

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. REV. 550/2007**

Date of Reserve : 08.01.2010

Date of Decision: 22.01.2010

VINESH VYAS

.... Petitioner

Through Mr. Simon Benjamin, Mr. M.P.
Kartik, Advocates

Versus

STATE THROUGH CBI

.... Respondent

Through Mr. Vikas Pahwa, Standing Counsel
for CBI with Mr. Biswajit Kr. Patra,
Advocate

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J.**

C.M.9793/2007

For the reasons stated in the application, delay in re-filing is condoned and the application is disposed of.

C.M.9795/2007

For the reasons stated in the application, 69 days' delay in filing the petition is condoned and the application is disposed of.

Crl.Rev.P.550/2007

1. This petition has been filed by the petitioner under Section 397 read with Section 401 and Section 482 of the Criminal Procedure Code,

1973 to call for the records of case of C.C. No.2/04 pending in the Court of Special Judge, Delhi and setting aside of order on charge dated 27.10.2006 and the consequent framing of charge against the petitioner under Section 193/120B IPC.

2. It is the case of the petitioner that even if it is presumed that he has committed the offences alleged against him, cognizance of those offence could not have been taken by the Special Judge in view of Section 195 of the Code of Criminal Procedure except upon filing of a complaint in writing by that Court or by such officer of the Court 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, admittedly, no complaint has been filed by the Special Judge or by any other officer authorized by that Court in relation to the allegation made against the petitioner by the complainant, after taking a decision under Section 195 Cr.P.C.

3. Both sides have relied upon the judgment delivered by the Hon'ble Supreme Court in Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. (2005) 4 SCC 370. It would be appropriate to take note of the following paragraphs of the aforesaid judgment:

10. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in

Chapter X of the IPC and the heading of the Chapter is - 'Of Contempts Of The Lawful Authority Of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as - 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

4. It is submitted that the petitioner has been charged by the trial Court for the offences of criminal conspiracy punishable under Section 120B IPC read with Section 193 IPC. No charge was framed against the petitioner under the Prevention of Corruption Act as well as for the offences for having committed forgery. This order has not been challenged by the Central Bureau of Investigation.

5. At this juncture, it would be also relevant to take note of the provisions contained under Section 193 of the Indian Penal Code, which reads as under;

193 - Punishment for false evidence: Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.--A trial before a Court-martial;¹[***] is a judicial proceeding.

Explanation 2.--An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

6. It is submitted that as per the case of the complainant the documents alleged to have been fabricated/forged were produced during an investigation directed by the law preliminary to a judicial proceeding before a Court of justice and, thus, it has been submitted that in the present case, neither any offence has been committed by the petitioner under Section 191 nor under Section 192 IPC where intention is an essential ingredient on the part of the maker of the false evidence.

7. It is submitted by the petitioner that as per the case of the complainant, the offences alleged against the petitioner talks of a conspiracy hatched between the petitioner and Shri V.K. Puri which led

to preparation of the Bill which it is stated are forged and fabricated for the purpose of purchase of jewellery and subsequent production thereof, during the course of an enquiry conducted by the respondents on the allegation that Shri V.K. Puri had acquired assets disproportionate to his known sources of income. It is, thus, submitted that in the present case the distinction of preparing the documents and producing it during the course of judicial proceedings are covered by Explanation 2 to Section 193 of the IPC and for such kind of an offence the only method which ought to have been adopted would have been approaching the concerned Court under Section 195 Cr.P.C. and requesting the Court to take the matter if at all any offence was disclosed as in the light of the allegations made in the complaint by the complainant/respondent. The Court was also required to hold an enquiry about the allegations made against the petitioner. In view of that it is submitted that the case of the petitioner was squarely covered by Section 195(1)(b)(i) & (ii) of the Cr.P.C. of which no cognizance could have been taken unless and until a complaint was filed by the concerned Court or by an officer authorized by the said Court where the documents were produced as stated above.

8. Referring to the judgment delivered by the Apex Court in the case of *Iqbal Singh Marwah (supra)* it has been submitted that even if the allegations of the respondents are taken on the face value, the case will be covered by Explanation 2 to Section 193 of IPC as those documents about which allegations of forgery have been made against the

petitioner admittedly have been given during the investigation of the corruption case against the co-accused of the petitioner. In this regard, it has also been stated that as far as the petitioner is concerned neither there is any reliance nor there is any charge framed against him under Sections 463, 471, 475, 476 IPC and in any event allegations do not disclose any offence of forgery as the allegations are not covered under the provisions of Section 464 IPC. It would also be relevant to take note of paragraphs 5 and 7 of the aforesaid judgment in *Iqbal Singh Marwah (supra)* on which reliance has been placed by the petitioner and which reads as under:

5. The principal controversy revolves round the interpretation of the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court" occurring in clause (b)(ii) of sub-section (1) of Section 195 Cr.P.C. The appellants place reliance on the following observations made in para 10 of the report in *Surjit Singh v. Balbir Singh*:

"It would thus be clear that for taking cognizance of an offence, the document, the foundation of forgery, if produced before the court or given in evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal court is prohibited from taking cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the Court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offence covered thereunder."

to contend that once the document is produced or given in evidence in Court, the taking of cognizance on the basis of private complaint is completely barred.

XXXXXX

7. On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.

9. In the present case, it is not the case of the complainant that the documents which are alleged to have been fabricated/forged were prepared by the petitioner for any other purpose than for their production before the Investigating Officer in relation to the charges of acquiring assets over & above the known sources of income of Shri V.K. Puri. It is not the case of the prosecution that the documents were used for any other purpose after preparing and forging them. As a matter of fact, there is no evidence to substantiate that the bills were fabricated prior to their production before the enquiring authority or that they were prepared much earlier and they were used at the time of enquiry which was going on. In fact, the allegations show that the documents were prepared and produced to safeguard the interest of Shri V.K. Puri in conspiracy with him and, thus, it is one transaction

and not two transactions. In view of Explanation 2 of Section 193 of IPC the offences alleged against the petitioner could not have been bifurcated. In fact, once the complainants themselves wanted the petitioner to be charged Section 193 IPC read with Section 120B IPC, it was not their intention that the petitioner should have been prosecuted for the forgery committed earlier as an independent offence and it was on that account they were filing a private complaint.

10. To appreciate the contentions raised by the petitioner it may be appropriate to take note of the allegations levelled against the petitioner which have been enumerated by the respondent in their written submissions which for the sake of reference are reproduced hereunder:

1. RC No. 1(A)/2002-ACU-II/New Delhi was registered against Shri V.K. Puri on 22.2.2002 u/s 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 for having movable/ immovable assets worth Rs. 1,30,70,863.61, disproportionate to his known sources of income. During investigation it was revealed that Shri V.K. Puri through his wife Smt Amita Puri submitted attested copies of 86 forged and fabricated bills, issued by M/s Shri Ambika Jewelers Indore, reflecting sale of gold jewellery and silver utensils worth over 87 Lacs during Sept 1992 to Jan 1995. During the investigation it was further revealed that the said 86 bills were fraudulently got prepared by the Petitioner through his employee/ relative, Shri Girish Jain and Shri Dipesh Vyas in the month of June-July 2002.

2. The Petitioner is thus facing prosecution u/s 193/120B IPC for fabricating false evidence by preparing 86 false & fabricated bills in the name of Accused No.2. The Petitioner got those bills prepared in back dates through his employees PW Girish Jain and PW Dipesh Vyas, whose statement were recorded u/s 164 Cr.P.C. All these bills were also countersigned by Accused No. 2. They were forged in

the month of June-July 2002 showing the transaction pertaining to the period of September 1992 to January 1995. At the time of doing so the Petitioner was very well aware that these bills are being forged for illegal purpose.

11. It is the stand of the respondent that the contentions of the petitioner that there is a bar u/s 195 Cr.P.C. in prosecuting the petitioner, is misconceived and is not applicable in the instant case as the bills were forged prior to the same being produced before the investigating officer. It is submitted that the offence of fabricating false evidence as defined u/s 192 IPC is an offence against Public Justice. The bar u/s 195 Cr.P.C. should be applied in the cases where the offence is committed in any proceeding in the Court and also in the cases where the forgery has been committed after the document is produced in the Court. It is further submitted that any offence committed in respect of a document at a time prior to its production or giving in evidence cannot be considered to be an offence affecting Administration of Justice. It is further submitted that the judgment passed by the Hon'ble Supreme Court of India in the matter of *Iqbal Singh Marwah (supra)*, is relating to the interpretation of Section 195(1)(b)(ii) Cr.P.C. and the Supreme Court in the said case has not categorically dealt with the interpretation of Section 195(1)(b)(i) Cr.P.C.

12. I have considered the submissions made on behalf of the parties and have also gone through the scheme of Section 195 of the Code of Criminal Procedure which reads as under:

195 - Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence:

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence,
except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),¹ except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

13. In this case, the Special Judge while framing the charges against the petitioner has made the following observations:

4. In order to explain the said disproportionate assets, A-1 and A-2 furnished photocopies of 86 bills showing purported sale of gold jewellery and silver utensils to one M/s Shree Ambica Jewellers, Indore to the tune of Rs. 87,10,259/- during the period September 1992 and January 1995. The said bills reflect inter alia purported sale of gold jewellery weighing 20,108.452 grams worth Rs. 76,62,902/- and silver utensils weighing 197.238 kgs worth Rs. 10,47,357/-. Each of these bills bear the signatures of A-2 Amita Puri.

13. On behalf of A-3 Vinesh Vyas arguments have been addressed by counsel Mr. Sidharth Aggarwal.

It has been argued that admittedly In the category of 'After Notice Miscellaneous Matters' and A-2 were not known to A-3 and in fact there is no such evidence forthcoming by the prosecution. The check period in this case is admittedly between 01.06.1988 to 22.02.02. It is argued that the 86 bills had allegedly been prepared in June/July 2002 by A-3 in conspiracy with A-1 and A-2 when the check period itself stood expired in February 2002; the question of conspiracy after offence of the amassing of disproportionate assets was over in February 2002, cannot arise in June/July 2002. Admittedly when these bills were prepared after the check period had terminated, the question of A-3 having entered into a conspiracy with A-1 and A-2 in the acquisition of the assets disproportionate to his known sources of income of A-1, could not arise. It is argued that this is clearly a case where there is a misjoinder of charges and A-3 cannot be tried for the offences which have been alleged against A-1 and A-2. Attention has been drawn to the provisions of Section 223 of the Cr.P.C. It is argued that under sub Clause (d) of Section 223 of the Cr.P.C. which is at best the provision of law which the prosecution can rely upon to try the accused under the same charge sheet; it necessarily entails that persons accused of different offences must have committed them "in the course of the same transaction"; the essential ingredient being in the course of the same transaction. For this proposition Id. Counsel has placed reliance upon a judgment of the Hon'ble Apex Court reported in (2000) 1 SCC 285. It is argued that the test to determine whether the offence falls within the course of the same transaction to permit a joint trial, there must be commonality of purpose or design and continuity of action.

14. It is argued that the offence as contained in Section 193 of the IPC is not made out against A-3 so as to bring the accused within the ambit and purview of Section 193 IPC. Admittedly in this case the making of the so called 86 false and fabricated bills by A-3 cannot be covered by Section 191 of the IPC as it is not a statement which has been made; the provisions of Section 192 of the IPC would also not apply as the essential ingredient of Section 192 IPC necessarily entails an intention on the part of the maker of the fabrication of such false evidence or a prima facie knowledge that this fabricated false evidence may appear in evidence in a judicial proceeding or in a proceeding taken by law before a

public servant or before an arbitrator which is not so in the instant case; no such intention or knowledge can be attributed to A-3. The only evidence forthcoming with the prosecution is the statements of PW Girish Jain and PW Dipesh Vyas recorded under Section 164 of the Cr.P.C. D-629 respectively and a reading of these statements clearly show that no knowledge could be foisted upon A-3 that he knew that by getting these bills prepared of an earlier date, he had knowledge that they are likely to be used in a judicial proceedings or before a public servant or before an arbitrator. In this view of the matter, the essential ingredient under Section 192 of the IPC not having been complied with, the offence under Section 193 of the IPC is not maintainable.

15. It has been argued by ld. counsel for A-3 that even otherwise the bills having allegedly been prepared by A-3 and having been used in the course of an investigation by A-1 & A-2 to explain their disproportionate assets, the case of A-3 would be termed as a 'judicial proceeding' and the bar of Section 195 of the Cr.P.C. would thus be attracted which clearly envisages that no court shall take cognizance of any offence punishable under Section 193 of the IPC when such an offence is alleged to have been committed in or in relation to any proceeding in any Court except on the complaint in writing of the public servant concerned to whom he is administratively subordinate. It is argued that in such a case provisions of Section 195 of the Cr.P.C. not having been complied with and there being no complaint in writing of the public servant, the provisions of Section 193 IPC are not maintainable.

14. According to the trial Court it was not a case where power of Section 195 Cr.P.C. was attracted for framing a charge against the petitioner under Section 193 I.P.C. In this regard, Special Judge made the following observations:

19. The bar of Section 195 of the Cr.P.C., in my view would also not attract as the act of A-3 would fall in the second part of Section 193 of the IPC which necessarily enjoins that whoever intentionally gives or fabricates false evidence in any other case i.e. other than a judicial proceeding, the bar of Section 195 of the Cr.P.C. would not arise and in

such a case there is no mandate for there to be a complaint in writing of a public servant which is only necessary where the offence of Section 193 of the IPC is alleged to have been committed in or in relation to any proceeding in any court; the fabrication of false evidence in this case by A-3 was not to be used in a judicial proceeding but these bills were to be used by A-1 and A-2 to explain their disproportionate assets before the Investigating Officer who is a public servant within the definition of Section 192 of the IPC, but this offence of Section 193 of the IPC not having been committed in relation to any proceeding in any court, the bar of Section 195 of the Cr.P.C. would not be attracted.

15. However, this is not the correct position. Explanation 2 attached with Section 193 I.P.C. makes it abundantly clear that if a forged document is produced during the course of judicial inquiry which, in the present case, would cover the investigation by the Central Bureau of Investigation and would attract the provisions of Section 195 Cr.P.C.

16. The submission made by the petitioner needs emphasis i.e. if the bills were prepared earlier and would not have been produced during the course of enquiry then these would not have been used by the person in whose favour those bills were issued and therefore, preparing those bills earlier would not have been an offence or even if some offence was committed it would not have been of any consequence. It is only when those bills were produced during the course of enquiry it becomes an offence because then it has been used to support the case of the person to whom those bills were issued before the inquiring authority i.e. CBI. Thus, to bifurcate the offence in two parts would be to misconstrue the provisions contained under Section 195 Cr.P.C. It

cannot be said that for the first part i.e. when the bills were prepared a private complaint can be filed, but for the second part a complaint will have to be filed only after the same was referred to by the court concerned which in this case would be the court of the Special Judge where the case has been filed against the incumbent who is facing charge under the Prevention of Corruption Act. Thus, in the facts of the present case, the alleged offence for which the petitioner has been charged under Section 193/120-B IPC, would be covered by Section 195(1)(b)(i) Cr.P.C. and would require filing of a complaint by the concerned court and by any authorized officer in this behalf, which is not the case before this Court.

17. At this juncture, it will also be appropriate to take note of a judgment delivered by the Supreme Court in Sushil Kumar & Ors. Vs. State of Haryana & Ors. AIR 1988 SC 419 where in similar facts the Court observed that since the documents alleged to have been forged was not produced in the Court, the provisions of Section 195(1)(b)(ii) had no application. Reference can be made to the following paragraph of the judgment, which reads as under:

3. According to the allegations in the first information report the partnership deed in question was forged by the appellant Sushil Kumar and Shiv Nandan in league with the officials of the Income tax Department and Sushil Kumar, thereafter, produced a copy of the forged deed in the suit. The original document was not filed in the civil court, and temporary injunction was obtained on the strength of its copy. We shall assume that the reasoning given by the High Court in support of its judgment is not correct but that does not help the appellants. Sub-section (1)(b)(ii) of Section 195 of the Code lays down

that no court shall take cognizance of any offence described in the sections mentioned therein when such offence is alleged to have been committed in respect of "a document produced or given in evidence in a proceeding in any Court. Interpreting the similar language of the corresponding provision in the earlier Criminal Procedure Code of 1898, the Privy Council in *Sanmukh singh v. The King* L.R[1949] IndAp 7, observed that by production of a copy of the allegedly forged document it cannot be said that the document itself was given in evidence. This view, as pointed out, accords with the plain grammatical meaning of the words and is also supported by the practical common sense. The Judgment of the Judicial Committee was followed in *Budhu Ram v. State of Rajasthan* : [1963]3SCR376 . Accordingly, we hold that since the document alleged to have been forged was not in the present case produced in the court, the provisions of the Section 195(1)(b)(ii) of the Code have no application. We, therefore, confirm the High Court's direction, but on a different ground as indicated. The appeal is dismissed.

18. It will also be relevant to take note of another judgment of Supreme Court in the case of *M.S. Ahlawat Vs. State of Haryana & Anr.* *AIR 2000 SC 168* where it has been held:

12. This Court has always adopted this procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false. We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340 Cr.P.C. were not brought to the notice of the learned Division Bench.

13. In the light of the enunciation of law made by this Court in the Supreme Court Bar Association case (supra), this Court could not have assumed jurisdiction by issue of a notice proposing conviction for forgery and making false statements at different stages in the court punishable under Section 193 IPC without following the procedure prescribed under Sections 195 and 340 Cr.P.C. Primarily this Court does not exercise any original criminal jurisdiction in relation to offences arising under Section 193 IPC and secondly the seriousness of the

charge arising under Section 193 IPC requires an elaborate inquiry and trial into the matter by the competent criminal court and a summary inquiry by mere issuing a show cause notice and considering affidavits or inquiry reports would not tantamount to a procedure provided under the Criminal Procedure Code. The order made by this Court convicting the petitioner under Section 193 IPC is, therefore, one without jurisdiction and without following due procedure prescribed under law. Though it is not clear from the impugned order whether the powers under Article 142 of the Constitution were exercised to convict the petitioner under Section 193 IPC, we have proceeded on the assumption that it is by exercise of that power that the impugned order had been made for there is no other provision enabling the passing of such an order.

15. To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience. We, therefore, unhesitatingly set aside the conviction of the petitioner for the offence under Section 193 IPC. We also do not at this stage, consider it expedient to direct the filing of a complaint in the competent court as envisaged by Section 340 Cr.P.C. because the petitioner has already undergone the sentence imposed upon him for an offence under Section 193 IPC although set aside now by this order and we are upholding his conviction and sentence imposed under Article 129 of the Constitution of India for committing contempt of court.

16. For the aforesaid reasons, the order made in Writ Petitions (Criminal) Nos. 356-357 of 1996 convicting the petitioner under Section 193 IPC is recalled and set aside. It is made clear that this order will not enable the petitioner to claim any compensation or initiate any proceedings in any court arising out of his conviction under Section 193 IPC except to use the same in any proceeding initiated against the petitioner departmentally regarding his services.

19. There is one more reason to take the aforesaid view i.e. the charge of conspiracy which is sought to be fastened upon the petitioner would arise only when the petitioner would be an accomplice with Shri V.K. Puri for the purpose of enabling Mr. Puri to use the Bills which are

alleged to be forged by producing them during the course of the enquiry. Thus, the second explanation appended to Section 193 IPC would certainly become applicable and, therefore, it will be covered by the mandate of Section 195 Cr.P.C., which is nothing else but giving jurisdiction to the Court concerned to take a view in the matter and if necessary to file a complaint for the offences disclosed.

20. Thus, I am of the considered view that in the present case the cause of action for the prosecution of the petitioner arose in favour of the complainant only on the basis of production of the alleged forged documents during the course of investigation of the case against the incumbent against whom charges under Prevention of Corruption Act were being investigated, it will certainly be a case which will be covered by Section 195(1)(b)(i) Cr.P.C. and would have to be tried in accordance with the provisions contained under Section 340 Cr.P.C. in view of Explanation (2) appended to Section 193 of IPC. Thus, the petition succeeds. Accordingly, the proceedings undertaken by the complainant against the petitioner and consequent framing of the charge are set aside. However, liberty is granted to the complainant to file an application before the concerned Special Judge in accordance with Section 195 Cr.P.C., if they so decide or to the Special Judge to take cognizance suo moto, if he is of the opinion that it is a fit case where the complaint is required to be made against the petitioner, he may do so in accordance with law. With this liberty, the present revision petition is allowed. The order dated 27.10.2006 framing charges against the

petitioner is set aside. The bail bond, if any, of the petitioner stands discharged.

Crl.M.A.9792/2007 (Stay)

In view of the orders passed above, this application has become infructuous and the same is accordingly disposed of.

MOOL CHAND GARG, J.

JANUARY 22, 2010
anb