



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO.585 OF 2024

C/W

CRIMINAL APPEAL NO.588 OF 2024

IN CRL.A. NO.585 OF 2024

BETWEEN:

ASIM SHARIFF
S/O. LATE M. ANWAR SHARIFF,
AGED ABOUT 46 YEARS,
R/AT NO.6/1, S.K. GARDEN,
BENSON TOWN,
BENGALURU-560046
(APPELLANT IS IN JC)

... APPELLANT

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

1. P. VIKRAMAN
S/O. NOT KNOWN,
AGED ABOUT 50 YEARS,
OCCUPATION SP, NIA
(CAMP AT BANGALORE),
O/AT NIA BRANCH OFFICE,
8TH FLOOR, VV KENDRIYA BHAVAN,
DOMLUR, BANGALORE-560071.
2. K.P. RAVI KUMAR
S/O. NOT KNOWN,
AGED ABOUT 55 YEARS,
OCCUPATION- DCP,



ATTACHED TO BANGALORE CITY POLICE,
BANGALORE CITY POLICE,
INFANTRY ROAD,
BANGALORE-560001.

3. RAVI CHANDRAN
HEAD CONSTABLE NO.7130
AGED ABOUT 60 YEARS,
FATHER NAME NO KNOWN
ATTACHED TO BANGALORE CITY POLICE,
BANGALORE CITY POLICE,
INFANTRY ROAD,
BANGALORE-560001.
4. NATIONAL INVESTIGATION AGENCY
BRANCH OFFICE, BENGALURU
#3RD FLOOR, BSNL TELEPHONE EXCHANGE,
HAL 2ND STAGE, INDIRANAGAR,
BENGALURU-560008
REPRESENTED BY ITS
SUPERINTENDENT OF POLICE.

(AMENDED AS PER VIDE
ORDER DATED 30.10.2024)

... RESPONDENTS

(BY SRI MADHAV BHALAJI KASHYAP, ADVOCATE FOR R-1;
SRI PAVAN SAGAR, ADVOCATE FOR R-2 & R-3;
SRI P. PRASANNA KUMAR, SPL. PP FOR R-4/NIA)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 341 CR.P.C.
AGAINST THE DISMISSAL OF CRIMINAL MISC.P UNDER SECTION 340
OF CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED DISMISSAL
ORDER OF UNNUMBERED CRL.MISC.NO...../2024 UNDER SECTION
340 OF CR.P.C. DATED 26.02.2024 PASSED BY THE XLIX ADDL. CITY
CIVIL AND SESSIONS JUDGE, (SPECIAL JUDGE FOR TRIAL OF NIA
CASES), (CCH-50) BENGALURU AT ANNEXURE-A; CONSEQUENTLY
TO CONDUCT A PRELIMINARY AGAINST THE RESPONDENTS AND
CONSEQUENTLY PROCEED AS PER THE MANDATE OF SECTION 340
OF CR.P.C.



IN CRL.A. NO.588 OF 2024

BETWEEN:

MOHAMMED SHIYAB
S/O. MAHAMMAD SAJID,
AGED ABOUT 33 YEARS,
R/AT NO.1-30,
SHETTIYADKA HOUSE,
GANDHINAGAR,
NAVOOR VILLAGE,
SULLIA TALUK,
DAKSHINA KANNADA-574 314.

... APPELLANT

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

1. SHANMUGAM .M
S/O. NOT KNOWN,
AGED ABOUT 45 YEARS,
OCCUPATION- NIA INSPECTOR,
AVAILABLE AT
NIA BRANCH OFFICE,
8TH FLOOR, VV KENDRIYA BHAVAN,
DOMLUR, BANGALORE-560 071.
2. DR. GANA P. KUMAR
S/O. NOT KNOWN,
AGED ABOUT 50 YEARS,
OCCUPATION- POLICE DY SP
AVAILABLE AT DY SP OFFICE,
OF PUTTUR SUB-DIVISION
PUTTUR,
DAKSHINA KANNADA DISTRICT,
KARNATAKA-574201.
3. LAXMI NARAYANA
S/O. NOT KNOWN,
AGED ABOUT 55 YEARS,
OCCUPATION POLICE CONSTABLE,
BEARING HC NO.1047,
AVAILABLE AT DY SP OFFICE,
OF PUTTUR SUB-DIVISION,
PUTTUR,



DAKSHINA KANNADA DISTRICT,
KARNATAKA-574201.

4. NATIONAL INVESTIGATION AGENCY
BRANCH OFFICE, BENGALURU
#3RD FLOOR, BSNL TELEPHONE EXCHANGE,
HAL 2ND STAGE, INDIRANAGAR,
BENGALURU-560008
REPRESENTED BY ITS
SUPERINTENDENT OF POLICE.

(AMENDED AS PER VIDE
ORDER DATED 30.10.2024)

... RESPONDENTS

(BY SRI MADHAV BHALAJI KASHYAP, ADVOCATE FOR R-1;
SRI PAVAN SAGAR, ADVOCATE FOR R-2 & R-3;
SRI P. PRASANNA KUMAR, SPL. PP FOR R-4/NIA)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 341 OF
CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED ORDER OF
DISMISSAL OF UNNUMBERED CRL.MISC. PETITION UNDER SECTION
340 OF CR.P.C. AT ANNEXURE-A PASSED BY THE XLIX ADDL. CITY
CIVIL AND SESSIONS JUDGE (SPECIAL COURT FOR TRIAL OF NIA
CASES (CCH-50)) AT BANGALORE VIDE ORDER DATED 26.02.2024
CONSEQUENTLY, CONDUCT MAKE A PRELIMINARY INQUIRY AGAINST
THE RESPONDENTS AND PROCEED AS PER THE MANDATE OF
SECTION 340 OF CR.P.C.

Date on which the appeals were reserved for Judgment	11.03.2025
Date on which the Judgment was pronounced	29.04.2025

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND
RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA



CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

Both the appeals are preferred assailing the order dated 26.02.2024 passed by XLIX Additional City Civil and Sessions Judge (Special Court for trial of NIA Cases) (CCH-50) at Bengaluru (hereinafter referred to as 'trial Court' for short), dismissing the appellants' application filed under Section 340 of Cr.P.C.

2. In Crime No.124/2016 and in Crime No.63/2022, the appellants were charged for the offences punishable under Sections 302 and 34 IPC. Later, they were charged under the provisions of Unlawful Activities (Prevention) Act, 1967 (UAPA for short). The Ministry of Home Affairs, Government of India directed the National Investigation Agency (NIA) to take up the aforesaid crime for investigation. NIA re-registered the said crime and took up the matter for further investigation. The State police handed over the investigation and all the case papers to NIA. After investigation, charge sheet was filed



against the accused persons including the appellants who were arrayed as accused Nos.1 and 5. Accused No.1 was charged for commission of offences under Sections 120B, 153A, 302 read with Section 34 of IPC, Sections 16, 18 and 20 of UAPA and Section 25(1) (a) of the Arms Act. Accused No.5 was charged for commission of offences under Section 302 read with Sections 120B and 34 of IPC and Sections 16, 18 and 20 of UAPA.

3. Applications were filed by the appellants under Section 340 of Cr.P.C. seeking an enquiry into the alleged offences of forgery (Section 463 IPC) and using a forged document as genuine (Section 471 IPC). The appellants sought to initiate proceedings against the respondents herein under Section 195 of the Cr.P.C. for committing these offences. The appellants prayed for conducting a preliminary enquiry against the respondents and consequently proceed as per the mandate of Section 340 of Cr.P.C.



4. The said applications were rejected by the trial Court and arrived at a conclusion that it is not for the Court at that stage to form an opinion without examining the witnesses regarding the allegations made by the appellants that the respondents have fabricated the statements of a few witnesses to falsely implicate them and the other accused persons in the alleged crime and same has to be considered after conclusion of the trial and during the appreciation of evidence.

5. Heard the learned counsel appearing for the parties and perused the material on record.

6. Learned counsel for the appellants Sri Mohammed Tahir submits that the respondents have fabricated the witness statements recorded under Section 161 Cr.P.C., and subsequently produced before the Court along with the charge sheet. These fabricated statements differ from the original version recorded by the State police and handed over to the NIA on 19.08.2022. Learned



counsel submits that since the statements are altered and are used in judicial proceedings, the bar under Section 195 (1) (b)(ii) Cr.P.C. is attracted. To safeguard the sanctity of judicial process, the complainant / appellants have rightly filed an application under Section 340 Cr.P.C. requesting the Court to conduct a preliminary enquiry and file a complaint against the concerned respondents for the offences affecting the administration of justice. It is further argued that the appellants are not seeking to establish the guilt of the respondents at this stage, but are only invoking the Courts' statutory power to act when its process is being abused through forged documents. Learned counsel places reliance on the decision of the Apex Court in the case of ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another***¹ (*Iqbal Singh Marwah*) to contend that if the offence of forgery is committed with the intent to use the forged document in the Court proceedings, the Court's sanction under Section 195 Cr.P.C. is required and in the instant case, the

¹ (2005) 4 SCC 370



fabricated witnesses statements were used to influence the judicial mind during the stage of taking cognizance and trial proceedings. There are justifiable reasons to invoke Section 340 Cr.P.C. Learned counsel argues that allowing the use of fabricated witnesses' statements in judicial proceedings strikes at the heart of judicial integrity. It is not merely a procedural lapse but an act of interference in the administration of justice – one that must be dealt with sternly by initiating action under Section 340 Cr.P.C.

7. Sri P. Prasanna Kumar, learned Special Public Prosecutor for NIA submits that the appellants' allegations of fabrication are unsubstantiated and purely speculative. Mere discrepancies or variations of number of pages or presence / absence of a witness name do not automatically amount to criminal fabrication under Sections 463 or 471 IPC. It is submitted that these are matters for appreciation during trial, especially through cross examination of the Investigating Officer and



witnesses, not for initiating criminal proceedings under Section 340 Cr.P.C. Placing reliance on the decision of the Apex Court in ***Iqbal Singh Marwah's*** case learned counsel would argue that the test "during the course of proceedings" is not met, and referring to the landmark judgment in ***Iqbal Singh Marwah's*** case learned counsel would argue that, where a forged document is created before it is produced in the Court and is not forged during the course of judicial proceedings, Section 195(1)(b)(ii) Cr.P.C. is not attracted. It is argued that the documents alleged to be fabricated were created prior to filing in the Court (as part of the investigation) then the appellants cannot invoke Section 195 or file an application under Section 340 Cr.P.C. The alleged forgery as contended by the appellants did not take place "in relation to a proceedings in a Court" as required under Section 195 Cr.P.C. It is submitted that moreover the statements under Section 161 Cr.P.C. are not substantive evidence and are meant only for investigation purposes. These are not "documents used in evidence", in the strict legal



sense. Therefore, even if there were discrepancies, though not admitting, they do not meet the threshold requirement under Section 195 (1)(b)(ii) Cr.P.C for triggering prosecution under Section 340 Cr.P.C. Further it is submitted that Section 340 Cr.P.C. is not intended to be invoked casually or for tactical purposes. It is the discretionary power of the Court, to be exercised only when it is expedient in the interest of justice to prosecute a person for an offence affecting judicial proceedings. In support, learned counsel places reliance on the decision of the Apex Court in the case of **Ashok Debbarma Alias Achak Debbarma Vs. State of Tripura**² (Ashok Debbarma).

8. It was brought to the notice of this Court by the learned counsel appearing for the NIA that accused Nos.9, 10 and 11 in Crime No.63/2022 (re-registered as RC No.36/2022/NIA/DLI) had approached this Court seeking bail in Crl.A. No.109/2023, similar contentions were raised

² (2014) 4 SCC 747



before this Court regarding fabrications. This Court on consideration observed that any such discrepancy is a matter to be agitated by the aggrieved party during full fledged trial and the said application was rejected. It is submitted that in Crime No.124/2016 re-registered as RC No.4/2016/NIA/HYD, the accused persons including accused No.5 (appellant) have cross-examined CWs.1 to 3 (PWs.1 to 3) and also the Investigating Officer-PW.75. It is submitted that the said witnesses have given their statements before the investigating officers and the same is recorded as per the procedure laid down under Cr.P.C. The prosecution examined 77 witnesses and the trial has reached its fag end. To conduct a preliminary enquiry or not, before deciding an application under Section 340 finally the discretion is upon the concerned Court. The application filed at the present stage is premature, rightly considered and rejected by the trial Court.

9. Having heard the learned counsel for the parties, the point that falls for consideration is :



"Whether the allegation of the petitioners/appellants that the respondents during the investigation of the case fabricated the statements of witnesses recorded under Section 161 of Cr.P.C. and presented them in the Court with the charge sheet can be considered as fabricated within the offences enumerated in Section 195(1)(b)(ii) Cr.P.C. necessitating the prosecution under Section 340 of Cr.P.C.?"

10. To answer the point for consideration, Sections 161, 195(1)(b)(ii) and 340 of Cr.P.C. and Sections 463 and 471 of IPC need to be looked into.

11. Section 161 Cr.P.C. reads as under:

"161. Examination of witnesses by police.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.



(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer."



12. Section 195 (1) (b) (ii) Cr.P.C. 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) x x x

(b) (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) x x x

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."

13. Section 340 Cr.P.C. reads 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 interests 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 of 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 or by such officer of the Court as the Court may authorise in writing in this behalf.*

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

14. Sections 463 and 471 of IPC reads as under:

"463. Forgery.-*Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

471. Using as genuine a forged document or electronic record.-*Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic*



record, shall be punished in the same manner as if he had forged such document or electronic record.”

15. Section 161 of Cr.P.C. empowers a police officer to examine witnesses during the course of an investigation and recording their statements. The statement recorded under Section 161 Cr.P.C can be used only to contradict his statement in the witness box and for no other purpose.

16. Section 195 (1) (b) (ii) of Cr.P.C. creates a bar on Courts from taking cognizance of offences under Section 463, 471, etc., when the document is produced or given in evidence in a proceedings in any Court, unless there is a complaint in writing by the concerned Court.

17. The five Judges constitution Bench of the Apex Court in the case of ***Iqbal Singh Marwah*** while considering Section 195(1) (b) (ii) Cr.P.C. observed that Section 195 (1) (b) (ii) of Cr.P.C, bars the Court from taking cognizance of forgery unless a complaint is filed by the Court itself. The Apex Court observed that forgery committed outside the Court proceedings even if the



document is later produced in the Court does not attract the bar under Section 195 (1) (b) (ii) Cr.P.C. The Apex Court emphasized that the bar under Section 195 Cr.P.C. applies only when an offence is committed with respect to a document after it has been filed in Court or during the course of judicial proceedings, intending to interfere with the administration of justice. The Apex Court held that sub-section 1 of Section 340 Cr.P.C. contemplates holding a preliminary inquiry. Normally, a direction for filing a complaint is not made during the pendency of the proceedings before the Court and this is done at the stage when the proceeding is concluded and final judgment is rendered. A cursory reading of Section 340 of Cr.P.C. goes to show that it is within the discretion of the concerned Court to hold a preliminary enquiry or not before deciding the application under Section 340 Cr.P.C. finally. The Court is of the opinion that an enquiry should be made into any offence referred to in clause (b) of sub-Section (1) of Section 195 can hold preliminary enquiry, which is within the discretion of the concerned Court. The



Court may at the threshold reject the application or Court may after a preliminary enquiry make a complaint in writing.

18. The Apex Court in the case of ***Pritish vs. State of Maharashtra and others***³ has held at paragraph Nos.8, 9, 10, 11 and 12 as under:

"8. Chapter XXVI of the Code contains provisions "as to offences affecting the administration of justice". Among the 12 sections subsumed therein we need consider only three. Section 340 consists of four sub-sections of which only the first sub-section is relevant for the purpose of this case. Hence the said sub-section is extracted below:

"340. (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

³ (2002) 1 SCC 253



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 of 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.”

9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a



proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

10. "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". It refers to the pre-trial inquiry, and in the



present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(x)] of the Code the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

11. Section 238 of the Code says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the Magistrate has to hear both the



prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the Magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.

12. Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged."



19. The Apex Court held that the concerned Court may conduct a preliminary enquiry, but it is not obligated to do so. The Apex Court observed that the decision to hold a preliminary enquiry under Section 340 Cr.P.C. lies entirely within the discretion of the Court and this discretion must be exercised judicially guided by whether it is necessary in the interest of justice and whether the alleged offence prima facie affects the administration of justice.

20. The Apex Court in the case of ***Iqbal Singh Marwah*** at paragraphs No.13 to 15 has observed as under:

"13. It may be noticed that language used in Section 195(1)(b)(ii) CrPC is similar to the above provision except that the words "by a party to any proceeding in any Court" occurring therein have been omitted. We will advert to the effect of this omission later on.

14. A Full Bench of the Allahabad High Court in Emperor v. Kushal Pal Singh considered the scope of the aforesaid provision and held, that clause (c)



of Section 195(1) applies only to cases where an offence is committed by a party, as such, to a proceeding to any Court in respect of a document which has been produced or given in evidence in such proceeding. It was held that an offence which has already been committed by a person who does not become a party till, say, 30 years after the commission of the offence, cannot be said to have been committed by a party within the meaning of clause (c). A three-Judge Bench of this Court in Patel Laljibhai Somabhai v. State of Gujarat after examination of the controversy in considerable detail observed that as a general rule the Courts consider it expedient in the interest of justice to start prosecutions as contemplated by Section 476 (of the old Code which now corresponds to Section 340 CrPC) only if there is a reasonable foundation for the charge and there is a reasonable likelihood of conviction. The requirement of a finding as to the expediency is understandable in case of an offence alleged to have been committed either in or in relation to a proceeding in that Court in case of offences specified in clause (b) [of the old Code corresponding to clause (b)(i) CrPC] because of the close nexus between the offence and the proceeding. In case of offences specified in clause (c), they are required to be committed by a party to a proceeding in that Court with respect to a



document produced or given in evidence in that Court. The Court approved the view taken by the Allahabad High Court in Emperor v. Kushal Pal Singh and held as under in para 7 of the Report: (Patel Laljibhai Somabhai case, SCC pp. 376-77)

"(i) The underlying purpose of enacting Sections 195(1)(b) and (c) and Section 476 seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous vexations or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the Court's control because of their direct impact on the judicial process. It is the judicial process or the administration of public justice which is the direct and immediate object or the victim of these offences. As the purity of the proceedings of the Court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party who might ultimately suffer can persuade the civil Court to file complaint.

(ii) The offences about which the Court alone is clothed with the right to complain may, therefore, be appropriately considered to



be only those offences committed by a party to a proceeding in that Court, the commission of which has a reasonably close nexus with the proceeding in that Court so that it can without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to be more appropriate to adopt the strict construction of confirming the prohibition contained in Section 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in character as such party. The legislature could not have intended to extend the prohibition contained in Section 195(1)(c) to the offences mentioned therein, when committed by a party to a proceeding in that Court prior to his becoming such party.”

15. The Court clearly rejected any construction being placed on the provision by which a document forged before the commencement of the proceeding in which it may happen to be used in evidence later on, to come within the purview of Section 195, as that would unreasonably restrict the right to initiate prosecution possessed by a person and recognised by Section 190 CrPC.”



21. The appellants contend that the statement of the witnesses were fabricated by respondents, which are the statement under Section 161 Cr.P.C. The Apex Court in the case of **Ashok Debbarma** (stated supra) has observed that statements made during investigation were not substantive piece of evidence and the statements recorded under Section 161 Cr.P.C. can be used only for the purpose of contradiction and not for corroboration. The Apex Court way back in the year 1959 in the case of **Tahsildar Singh and Others Vs. The State of Uttar Pradesh**⁴ (Tahsildar Singh), held at para No.13 as under:

"13. The learned counsel's first argument is based upon the words "in the manner provided by Section 145 of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is placed upon the judgment

⁴ AIR 1959 SC 1012



of this Court in Bhagwan Singh v. State of Punjab (1), 1952 SCR 812 : (AIR 1952 SC 214). Bose J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819 (of SCR) : (at p. 217 of AIR):

"Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts : the first part enables



the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple



procedure to be followed. To illustrate : A says in the witness-box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus : If the witness is asked "did you say before the police-officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police-officer. If a police-officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police-officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the



witness-box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said he had stated before the police-officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.”

22. The Apex Court in **Tahsildar Singh’s** case held that statements under Section 161 Cr.P.C are not substantive evidence. They can be used for limited purpose of contradiction as laid down in Section 145 of the Indian Evidence Act, 1872 (for short “Act, 1872”). Therefore, it is well settled law that the statements recorded under Section 161 Cr.P.C. are part of the investigative process, as such, they are not considered as



evidence unless used for contradiction during trial as per Section 145 of the Act, 1872. For the document to attract prosecution under Sections 463 and 471 of IPC, it has to be shown that the document is fabricated with an intent to deceive and has been used as genuine in judicial proceedings. According to the Apex Court in ***Iqbal Singh Marwah's*** case the bar under Section 195 (1) (b) (ii) applies only when a forged document is created for use in Court or is actually used in evidence during a judicial proceedings. Whether the statement under Section 161 of Cr.P.C is forged / fabricated or not is a matter of trial and for the Section 195 (1) (b) (ii) to apply and a complaint under Section 340 Cr.P.C. would become necessary only if it is proved that the 161 statement so produced is forged / fabricated and mere allegation that the statement under Section 161 Cr.P.C. is fabricated by itself does not attract Section 195 (1) (b) (ii).

23. Accordingly, the point framed for consideration is answered in the negative. The trial Court on being



satisfied that it is not expedient in the interest of justice to proceed against the respondents under Section 340 Cr.P.C. has rejected the applications, which warrants no interference by this Court and this Court pass the following:

ORDER

Criminal appeals are hereby ***dismissed***.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE

MBM,AT
List No.: 1 SI No.: 4