

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Petn. No.55 of 2014

Sri Ranjit Das,
son of Sri Nani Gopal Das,
resident of Village-Baralutma,
P.O. Salema – 799 278,
P.S. Salema, Sub-division - Kamalpur,
District – Dhalai, Tripura

..... **Petitioner**

- Vs -

Sri Joydeb Das,
son of Sri Ramesh Das,
resident of Village-Chankap,
P.O. Chankap,
P.S. Kachucherra, Sub-division - Kamalpur,
District – Dhalai, Tripura

.....**Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. D. Chakraborty, Senior Advocate Mr. H. Laskar, Advocate
For the respondent	: Mr. R. Saha, Advocate
Date of hearing and delivery of judgment & order	: 12.02.2015
Whether fit for reporting	: YES

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Chakraborty, learned senior counsel assisted by Mr. H. Laskar, learned counsel appearing for the petitioner as well as Mr. R. Saha, learned counsel appearing for the respondent.

02. There is no dispute that the bailiff namely Jayanta Bhattacharjee, nominated by the Civil Judge, Jr. Divn., Kamalpur, North Tripura Judicial District has reported intimidation while he went for attaching the properties in terms of the order of the court. The

bailiff brought the incident to the knowledge of the Civil Judge, Sr. Divn., Kailashahar by a report dated 04.05.2013, Annexure-R/1 to the counter affidavit filed by the respondent. Simultaneously, the plaintiff, Shri Joydeb Das filed an application in the court of the Civil Judge, Sr. Divn., North Tripura Judicial District, Kailashahar being Civil Misc. Case No.24 of 2013 for prosecution against the petitioner for contempt of lawful authority of public servant and for offence against public justice after holding an inquiry under Section 340 of the Cr.P.C. In the said reference, it has been alleged that on his petition under Order 38, Rule 5 of the CPC being Civil Misc. Case No.19 of 2013 the writ of attachment dated 20.04.2013 was issued. For purpose of executing the said writ, the bailiff as stated proceeded for attachment, accompanied by Samarjit Sinha, the process server and one Sri Jibesh Charaborty, Advocate for the plaintiff. But a group of person resisted them and sought to use criminal force with intention to deter them from discharging their duties in presence of the witnesses as cited in the said reference.

03. From the report dated 04.05.2013 of the bailiff and the process server, the incident of deterrence has come to the knowledge of the Civil Judge, Sr. Divn. It has been also revealed that the wife of the petitioner lodged a complaint alleging commission of offences punishable under Sections 447/354-b/323/506/34 of the IPC being Salema PS Case No.09 of 2013 against the respondent and others.

04. The respondent herein obtained the pre-arrest bail. On consideration of the said reference, the Civil Judge, Sr. Divn., Kailashahar, North Tripura on observing that Section 195 of the Cr.P.C. relates to offences punishable under Section 172 to 188 of the IPC or

abetment to commit such offences or against any criminal conspiracy to commit such offences, declined to file the complaint as urged.

05. Being aggrieved by the said order dated 21.09.2013 delivered in Civil Misc.No.24 of 2013 the respondent herein filed an appeal under Section 341 of Cr.P.C being Criminal Appeal No.16(4) of 2013. The appeal was preferred primarily on the ground that unless such complaint is lodged it would encourage law-defying people. In the impugned judgment dated 03.03.2014 delivered in Criminal Appeal No.16(4) of 2013 the District Judge, North Tripura, Kailashahar has observed that "*..... it is expedient in the interest of justice to lodge complaint against the O.P, although the allegation against the OP is not for commission of offence referred to in section 195(1)(b) Cr.P.C.*" Having held so, the appeal has been allowed by the order dated 03.03.2014. This petition under Section 482 of the Cr.P.C. has challenged that order.

06. Mr. D. Chakraborty, learned senior counsel assisted by Mr. H. Laskar, learned counsel appearing for the petitioner has submitted that the analogy as drawn by the Sessions Judge, North Tripura, Kailashahar is not germane to the provisions of Section 195(1)(b) of the Cr.P.C. and as such the complaint as contemplated under Section 340 of the Cr.P.C. has rightly not been filed. For purpose of reference Section 340 of the Cr.P.C. is reproduced hereunder:

"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.

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

07. It is no denying fact that having received the reference for making the complaint, the Civil Judge, Sr. Divn., North Tripura, Kailashahar on making inquiry has observed that the offence as disclosed cannot be complained of within the ambit of Section 195 of the Cr.P.C. Section 195 of the Cr.P.C. provides 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, or 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 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) 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), except on the complaint in writing of that Court, 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 sub-section (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 the 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."

08. For prosecuting someone for contempt of the lawful authority for committing offences against the public justice or for offences relating to the documents given in evidence, offences are categorised under Section 195(1)(b) of the Cr.P.C. The court concerning which such offence has been committed can only lodge the complaint. In Section 195(3) the term 'Court' has been illustrated. It includes and 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 purpose of this Section. It is abundantly clear that no offence unless is punishable under Sections 193 to 196 both inclusive, Section 199, 200, 205 to 211 (both inclusive) and 222 when such offence is alleged to have been committed in or in relation to any proceeding in any court or of any offence described in Section 463 or punishable under Section 471, 475 or Section 476 of the Code is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court or for criminal conspiracy to commit or attempt to commit or abetment of any offence specified in Sub-Clause (1) or Sub-Clause (2), would attract the provisions of Section 195 of the Cr.P.C.

09. From the report submitted to the Court by the bailiff and the process server, it appeared to the Civil Judge Sr. Divn., Kailashahar, North Tripura that the offence under reference cannot be brought under those provisions of the IPC as catalogued under Section 195 of the Cr.P.C. and hence on inquiry the said court declined to lodge the complaint. But in the appeal, the said order dated 21.09.2013 by which prayer for lodging the complaint was declined has

been reversed directing the Civil Judge, Sr. Divn., Kaisashahar, North Tripura to lodge the complaint.

10. Mr. Chakraborty, learned senior counsel appearing for the petitioner has categorically submitted that the Sessions Judge while exercising power under Section 341 of the Cr.P.C. has exceeded its jurisdiction and he has interfered the order dated 21.09.2013 on a premise which is not at all sustainable. He has referred to a decision of the apex court in ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another*** reported in **(2005)4 SCC 370** where the apex court has approvingly relied on a decision of the Allahabad High Court in ***Emperor v Kushal Pal Singh*** reported in ***AIR 1931 All 443*** which was also earlier referred in ***Patel Laljibhai Somabhai vs. The State of Gujarat*** reported in **(1971)2 SCC 376**. It has been enunciated there as under:

"(i) The underlying purpose of enacting Section 195(1)(b) and (c) 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."

11. That case involved a document, alleged to have been forged in the proceeding. In ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another***, the apex court has observed as under:

"22. Section 341 Cr.P.C. provides for an appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195, against the order refusing to make a complaint or against an order directing filing of a complaint and in such appeal the superior Court may direct withdrawal of the complaint or making of the complaint. Sub-section (2) of Section 343 lays down that when it is brought to the notice of a Magistrate to whom a complaint has been made under Section 340 or 341 that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

23. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration

of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

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

25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in Sachida Nand Singh, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of society at large.

(Emphasis supplied)

It clearly emerge that the jurisdiction under Section 340 of the Cr.P.C. is discretionary and conditioned by the element of justice.

12. From the other side, Mr. R. Saha, learned counsel appearing for the respondent has submitted that Section 195 (1) (b) should not be given a restricted interpretation so as to ensure that the public justice does not come under fire from the law defying elements. According to Mr. Saha, learned counsel, the ground for refusal is the outcome of such restricted interpretation. But the appellate court has corrected the course upholding the interest of the justice and as such this court may not interfere the impugned order. For purpose of illustrating the correct position of law, we are to make a basic statement that Section 340 has been structured in a way so that complaint is not filed in all and sundry matters and that should only be filed on inquiry. If it surfaces from the inquiry that the offence as categorised under Section 195(1)(b) of the Cr.P.C. has been committed and that lodging of the complaint would serve the interest of justice then only a complaint should be filed. Section 340 confers a discretionary jurisdiction. If in the consideration of the court, it appears expedient in the interest of justice that an inquiry should be made into any offence referred to 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 the document produced or given in evidence and after recording its finding in the inquiry may file a complaint in writing and send it to the Magistrate of the first class having jurisdiction on ensuring sufficient security for appearance of the accused before such Magistrate or binding any other person to give evidence before such Magistrate. If the court is not

satisfied on appreciating the outcome of the inquiry, it would be just to reject such reference and in that event interpretation given in ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another*** has to be observed strictly.

13. In ***K. Karunakaran vs. T.V. Eachara Warriar and Anr.*** reported in ***AIR 1978 SC 290*** the apex court has held as regards the scope and purpose of the inquiry as under:

"19. Chapter XXVI of the CrPC 1973 makes provisions as to offences affecting the administration of justice. Section 340 Cr.P.C. with which the chapter opens is the equivalent of the old Section 476, Criminal Procedure Code, 1898. The chapter has undergone one significant change with regard to the [provision of appeal which was there under the old Section 476B Cr.P.C. Under Section 476B Cr.P.C. (old) there was a right of appeal from the order of a subordinate Court to the superior Court to which appeals ordinarily lay from an appealable decree or sentence of such former Court Under Section 476B (old) there would have ordinarily [been a right of appeal against the order of the High Court to this Court. There is, however, a distinct departure from that position under Section 341 Cr.P.C. (new) with regard to an appeal against the order of a High Court under Section 340 to this Court. An order of the High Court made under Sub-section (1) or Sub-section (2) of Section 340 is specifically excluded for the purpose of appeal to the superior court under Section 341(1) Cr.P.C. (new). This is, therefore, a new restriction in the way of the appellant when he approaches this Court under Article 136 of the Constitution.

20. Whether, suo moto, or on an application by a party under Section 340(1) Cr.P.C., a Court having been already seized of a matter may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In a proceeding under Section 340(1) Cr.P.C. the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the Court in the earlier proceedings.

21. At an enquiry held by the court under Section 340(1) Cr.P.C, irrespective of the result of the main case, the only question, is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

22. The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the court."

(Emphasis supplied)

14. It has been further held that:

"25. An enquiry, when made, under Section 340(1) Cr.P.C. is really in the nature of affording a locus poenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence."

15. In **K. Karunakaran vs. T.V. Eachara Warriar and Anr.**

it has been also held that a prima facie case for laying a complaint does not mean that the charge has been established against a person beyond reasonable doubt. That will be thrashed out in the trial itself where the parties will have opportunity to produce evidence and controvert each other's case exhaustively without any reservation. Therefore, the purpose of the preliminary inquiry as contemplated under Section 340 is to observe prima facie that there are adequate materials to lodge the complaint under Section 195 of the Cr.P.C. It is the consideration and discretion of the court concerned is of paramount importance. The consideration is bound to be restricted within the parameters as laid down in Section 195 of the Cr.P.C.

16. In **M. S. Ahlawat vs. State of Haryana and another** reported in **(2000)1 SCC 278** the apex court has observed that:

"5. Chapter XI of IPC deals with false evidence and offences against public justice' and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred

absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

6. Section 340 Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C. it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 Cr.P.C. are mandatory and no court can take cognizance of offences referred to therein. It is in respect of such offences the court has jurisdiction to proceed under Section 340 Cr.P.C. and a complaint outside the provisions of Section 340 Cr.P.C. cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.

(Emphasis supplied)

17. In ***B. K. Gupta vs. Damodar H. Bajaj and others*** reported in ***(2001)9 SCC 742*** the apex court had the occasion to consider the premises of inquiry as contemplated under Section 340 of the Cr.P.C. In ***B. K. Gupta vs. Damodar H. Bajaj and others*** the apex court has observed as under:

“.....it follows that there are two conditions, on fulfillment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. On perusal of the record we do not find any material on record to show that there was any application of mind by the court that it was expedient in the interest of justice to make an inquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No. 1442/1983 and the judgment does not show that the court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an inquiry into

the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated.

(Emphasis supplied)

18. In another decision in ***Prithvi vs. State of Maharashtra*** reported in **(2002)1 SCC 253** the apex court has also illustrated the purpose of preliminary inquiry as contemplated under Section 340 of the Cr.P.C. which is as under:

"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."

(Emphasis supplied)

19. In ***N. Natarajan vs. B. K. Subba Rao*** reported in ***AIR 2003 SC 541*** the apex court has lucidly analysed the law. It has been observed that:

"It is well settled that in criminal law that a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offence adverted to in Section 195 CrPC there is a restriction that the same cannot be entertained unless a compensate made by a court because the offence is stated to have been committed in relation to the proceedings in that court. Section 340 CrPC is invoked to get over the bar imposed under Section 195 CrPC. In ordinary crimes not adverted to under Section 195 CrPC, if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under Section 340 CrPC. For that matter, the wordings of Section 340 CrPC are significant. The Court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed covered by the said provision."

(Emphasis supplied)

20. In the case in hand, a categorical finding has been given by the Civil Judge, Sr. Divn., North Tripura, Kailashahar that the alleged offence does not come under the offence referred under Section 195 of the Cr.P.C. but while disposing the appeal by the impugned order, the said aspect of the matter was even though taken care of, but the finding in this regard is somewhat unusual. The relevant part is quoted *"However from the report of the bailiff and from the report of the process server, I do not find that OP used any criminal force upon them within the meaning of Section 350 IPC but assaulted the bailiff and the process server by making gesture knowing it to be likely that such gesture will cause them apprehend that the OP was about to use criminal force to them therefore, there is prima facie case under Section 353 as well against the O.P."* But the Sessions Judge did not advert whether the offence punishable under Section 353, which is quite a distinct offence, comes within the offences catalogued in Section 195 of the Cr.P.C. having regard to the

restriction imposed under Section 195(1) of the Cr.P.C. that no court shall take cognizance of any offence unless punishable under Section 172 to 188, both inclusive, of the Indian Penal Code or the other offences as mentioned or for abetment or for attempt to commit such offence or for any criminal conspiracy to commit such offence.

21. In *Iqbal Singh Marwah and another vs. Meenakshi Marwah and another*, it has been categorically held that the principle that the penal statute should be strictly construed is not applicable while interpreting Section 195(1)(b)(ii). But the latitude as provided by Section 195(1)(b)(iii) has been well defined in *M. S. Ahlawat vs. State of Haryana and another*. It has been unambiguously held that no court has jurisdiction to take cognizance of any offence mentioned therein unless there is a complaint in writing. Even the purpose of the inquiry cannot expand beyond those offences catalogued in Section 195(1) of the Cr.P.C. For other offences any court can take cognizance in terms of Section 190 of the Cr.P.C. and there is no such procedural restriction generally and no complaint in writing from the court is required for purpose of taking cognizance. It is also to be noted that Section 340 of the Cr.P.C. has conferred a discretionary jurisdiction on the court for purpose of taking cognizance under Section 195 of the Cr.P.C. Exercise of such discretion is found two elements such as (i) offences are covered by Section 195(1)(b) of the Cr.P.C. and (ii) the complaint would sub-serve the interest of justice. Thus, these aspects had been well taken by the Civil Judge, Sr. Divn., North Tripura, Kailashahar.

22. In the considered opinion of this Court, the basis of the finding as provided by the Sessions Judge while disposing the appeal

under Section 341 of the Cr.P.C. should not persuade any court file the complaint exhausting the procedure as laid down in Section 340 of the Cr.P.C.

Having held so, the impugned order stands set aside and quashed.

In the result, this petition is allowed.

JUDGE

MB