

IN THE HIGH COURT OF DELHI AT NEWDELHI

Reserved on : November 30, 2007
Date of Decision : January 28, 2008

**CRL M . C. 1525/2006 & Crl M As 2511-12,8656, 11526/2006,
4896, 5182, 6565-66/2007**

RAJEEV SARDA PETITIONER
Through : Mr. K.K. Sud, Senior Advocate with Mr. Anish
Shrestha, Advocate

versus

STATE & ANR. RESPONDENTS
Through: Mr. Santosh Kumar, Advocate for
Respondent No.2 and Mr.P.K.Behl, APP for the State

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

Dr. S. Muralidhar, J.

1. By this petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') the Petitioner seeks quashing of Complaint Case No. 1357/1 titled ***Ravinder Kumar v. Amit Kumar & Ors.*** and the resultant FIR No. 199/2005 dated 17th May, 2005 registered at Police Station ('P.S.') Tilak Marg, New Delhi against the petitioner under Sections 467/468/471/420 read with 34 IPC. The Petitioner also seeks the quashing of an order dated 15th February, 2005 passed by the learned Metropolitan Magistrate, ('MM') New Delhi directing the Station House Officer ('SHO'), P.S. Tilak Marg, New Delhi to investigate the matter under Section 202 CrPC for the alleged conspiracy for forgery and submit a report to the court.

Background Facts

2. The facts leading to the filing of the petition are that a complaint was filed in the Court of the learned MM on 21st May, 2002 by the Respondent No.2 Shri Ravinder P. Kumar, a Director of M/s. Arcon Electroplast Pvt. Limited against Shri Amit Kumar and five others including the Petitioner here who was arrayed as Respondent No.3 therein. In the complaint, registered as Complaint Case No. 1357/1, it was alleged that the accused 2 to 4 i.e. Shri T.R. Biyani, Shri Rajeev Sarda, the Petitioner here, and Shri Sanjay Sarda were closely related to each other and were common directors of a group of companies which included M/s. Sparrow Technologies Limited, M/s. Adige Computer Service Private Limited and M/s. Sparrow Microelectronics Pvt. Limited. It is alleged that the companies had approached the complainant for supply of goods on short-term credit with the assurance of making payments. The complainant had, pursuant to such assurance, supplied goods and a sum of Rs.3,46,332.25 paise was found outstanding and due from M/s. Sparrow Technologies Limited. It is also alleged that these accused failed to furnish the 'C' form and when the amount remains unpaid despite several requests, the complainant filed a suit on the Original Side of this Court for recovery of Rs.8,76,000/-.

3. The complaint proceeded to state that accused Shri Amit Kumar acting as Pairokar of accused 2 to 4 filed an application under Section 8 of the Arbitration & Conciliation Act, 1996 ('Act') read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') in this Court in the pending suit stating that the dispute should be referred to arbitration in Bangalore and that no cause of action had arisen in Delhi. It is stated that along with the said application, accused 2 to 4 through accused 1 filed a false and fabricated document being a photostat copy of an attested copy of an alleged Memorandum of Understanding ('MOU') dated 9th January, 1998 purporting to have been executed by the plaintiff/complainant in Bangalore and containing an arbitration clause. It is stated that no such MOU was ever

executed by the complainant. It was pointed out that stamp paper on which the MOU was drawn was purchased much prior to the date of execution of the alleged MOU. In fact the date was even prior to the date on which business, even according to the defendants, had been transacted between the parties. It is then stated in the complaint that:

“There is no bar of Section 195 Cr.PC since the original document has not been filed and only the photocopy of the same has been filed in the Hon’ble High Court.”

4. By an order dated 26th February 2003, the learned MM before whom the complaint was presented declined to summon the accused for the following reasons:

“In the present case, the complainant has examined himself as a witness and CW-1 and has closed his evidence. The complainant has filed certified the copy of agreement which contains the arbitration clause in the court. The complainant has examined CW-1 Sh. T.K. John in support of his complaint who is the Manager of M/s. Arcon Electro Plast Pvt. Limited. Mere bald statement of CW-1 and CW-2 that the said agreement does not bear their signature is not sufficient to summon the respondents as an accused. The suit for recovery is still pending in the Hon’ble High Court, Delhi. The present complaint is pre-mature. In my considered view, there are not sufficient grounds to proceed against the respondents and it would not be appropriate to summon them as accused. The facts of the authorities relied upon by learned counsel for the complainant are different and the ratio of the observations made therein are not applicable to the facts of the case. In view of the above reasons the present complaint is not maintainable at this stage. Accordingly, it is dismissed. File be consigned to RR.”

5. Aggrieved by the said order dated 26th February 2003, the Respondent No.2 here Shri Ravinder P. Kumar filed Crl. Rev Nos. 7 and 8 of 2003 in the court of the learned Additional Sessions Judge, (ASJ) New Delhi. During the pendency of the said criminal revision case, the revisionist/complainant filed an application under Section 311 CrPC in which it was prayed that the order dated 26th February, 2003 should be set aside and an opportunity should be afforded to the complainant to place on record before the learned MM, at the pre-summoning stage, a copy of the MOU which was filed before this Court by the accused persons. The learned ASJ thereafter passed an

order on 13th August 2003, the material portions of which read as under:

“5. Under these circumstances, and in the interest of justice, and to prevent the miscarriage of justice, I am of the opinion that the impugned order of the learned trial court be set aside and an opportunity be afforded to the revisionist, to place on record the additional evidence, as stated herein above.

6. I, therefore, set aside the impugned order of the learned trial court. An opportunity shall be afforded to the revisionist by the learned trial court to enable him to lead further pre-summoning evidence, as desired by the revisionist, and thereafter the learned trial court shall pass order afresh in accordance with law.

7. With this the revision is disposed of.

8. Trial court record be sent back along with copy of this order, for compliance.

9. Revisionist is directed to appear before the learned trial court on 22.8.03 at 10.00 a.m. for further proceedings.”

6. On remand, the learned MM by an order dated 15th February 2005 referred the matter to SHO, P.S. Tilak Marg for investigation and filing a report. Pursuant thereto, an FIR was registered against the named accused including the Petitioner here on 17th May, 2005 at P.S. Tilak Marg, New Delhi under Sections 467/468/471/420 read with Section 34 IPC.

7. The application for anticipatory bail filed on behalf of the Petitioner here was dismissed by the learned ASJ by an order dated 20th December, 2005 after observing that this Court had already opined that the MOU is forged and fabricated.

8. It must be mentioned at this stage that the application filed by M/s. Sparrow Technologies Limited under Section 8 of the Act, i.e. IA No. 4050 of 2002 in CS (OS) NO. 21349 of 2002, was dismissed by this Court on 11th July, 2003. After setting out the respective contentions of learned counsel for the parties, this Court set out the following reasons for dismissing the application:

“10. On the aspect of using the stamp paper much earlier to the date when Memorandum of Understanding was executed, the defendant replied that the whole exercise of

executing the minutes at Goa and also exercise of executing the Memorandum of Understanding was done at a very short time. The stamp paper which was already available with the defendant was therefore used, I am not impressed by such reasons as the defendant was under legal obligation to purchase the stamp paper for the specific purpose for which it was specifically required to be used.

11. Defendant has also not been able to produce the original Memorandum of Understanding. Since the defendant desired this Court to believe the execution of Memorandum of Understanding which has since been denied by the plaintiff, burden heavily lies on the defendant to prove the execution of such document. He ought to have discharged his obligation by producing the original documents on record which he states has since been lost or misplaced details of which are again missing in the application nor does this application state as to whether the defendant took any step by lodging any report with the authorities about such misplacing of the document.

12. Defendant has further stated that the signatures of the plaintiff on this document can be got verified by sending it to the Handwriting Expert. I may state that unless original document is on record, no authentic report can be executed from the Handwriting Expert as this Court has experienced in so many cases that FSL has expressed their inability to give detailed report in the absence of original documents. **I am afraid if FSL would be able to give authentic report on the basis of the Photostat copies of the documents. Even otherwise perusal of the photostat copies of such documents leaves doubt in my mind about authenticity of such document as it is noticed that arbitration clauses has been shown on the last page of the document despite there being sufficient space available on page 3 was left blank. Instead arbitration clause was incorporated on the next page, if one looks to page 1 of this document this would show that this page was completely typed out whereas page 2 was not typed out in the same manner but arbitration clause was carried forward to last page of this document. What made the defendant to do so is not understandable and therefore doubt goes in my mind about the genuineness of this document.** Even otherwise defendant has not been able to show as to how he reached Goa on the same date after having signed the Memorandum of Understanding at Bangalore. The defendant was under legal obligation to clear this doubt in the mind of the Court particularly when plaintiff had taken up this plea. **The defendant has deliberately concealed this fact from the Court and therefore, inference can be drawn against him that this Memorandum of Understanding was never executed between the parties on 9th January, 1998.**

13. For all these the application of the defendant merits dismissal. Dismissed as such.” (emphasis supplied)

9. It must also be mentioned at this stage that not satisfied with the order dated 15th February 2005 passed by the learned MM directing the investigation by the police without any specific outer time limit, the complainant filed a petition Crl. Misc. 902/2005 in this Court under Section 482 CrPC. By an order dated 22nd March, 2005 notice was directed to issue to the State returnable on 9th May, 2005. Thereafter when an FIR came to be registered on 17th May 2005, Crl. Misc. No. 902 of 2005 was disposed of on 4th July 2005 as having become infructuous.

10. After the petitioner's application seeking anticipatory bail was rejected, the present petition was filed on 14th March 2006. On 21st March 2006, the following order was passed by this Court staying the order dated 15th February 2005 passed by the learned MM:

"Crl.M.C.No.1525/2006

Notice to respondents for 20th July, 2006.

Crl.M.A.2511/2006

Notice for the date fixed.

The Metropolitan Magistrate at the first instance dismissed the complaint of the complainant vide order dated 26th February, 2003 for alleged commission of offence under Section 467/468/471/420/34 IPC as is seen from the order passed by the Metropolitan Magistrate. The said order dismissing the complaint under Section 203 Cr.P.C. was passed as the evidence produced by the complainant/ respondent was not found sufficient for the purposes of summoning the petitioner as an accused. Dissatisfied with the said order complainant preferred a revision petition before the Additional Sessions Judge where the complainant had also made an application under Section 311 Cr.P.C. of the Code of Criminal Procedure seeking permission of the court for leading additional evidence which permission was granted by the Additional Sessions Judge vide order dated 13th August, 2003. Thereafter, the case had been sent back to the Metropolitan Magistrate. The Metropolitan Magistrate instead of adhering to the directions proceeded entirely in a different direction now directing the Investigation Officer to investigate the matter and submit its report before the court on 20th May, 2005.

Having gone through these three orders, I am of the opinion that Metropolitan Magistrate seems to have acted contrary to what was directed to him by the Additional Sessions Judge. As is seen from the order of the Additional Sessions Judge the Metropolitan Magistrate was only to confine his judicial function to the extent of recording additional evidence pursuant to the acceptance of the application made under Section 311 Cr.P.C. and not

beyond that. Pursuant to passing such orders the police came into action and had obtained non bailable warrants thus necessitating the petitioner to make an application for seeking anticipatory bail which prayer was turned down by the Additional Sessions Judge. Looking to the order passed by the Metropolitan Magistrate on 15th February, 2005, I am of the opinion that it is a fit case where prima facie it appears that Metropolitan Magistrate had acted contrary to the orders passed by the Additional Sessions Judge. Therefore, this order needs to be stayed. Consequently, the impugned order dated 15th February 2005 shall remain stayed.

Investigation being carried out by the Investigator pursuant to the passing of the impugned order shall also be kept in abeyance till further order. Dasti.”

Submissions of Counsel for the parties

11. The submissions of Mr. K.K. Sud, learned Senior counsel appearing on behalf of the Petitioner are as under:

(i) In terms of Section 195 (1)(b)(ii) read with Section 340 CrPC no cognizance could be taken of an offence alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, except on the complaint in writing by the presiding officer of the Court or of such person as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. It is submitted that in the instant case instead of filing an application in this Court seeking a direction in terms of the above provisions, the Respondent No.2/ Complainant approached the learned MM who, by the order dated 26th February 2003, rightly declined at that stage to issue summons since this Court was still seized of the proceedings in which the document in question was produced.

(ii) It is pointed out that in the FIR, against the column titled “occurrence of offence” the column “day” is left blank and columns “Date from” and “Date to” are both filled up with the word “unknown.” Even the columns “Time from” and “Time to” are filled as “unknown.” Reliance is placed on the judgment in ***Iqbal Singh Marwah v. Meenakshi Marwah (2005) 4 SCC 370*** to contend that the only exception carved out for not following the procedure outlined in Section 195 (1)(b)(ii) CrPC is where the forgery of the document has been committed even prior to it being produced in a proceeding in any Court whereas it in the instant case the date of commission of the

offence is “unknown”.

(iii) In any event the learned ASJ could not have, while exercising the revisional jurisdiction, entertained an application under Section 311 CrPC for producing a document before the learned MM particularly when there was no proceeding pending in the Court of the learned MM. There is no known provision of law for the learned ASJ to have given such a direction.

(iv) As regards the order dated 15th February, 2005 it is submitted that the learned MM acted contrary to the directions issued by the learned ASJ asking him to permit the complainant to produce the alleged copy of the MOU filed by the accused in this Court and to examine the document himself. Instead, the learned MM erroneously referred the matter for investigation to the police under Section 202 CrPC.

(v) The direction issued by the learned MM to the complainant to file copies with the Ahlmad for transmission to SHO was also illegal. As a result of the said direction, the police mechanically registered the FIR without any investigation whatsoever.

(vi) Without prejudice to the above contentions, the petitioner would be satisfied if the matter was remanded to the learned MM with a direction that he should consider the report of the police under Section 202 CrPC before directing the registration of an FIR. He adds that once the cognizance taken by the learned MM, there is no question of acting on an FIR.

(vii) Relying upon the judgment of the Supreme Court in ***Devarapalli Lakshminarayana Reddy v. V.Narayana Reddy 1976 (3) SCC 252***, it is submitted that once the cognizance is taken, the Magistrate has to logically proceed to the next stage of examining the pre-summoning evidence and cannot revert to the procedure under Section 202 CrPC by requiring the police to investigate. He has to only proceed in accordance with the procedure embodied in Chapter XV of the Cr.PC by examining the complaint and documents filed by the complainant. In other words, having been directed by the learned ASJ to resume the proceedings at the post-cognizance stage i.e. the stage of examining the pre-summoning evidence, the MM could not have straightway gone to the further stage of calling for a police

report under Section 202 CrPC.

(viii) Referring to the judgment in ***Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi (1976) 3 SCC 736*** it is contended that although in terms of Section 202 Cr.PC the accused is not entitled to be heard on the question whether process should be issued against him or not, the MM is duty bound to examine the case on merits and take into consideration inherent improbabilities, if any, appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. Reliance is also placed on the judgments in ***Jamuna Singh v. Bhadai Shah AIR 1964 SC 1541*** and ***Mohd. Yousuf v. Smt. Afaq Jahan 2006 (1) Crimes 81 (SC)***.

12. Appearing for the Respondent No.2 Mr. Santosh Kumar, learned counsel submits that the inference to be drawn from the order dated 11th July, 2003 of this Court while dismissing the application under Section 8 of the Act by the complainant M/s. Sparrow Technologies Limited is that the copy of the MOU produced was indeed forged. Relying on the judgment in ***Iqbal Singh Marwah (supra)*** it is submitted that since the document in question was forged even before its production before this Court, the procedure outlined in Section 195 (1)(b)(ii) CrPC was not required to be followed. Reliance is also placed upon the judgments in ***Gopalakrishna Menon v. D.Raja Reddy (1983) 4 SCC 240*** and ***Sachida Nand Singh v. State of Bihar (1998) 2 SCC 493*** to contend that even if the original of the document in question was not produced, it would make no difference to the MM taking cognizance of the complaint regarding forgery. Mr. Kumar has also placed reliance on the judgments in ***Rama Shankar Lal v. The State of U.P. 1971 (3) SCC 905*** and ***Budhu Ram v. State of Rajasthan 1963 (3) SCR 376***.

13. It is then contended that the power under Section 482 Cr.PC should be exercised sparingly and no case has been made out by the petitioner in the instant case for interference by this Court. Reliance is placed on the judgment of the Supreme Court in ***Indian Oil Corporation v. NEPC India***

Limited (2006) 6 SCC 736 and State of Karnataka v. Pastor P. Raju (2006) 6 SCC 728.

14. Notwithstanding the above submissions, it is submitted by the counsel for Respondent No.2 that there would be no objection to the case being remanded to the learned MM to proceed in accordance with the directions issued by the learned ASJ.

Issues for determination

15. On consideration of the aforesaid submissions, the following questions arise for determination by this Court:

- (1) Could Respondent No.2 validly have preferred a complaint before the learned MM in respect of the alleged forgery of the copy of the MOU produced in CS (OS) No. 2349 of 2002 in this Court without resorting to the procedure outlined in Section 195 (1)(b)(ii) read with Section 340 CrPC?
- (2) Was the learned ASJ justified in entertaining the application filed by the complainant under Section 311 CrPC for producing the document before the MM at the pre-summoning stage and remanding the complaint to the learned MM for that purpose?
- (3) Was the learned MM justified by directing investigation by the police under Section 202 CrPC by the impugned order dated 15th February 2005 and was such direction contrary to the direction issued by the learned ASJ?
- (4) Was the consequent registration of the FIR justified in law?
- (5) Has a case been made out for interference by this Court under

Issue No.1

16. The purport of Section 340 CrPC read with Section 195 (1)(b)(ii) is that the offence committed when a document that is forged is produced in judicial proceedings in a Court there is, apart from an offence being committed, an interference with the administration of justice and the offender should not go unpunished only because the party affected may choose not to file a complaint regarding such forgery. The question whether the procedure outlined in Section 340 CrPC read with Section 195 thereof, viz., that the court in whose proceedings the offence is committed should itself give a complaint in writing for registration of a criminal case, would alone apply even where the document in question was forged even prior to its production in the court stood settled in the judgment of the Supreme Court in ***Sachida Nand Singh (supra)***. After examining the apparent conflict between the judgments in ***Patel Laljibhai Somabhai v. State of Gujarat (1971) 2 SCC 376*** and ***Gopalakrishna Menon (supra)*** it was authentically stated by the judgment in ***Sachinda Nand Singh (supra)*** is that bar created by Section 195 (1)(b)(ii) CrPC “is not applicable to a case where forgery of document was committed prior to that document being produced or given in evidence in a proceeding in any court.”

17. The issue came to be referred to a Constitution Bench of the Supreme Court in ***Iqbal Singh Marwah (supra)*** on account of a conflict between ***Sachida Nand Singh (supra)*** which was by three Hon’ble Judges and an earlier judgment of a three-Judge Bench in ***Surjit Singh v. Balbir Singh (1996) 3 SCC 533***. In ***Iqbal Singh Marwah (supra)*** the Constitution Bench confirmed the decision in ***Sachida Nand Singh (supra)*** and held as under:

“23. In view of the language used in Section 340 Cr.PC the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195 (1)(b),

as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195 (1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact. Such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless has to be discarded.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr.PC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343 (2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343 (2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This import consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

25. An enlarged interpretation to Section 195 (1)(b)(ii), whereby the bar created by the said provision would also

operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in ***Sachida Nand Singh*** after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

26. Judicial notice can be taken of the fact that courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In ***Statutory Interpretation*** by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

“The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are over-riding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong.”

18. The law can now be taken to be settled that where the alleged forgery of the document produced by a party in the Court is shown to have been committed even before the filing of such document in the Court, then the bar under Section 195 (1)(b)(ii) would not apply. In other words, where it is shown that the document was already forged before its production in a court, the court where the complaint is filed would be justified in law in taking cognizance even without the complaint of the court in whose proceedings the document in question has been produced.

19. Turning to the facts of the present case it can be seen from the copies of the document in question produced by the accused along with their

application IA No. 4050 of 2002 in CS (OS) No. 2392 of 2002 in this Court (which copy is also placed on the record of this petition and is not disputed by the counsel for the petitioners) that it is shown to have been executed on 9th January, 1998. The seal of the notary public with the signature however, is shown with the date of 2nd January 1999. According to the complainant the stamp paper appears to have been purchased on 7th December 1996. The application IA No. 4050 of 2002 was itself filed some time in 2002 in the pending civil; suit which was also filed in the same year. Since the complainants are denying the genuineness of their signatures on the document, which according to the accused were appended either on 9th January 1998 or 2nd January 1999, it is obvious that the alleged forgery took place long before the document was produced in this Court.

20. From the above facts it appears that the alleged forgery of the documents would have taken place definitely prior to the production in the Court. Even according to M/s. Sparrow Technologies Limited, if the document is genuine then it should be executed on the date as shown on the documents i.e. 9th January 1998 or the date of its attestation i.e. 2nd January 1999 and in any event it is prior to date of such document or photocopies being produced in Court. The fact that the original document itself was not produced would not make any difference in terms of the law as explained in ***Rama Shankar Lal (supra)***. Applying the ratio of the judgment in ***Iqbal Singh Marwah (supra)*** it is held that in the present case bar under Section 195 (1)(b)(ii) read with Section 340 CrPC did not apply to the complaint filed by the Respondent No.2 and to that extent the learned MM was not in error in taking cognizance. In other words, the learned MM could not have refused to take cognizance only because on the date the complaint was filed, this Court had not disposed of the application filed by M/s. Sparrow Technologies Limited under Section 8 of the Act. Issue No.1 is answered accordingly.

Issue No. 2

21. The next issue that arises is whether the learned ASJ was justified in entertaining the application filed by the Respondent No.2 under Section 311 CrPC and permitting the complainant to produce the copy of the MOUU before the learned MM at the pre-summoning evidence stage. A perusal of the order passed by the learned ASJ reveals that the question whether the ASJ could himself entertain the application under Section 311 CrPC did not really arise for consideration. In fact what the ASJ appears to have done is to opine that the impugned order of the learned MM, which was amenable to revisional his jurisdiction, was not sustainable since the learned MM had not considered the alleged forged document. Therefore, the learned ASJ, remanded the matter to the learned AMM for passing a fresh order "in accordance with law after affording an opportunity to the complainant to lead further pre-summoning evidence." Thus the learned ASJ left it to the learned MM to examine the pre-summoning evidence in the form of the copy of the MOU instead of taking such task upon himself. Viewed in the background of the case, the operative portion of the order dated 13th August 2003 passed by the learned ASJ cannot be found fault with. Indeed the learned MM after taking cognizance would have to had to examine the pre-summoning evidence sought to be adduced by the complainant. In that view of the matter, it is not necessary to examine if learned ASJ could have at the stage of revision entertained the application under Section 311 CrPC. In the facts and circumstance of the present case, this Court is, of the view that there is no legal infirmity in the order dated 13th August 2003 passed by the learned ASJ remanding the case to the learned MM with the directions as noted earlier. Issue No.2 is answered accordingly.

Issue No.3

22. The next issue is whether the learned MM was justified, on remand, in passing the impugned order dated 15th February 2005 directing investigation by the police under Section 202 (3) CrPC. The answer to this is

in ***Devarapalli Lakshminarayana Reddy (supra)*** where the Supreme Court explained the law in the following words (SCC, p.258):

“17. Section 156 (3) occurs in Chapter XII, under the caption: “Information to the Police and their powers to investigate”: while Section 202 is in Chapter XV which bears the heading: “Of complaints to Magistrates”. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the magistrate is in **seisin** of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate **before** he takes cognizance of the offence under Section 190 (1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156 (3). It may be noted further that an order made under Section subsection (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report of charge sheet under Section 173. On the other hand, *Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that Section an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding”.* Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the magistrate in completing proceedings already instituted upon a complaint before him.”

(italics supplied for emphasis)

23. Turning to the facts of the case on hand, it is seen that there was no question of the learned MM referring the matter for investigation by the police, without adhering to the order of the learned ASJ and examining the pre-summoning evidence himself. If, and only if, after examining the pre-summoning evidence adduced by the complainant, the learned MM formed an opinion that further investigation by was required by the police under

Section 202 (3) CrPC could he have referred the case for investigation. In other words, the learned MM will have to first form an opinion that the pre-summoning evidence as examined by him is “deemed insufficient to take a decision as to the next step in the prescribed procedure.” According to the Supreme Court only in such a situation, the Magistrate is empowered under Section 202 to direct, an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding”. In that view of the matter, this Court has no hesitation in setting aside the order dated 15th February, 2005 passed by the learned MM and directing that he should now proceed in terms of the direction as contained in the order dated 13th August, 2003 passed by the learned ASJ. Issue No.3 is answered accordingly.

Issue No.4

24. In view of the above conclusions arrived at by this Court, the registration of the FIR consequent upon the directions issued by the learned MM in the impugned order dated 15th February, 2005 cannot be sustained in law. The FIR is accordingly quashed. The learned MM will now proceed with the complaint filed by the Respondent No.2 at the post-cognizance stage and proceed to examine the pre-summoning evidence, including the copy of the MOU, in light of the directions of the learned ASJ. Thereafter if he forms an opinion that the evidence is deemed insufficient to arrive at a decision, the learned MM can order investigation by the police in terms of Section 202 CrPC. Either while examining the pre-summoning evidence or at the stage of considering the report of investigation by the police, as the case may be, the learned MM will examine the role of each of the accused named in the complaint for deciding if there is sufficient ground for proceeding against such the accused. Learned MM would be conscious of the facts that a prima facie would have to be made out to connect each of the accused with the alleged offence. Issue No.4 is decided accordingly.

Issue No.5

25. The above conclusions, as regards Issues 2 to 4, constitute sufficient grounds for this Court to interfere in exercise of its powers under Section 482 CrPC to interfere with the impugned order dated 15th February, 2005 passed by the learned MM. Issue No.5 is answered accordingly.

Conclusions

26. To summarise the conclusions:

- (a) There is no bar under Section 195 (1)(b)(ii) read with Section 340 CrPC to the learned MM entertaining the complaint filed by the Respondent No.2.
- (b) The order dated 13th August 2003 passed by the learned ASJ does not call for interference.
- (c) The order dated 15th February 2005 passed by the learned MM is erroneous in law and hereby set aside.
- (d) Consequently, the FIR No. 199/2005 dated 17th May, 2005 registered at Police Station ('P.S.') Tilk Marg, New Delhi under Sections 467/468/471/420 read with 34 IPC pursuant to the order dated 15th February, 2005 passed by the MM is hereby quashed.
- (e) The learned MM will now proceed in accordance with law by examining the pre-summoning evidence, including the copy of the MOU, in light of the directions of the learned ASJ contained in the order dated 13th August 2003. The learned MM will abide by the directions in paragraph 25 of this judgment.
- (f) The petitioner has made out a case for interference by this Court under Section 482 CrPC to the extent indicated hereinabove.

27. This petition and the pending applications are disposed of in the above terms. The trial court records, if summoned, be sent back immediately to

the court of the learned MM who will proceed in accordance with law. The parties are directed to appear before the learned MM on February 18th of 2008 at 11.00 am for further directions.

S. MURALIDHAR, J.

January 28, 2008
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