

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

% Judgment reserved on: 17th October, 2014
Judgment pronounced on: 05th December, 2014

+ **CO. A(SB) 50/2013**

ARUN DHAWAN & ANR **...APPELLANTS**

Through: Mr.Suhail Dutt, Senior Advocate
with Mr. Vikas Tiwari and
Mr.Neeraj Gupta, Advocates

Versus

LOKESH DHAWAN **....RESPONDENT**

Through: Mr.Ankit Sibal, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. This appeal arises out of order dated 18.9.2013 of the Company Law Board whereby the Company Law Board while holding that the document, i.e., Resolution of Board of Directors dated 16.8.2010 filed by the Respondent (Petitioner in the Company Petition) was a forgery, refused to proceed further with the application filed by the Appellant (Respondent in the Company Petition) to initiate action and prosecute the Respondent for perjury and contempt. The Company

Law Board dismissed the application relying on the judgment of the Supreme Court in ***IQBAL SINGH MARWAH V. MEENAKSHI MARWAH, 2005 (4) SCC 370*** and held that Section 195(1)(b)(ii) CrPC was attracted only when the offences, enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in any court during the time the same was in *custodial legis*. The Company Law Board further relied on the judgment of the Supreme Court in case of ***SACHIDA NAND SINGH & ANR. VS. STATE OF BIHAR & ANR., 1998 (2) SCC 493*** and held that it would be strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reaches the court.

2. The application filed by the Appellant for prosecuting the Respondent (Petitioner before the CLB) for perjury was premised not only on the facts that the document was forged and fabricated but that the Respondent by filing and relying on the said forged and fabricated

document induced the Court to believe that the Respondent was having a higher shareholding.

3. It is an admitted position of the parties that the said document is forged and fabricated. The Respondent contends that the document was handed over to the Respondent by the Appellant himself and believing the document to be correct, the document was relied upon and filed by the Respondent in Court. On the other hand, the contention of the Appellant is that the Respondent forged and fabricated the document and filed pleadings duly verified and affirmed based on the said forged and fabricated document knowing that the document was forged and fabricated and thereby inducing the Court in entertaining the petition.
4. The question that arises for consideration is: Whether the court would be barred from entertaining an application under Section 340 CrPC even in cases where a party files pleadings being aware that the document on which such pleading is based is forged and fabricated?
5. Since the Company Law Board has held that there is a jurisdictional bar, the merits of the allegation of the

Appellant or the defence of the Respondent are not being considered in the present judgment.

6. The Appellant No. 1 and Respondent are real brothers and sons of late Sh. K. C. Dhawan. The dispute relates to the succession to the shares of Late Sh. K. C. Dhawan in the Appellant No. 2 Company.
7. The Respondent filed before the Company Law Board Minutes of Meeting of the Board of Directors allegedly held on 16.08.2010 wherein the Resolution is allegedly passed for distribution of the shares of late Sh. K.C.Dhawan between his four sons, one daughter and the wife.
8. It is an admitted case of the parties that the Minutes of Meeting produced by the Respondent are forged and fabricated.
9. The contention of the Appellant is that the Respondent who held only 1% share forged and fabricated the Minutes of the Board and filed the petition under Section 397/398/402 and 403 of the Companies Act, 1956 contending that he had 15% shares based on the said Board Minutes. As per the Appellant, the Respondent, knowing fully well that the Resolution

was forged and fabricated, filed the petition contending as under:

“8. That a Board Resolution was also passed in the Board Meeting held on 16.8.2010 and the said shares were also transmitted in the name of the above mentioned legal heirs. The copy of the Board Resolution is annexed as Annexure P-2.”

10. As per the Appellant not only were the Minutes forged but the Respondent had specifically in the petition averred that the said Board Resolution was passed in the meeting held on 16.08.2010 and the shares were, accordingly, transferred. As per the Appellant, the said averment was a positive averment and was false to the knowledge of the Respondent and was based on a forged and a fabricated document which was supported by an affidavit of the Respondent.
11. Further, the Appellant has contended that this fact was even reiterated and reaffirmed by the Respondent despite the fact that the Appellant had specifically stated in the reply that the documents were forged and fabricated.

12. It is contended that the Respondent in the rejoinder had not taken any plea that the Resolution was handed over by the Appellant but on the contrary he contended that the contents of the reply of the Appellant was false, fake, bogus and mischievous and, therefore, denied it in full. It was contended in the rejoinder that the Board Resolution dated 16.08.2010 was passed and the same was recorded in the own handwriting of the Appellant in the Minute Book. As per the Appellant, the Respondent never took the plea that the Resolution was handed over by the Appellant.
13. As per the Appellant, since the petition filed by the Respondent contained a false averment and further relied on a forged and fabricated document, the application filed by the Appellant under section 340 CrPC for initiating perjury proceedings against the Respondent was maintainable.
14. The contention of the Respondent is that though the document was forged and fabricated, the document was handed over to the Respondent by the Appellant himself and believing the document to be a valid document, reliance was placed on the same.

15. The Company Law Board has refused to entertain the application on the premise that the same was not maintainable. The Company Law Board has refused to consider the application filed by the Appellant on merits.
16. Since the application has not been considered by the Company Law Board on merits, the question that arises for consideration is whether there is a jurisdictional bar in entertaining such an application?
17. In case, there is no threshold jurisdictional bar in entertaining the application, then the Company Law Board would be required to consider the merit of the pleas of the Appellant and the defence of the Respondent.
18. Learned Counsel for the Appellant pointed out to similarities between the font and contents of the Board Resolution and the Suit filed by the Respondent to contend that the Board Resolution was forged as the table in the Resolution and the Suit were identical having identical font, punctuation marks etc. It was submitted that the address of the Respondent in the Resolution was incorrect and even the ages of the

parties were incorrect. This in my view is a plea on the merits of the application and is not relevant to be considered at this stage as the question arising for consideration is with regard to the jurisdictional bar of the Company Law Board.

19. To decide the question of law that arises for consideration, it would be necessary to consider the relevant provision of law.
20. Section 340 of Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC) lays down as under:

340. Procedure in cases mentioned in section 195.

- (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—*

- (a) *record a finding to that effect;*
 - (b) *make a complaint thereof in writing;*
 - (c) *send it to a Magistrate of the first class having jurisdiction;*
 - (d) *take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and*
 - (e) *bind over any person to appear and give evidence before such Magistrate.*
- (2) *The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.*
- (3) *A complaint made under this section shall be signed,—*
 - (a) *where the Court making the complaint is a High Court, by*

such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195.

21. Section 340 CrPC lays down the procedure to be followed by a court or a court to which such court is subordinate in respect of an inquiry into any offence referred to in clause (b) of sub-section (1) of section 195 CrPC, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court.

22. Section 195 (1)(b) of CrPC lays down 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)

(b)(i) of any offence punishable under any of the following

sections 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)

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

.....”

23. Section 195(1)(b)(i) & (ii) CrPC lay down that no Court shall take cognizance of any offence punishable under any of the following sections 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 and 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 except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

24. The reading of Sections 195(1)(b)(i) & (ii) CrPC shows that the said sections places a bar on a Court from taking cognizance in respect of the offence punishable under the Sections specified therein in relation to any proceedings in any Court or in respect of a document produced or given in evidence in any Court except on the complaint in writing of that Court or of a Court to which that that Court is subordinate.
25. Sections 195(1)(b)(i) & (ii) CrPC do not deal with the power of the Court before whom the proceedings are already pending. The bar from taking cognizance is on the other Court before which the complaint is sought to

be made in respect of the proceedings pending in another Court.

26. Sections 195(1)(b)(i) & (ii) CrPC thus contemplate two proceedings: (i) which is originally pending between the parties in a Court (hereinafter referred to as the 'First Court') and (ii) the other being the proceedings initiated or sought to be initiated by a party before the other Court (hereinafter referred to the 'Second Court').
27. The bar contained in Section 195(1)(b) applies to the proceedings sought to be initiated before the Second Court with regard to the offences committed by a party in relation to proceedings pending before the First Court.
28. Sections 195(1)(b)(i) & (ii) CrPC lay down that the Second Court shall not take cognizance of the offences specified therein committed by a party in respect of the proceedings pending or in respect of a document produced or given in evidence before the First Court except on a complaint in writing of the First Court or of some other Court to which the First Court is subordinate.

29. Sections 195(1)(b)(i) & (ii) CrPC create a bar on the powers of the Second Court and does not in any manner deal with the powers or jurisdiction of the First Court. The said provision does not place any restriction on the first Court from entertaining any proceedings initiated under section 340 CrPC.
30. The issue in the present case is not with regard to the powers or jurisdiction of the Second Court but with regard to the powers and jurisdiction of the First Court as it is before the First Court (Company Law Board) that an application under Section 340 CrPC has been filed for initiating perjury action against the Respondent for having filed proceedings before that very Court based on forged and fabricated documents knowing the same to be forged. The application or complaint has not been filed before any Second Court for initiating action against the Respondent in respect of proceedings pending before the First Court.
31. The embargo as laid down by Sections 195(1)(b)(i) & (ii) CrPC applies on the Second Court and not on the First Court. It applies only where a forgery has taken place after the document has been filed. There is no embargo on the First Court from proceeding with a

complaint under section 340 CrPC about a document forged and fabricated prior to the same being filed or even after it has been filed. The embargo would even not apply where a forged and fabricated document is sought to be used in a proceeding.

32. There may be three situations. (i) document is forged and fabricated but neither filed nor relied on in any Court but filed or relied on for other purposes (eg: produced and relied on before authorities, etc.); (ii) document is forged and fabricated and then filed in a Court (iii) document is forged and fabricated after it is filed in Court (while it is *custodia legis*).
33. The embargo on the Second Court is only in the third situation where for setting into motion the criminal proceedings, a complaint would be required from the First Court in whose custody the document has been forged and fabricated. There is no embargo on the Second Court in setting into motion the criminal proceedings in the first or the second situation. There would be no embargo on the First Court in entertaining an application under section 340 CrPC in respect of the second and third situation. The first situation being not

applicable to the First Court as the document is neither filed nor relied on in the Court.

34. The Company Law Board has misapplied the ratio of the judgment of the Supreme Court in the case of ***IQBAL SINGH MARWAH (SUPRA)*** to the facts of the present case.
35. The Constitution Bench of the Supreme Court in the case of ***IQBAL SINGH MARWAH V. MEENAKSHI MARWAH (SUPRA)*** was dealing with a case where the complaint was filed by a party before the Court of Chief Metropolitan Magistrate for prosecution of the other party on the ground that proceedings for probate had been filed by the other party before the court of the District Judge for probate of a Will which was forged and fabricated. Application filed under section 340 CrPC before the District Judge was still pending.
36. The Court of the Metropolitan Magistrate held that there was a bar under Section 195 CrPC on it from taking cognizance as the issue of genuineness of Will was pending before the District Judge. In a Revision filed against the said order, the Sessions Judge, held that the bar of Section 195 CrPC would not apply

where forgery of document was committed before the said document was produced in Court and, accordingly, the Revision was allowed and the matter was remanded to the Court of Metropolitan Magistrate for proceedings in accordance with law.

37. The Appeal against the said order of Revision was dismissed and, accordingly, the matter reached before the Supreme Court. The Supreme Court in the said case was, thus, concerned with the powers of the Court of Metropolitan Magistrate (Second Court) to entertain a petition in respect of the proceedings pending before the Court of the District Judge (First Court). It was in these circumstances the Supreme Court laid down that bar under Section 195 CrPC would be attracted only when the offences enumerated in the said provisions have been committed with respect to a document which has been produced or given in evidence in a proceedings in any Court, i.e., during the time when the document was in *custodia legis*.
38. The Supreme Court further held that 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.

39. The Supreme Court affirmed the decision in the case of *SACHIDA NAND SINGH (SUPRA)* wherein it was pointed out that, if an enlarged interpretation were given, there may be a situation where 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. The Supreme Court held that such an interpretation would be highly detrimental to the interest of the society at large.
40. The Constitution Bench was not dealing with the powers of the First Court and it has not laid down that the First Court is debarred from taking action in respect of documents that have been forged prior to being filed

in court. It lays down that the Second Court would have no jurisdiction to take cognizance in respect of such offences with regard to documents that are custodia legis or proceedings pending before the First Court except on a complaint by the First Court. It does not lay down the converse that the First Court can only take action if documents are forged custodia legis and not otherwise.

41. The Company Law Board has also misapplied the ratio of the judgment of the Supreme Court in *SACHIDA NAND SINGH (SUPRA)*.
42. In *SACHIDA NAND SINGH (SUPRA)* a complaint was filed by second Respondent in the Court of the Chief Judicial Magistrate, alleging that the Appellants had forged a document and produced it in the Court of the Executive Magistrate. The Chief Judicial Magistrate forwarded the complaint to the police as provided in Section 156(3) of the Code. Police registered an FIR on the basis of the said complaint and after investigation laid a charge-sheet against Appellants for those offences. The Chief Judicial Magistrate took cognizance of those offences and issued process to the accused. The Appellants then moved the Patna High

Court under Section 482 of the Code for quashing the prosecution on the main ground that the Magistrate could not have taken cognizance of the said offences in view of the bar contained in Section 195(1)(b)(ii) of the Code. The High Court dismissed the Petition and thereafter the Special Leave Petition was filed before the Supreme Court.

43. The Supreme Court in the said case was also dealing with the powers of the Second Court and not of the First Court. The Company Law Board has misread Para 12 of the said judgment wherein the Supreme Court held as under:

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

44. Para 12 has to be read in context of Para 8 wherein the Court has laid down as under:

8. That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely

because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgerer is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either instituted by himself or somebody else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of pendency of that litigation.

45. The Company Law Board has erred in applying the ratio of the said two judgments to the facts of the present case. Both the judgments were dealing with the powers of and the embargo on the magistrates (Second Court) in respect of documents produced and relied on before the First Court. The Company Law Board in the present case has not been approached with an application under section 340 CrPC as a Second Court but as the First Court before which a forged and fabricated document has been filed and made the basis of the petition.

46. This Court in the case of **KULDEEP KAPOOR V. SUSHANTA SENGUPTA, (2006) 126 DLT 149** held as under:

10. *The argument of learned Counsel appearing for the plaintiff/Respondent that if the document was tampered/forged prior to institution of the legal proceedings, the Court will have no jurisdiction to entertain an application under Section 340 of the Code is entirely misconceived and is without merit. The document has been produced in Court proceedings. A document, which is tampered or forged and is produced during the Court proceedings, the Court would have jurisdiction to conduct an inquiry under Section 340 of the Code and decide whether the bar contained under Section 195 partially or in its entirety is attracted in the facts and circumstances of the case or not. An offender cannot take advantage of its own offence and wrongs committed, and give an interpretation of the provisions of law, which is destructive of the legislative intent and spirit of the statute. While conducting an inquiry, the Court may hold that a person is liable to be prosecuted and grant the sanction, if necessary. If in the opinion of the Court, the bar under Section 195(1)(b) is not attracted, then the offender would be liable to be prosecuted in any event as the conditions imposed under Section 195(1)(b) would not be attracted or applied to the facts of the case.*

47. Further, this Court in the case of **SANJEEV KUMAR MITTAL V. THE STATE, (2010) 174 DLT 214** held as under:

8.7. *Making false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence.*

8.8. *Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the Courts and thus produce mischievous consequences to the administration of justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law.*

8.9. *Consequently, there cannot be any doubt that if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 of the Code (and other provisions). It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filing of such pleading. There is need for the justice system to*

protect itself from such wrong doing so that it can do its task of justice dispensation.

9. *What constitutes the offence?*
 - 9.1. *Inasmuch as on a complaint of Respondent No. 2, a prosecution of the Petitioner is pending before the Metropolitan Magistrate, the question also arises as to what constitutes the offence because it may be said that since prosecution is pending, why should a second inquiry or prosecution be called for. On the face, such a contention appears attractive, but there are more compelling reasons why the Court must take cognizance and proceed as per law.*
 - 9.2. *The learned amicus curiae, Dr. Arun Mohan has submitted that the two offences are separate and are to be prosecuted and tried separately. According to him, the first offence was of forging the document and then using it before the DDA in order to cause injury to the Respondent No. 2. It was carried out by and before 12th March, 2004 when public notice was also published by Sanjeev Kumar Mittal.*
 - 9.3. *The complaint of 21st March, 2004 by Respondent No. 2 was in relation to that offence. If the matter had rested there, it would have been one thing, but on 12th April, 2004, when the present petition containing false averments and relying on forged documents (which were also filed) was filed, a second offence stood committed. That second offence was of: (1) making a*

false averment in the petition duly verified and filing the same in Court; and (2) asking the Court for a judgment on the basis of false averments and forged documents.

9.4. *The learned amicus curiae submits that if a person prepares a petition containing false averments, relying on forged documents, and signs and verifies it, and then comes to the Court, but on seeing the building, develops cold feet and returns home, the second offence would not have been committed. But when he presents these papers at the filing counter, it is filing in Court. The moment they cross the window at the filing counter is precisely the point of time when the second offence stands committed.*

9.5. *In **Iqbal Singh Marwah v. Meenakshi Marwah**, 118 (2005) DLT 329 (SC)=III (2005) SLT 154=II (2005) CCR 16 (SC)=(2005) 4 SCC 370, the question before the Supreme Court was when would the bar of Section 195(1)(b)(ii), Cr.P.C. be attracted. Their Lordships held that the bar would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court. Finding that the Will had been produced in the Court subsequently, they held that the bar of Section 195(1)(b)(ii), Cr.P.C. does not apply.*

9.6 *The rationale will equally apply to a situation where, as here, the complaint will be in respect of subsequent and independent offences, i.e., filing before a Court of law, pleadings containing false averments and also filing of documents that were forged as distinct from forgery at home. It will also be contempt of Court.*

48. This Court has thus held that even if a document was tampered/forged prior to institution of the legal proceedings, the Court will have jurisdiction to entertain an application under section 340 of the Code if the document has been produced in Court proceedings. Further it is laid down that making of false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt.
49. The reliance placed by the Respondent on the case of ***KISHOREBHAI GANDUBHAI PETHANI V. STATE OF GUJARAT, 2013 (12) SCALE 1*** is misplaced. In the said case in a trial before the Sessions Court a medical report was tendered in evidence. It was alleged that the

medical report was tampered with. An application was filed before the sessions court to enquire into the matter of tempering with the medical report. A complaint was also lodged and a FIR was registered based on the complaint. A petition was filed under Section 482 seeking quashing of the complaint and the FIR. The petition was dismissed by the High Court rejecting the contention of the Appellant that such a complaint was not maintainable unless it is made by the court itself under the provisions of Section 195 CrPC. The Supreme Court relying upon the Judgments in the case of *IQBAL SINGH MARWAH (SUPRA)* and *SACHIDA NAND SINGH (SUPRA)* dismissed the appeal. In the said case also the powers of Sessions Court (First Court) were not in issue. It was held that the complaint would be maintainable.

50. The Company Law Board was not barred from entertaining the application under section 340 CrPC and has thus erred in refusing to entertain the application filed by the Appellant.
51. The impugned order is accordingly set aside. The Company Application being C.A. No. 5/2013 in C.P. No. 104(ND)/2012 is restored. The Company Law

Board is directed to consider the said Application on merits in accordance with the procedure laid down in Section 340 CrPC.

52. It is clarified that the merits of the allegation of the Appellant or the defence of the Respondent on the factual matrix of forgery have not being considered in the present judgment.

SANJEEV SACHDEVA, J.
DECEMBER 05, 2014
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