

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8083 OF 2015

Mahendra Mehta ... Petitioner
Vs.
Kaushik Pandya ... Respondent

Mr. Vivek Kantawala with Mr. Sunny Punamiya with Mr. Amey Patil i/b. SSP
Legal for Petitioner.
Mr. Madhav Jamdar a/w. Ms Vrushali K. for Respondent.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 03, 2015

P.C. :

Heard Mr. Kantawala, learned Counsel for petitioner and
Mr. Jamdar, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.2 has challenged the judgment and order dated 29.04.2015 passed by the learned Judge, City Civil Court, Bombay in Notice of Motion No.1002 of 2015 in Summary Suit No.7630 of 1996. By that order, the learned trial Judge rejected the Motion taken out by defendant No.2 seeking order under Sections 195(1)(b)(ii) and 340 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to lodge complaint against respondent-plaintiff for the offences punishable under Sections 192, 193, 196, 463, 465, 466, 471 and 120-B Indian Penal Code, 1860 (for short 'IPC').

3. Mr. Kantawala strenuously contended that the controversy revolves around document dated 11.05.1993. The original letter dated 11.05.1993, at page 17, reads as under:

“

Mahendra Chunilal Mehta
Special Executive Magistrate

Date: 11/5/93

4.
To,
K. C. Pandya & Co.,
8, Khatau Building,
Marine Street,
Opp. Union Bank (Stock Exng. Br.)
1st Flr., R. No.18-A, Fort,
Bombay – 400 023

Kind Att Kaushik Pandya

Sub:- Consultancy charges for fixing
renewal new rent with State Bank
of India, Diamond Br., Chowpatty.

Dear Sir,

With subject to the above, I hereby confirm that I will pay
24 months increased lease rent only fixed by State Bank of India
after on finalisation of proposal. This offer stand irrevocably
only for **2 months**.

I am sending advance of Rs.15,000/- as advance against
your fees.

Thanking you,

Yours faithfully,
sd/-
(Mahendra C. Mehta)”

5. Respondent-plaintiff instituted Summary Suit in the year 1996.
Along with that Suit, he has annexed typed copy of letter dated
11.05.1993, at page 203, which reads as under,

“ Mahendra Chunilal Mehta
Special Executive Magistrate

Date: 11/5/93

To,
K. C. Pandya & Co.,
8, Khatau Building,
Marine Street,
Opp. Union Bank (Stock Exng. Br.)
1st Flr., R. No.18-A, Fort,
Bombay – 400 023

Kind Att Kaushik Pandya

Sub:- Consultancy charges for fixing
renewal new rent with State Bank
of India, Diamond Br., Chowpatty.

Dear Sir,

With subject to the above, I hereby confirm that I will pay
24 months increased lease rent only fixed by State Bank of India
after on finalisation of proposal. This offer stand irrevocably only
for **12 months**.

I am sending advance of Rs.15,000/- as advance against
your fees.

Thanking you,

Yours faithfully,
sd/-
(Mahendra C. Mehta)"

6. Plaintiff has tendered letter dated 11.05.1993 at page 219 in
evidence, which is to the following effect:

“ Mahendra Chunilal Mehta
Special Executive Magistrate

Date: 11/5/93

To,
K. C. Pandya & Co.,
8, Khatau Building,
Marine Street,
Opp. Union Bank (Stock Exng. Br.)
1st Flr., R. No.18-A, Fort,
Bombay – 400 023

Kind Att Kaushik Pandya

Sub:- Consultancy charges for fixing
renewal new rent with State Bank
of India, Diamond Br., Chowpatty.

Dear Sir,

With subject to the above, I hereby confirm that I will
pay 24 months increased lease rent only fixed by State Bank of

India after on finalisation of proposal. This offer stand irrevocably only for **12 months**.

I am sending advance of Rs.15,000/- as advance against your fees.

Thanking you,

Yours faithfully,
sd/-
(Mahendra C. Mehta)”

7. Mr. Kantawala has also invited my attention to the reply dated 20.10.1997 filed by the plaintiff in Summons for Judgment No.693 of 1996, and in particular paragraph 17 thereof. It is asserted therein that defendants have taken full, free and complete inspection of the documents. Defendants did not state that while taking inspection, original letter contained “2 months” and not “12 months”. It is further asserted that mentioning of “2 months” in the said letter is pure and genuine typing mistake. He submitted that the learned trial Judge rejected the Motion on the ground that in the case of ***Iqbal Singh Marwah Vs. Meenakashi Marwah***, AIR 2005 SC 2119, the Constitution Bench has held that Section 195(1)(b)(ii) of Cr.P.C. 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 i.e. during the time when the document was in custodia legis. He submitted that the decision of ***Iqbal Singh Marwah*** (*supra*) was considered by Delhi High Court in the case of ***Arun Dhawan Vs. Lokesh Dhawan***, 2015 ***Cri.L.J.2126***. He submitted that the learned trial Judge ought to have allowed the Motion and directed the Registry to lodge complaint against the respondent-plaintiff for the offences punishable under Sections 192, 193, 196, 463, 465, 466, 471 and 120-B IPC.

8. On the other hand, Mr. Jamdar submitted that the defendants have

contended that when the letter dated 11.05.1993 was in the custody of the Court, the plaintiff committed forgery. The learned trial Judge has recorded a categorical finding that the plaintiff has produced original letter dated 11.05.1993 on 11.09.2014 as per compilation of documents, exhibit-8. In other words, it was not in the custody of the Court when the original letter was produced on 11.09.2014, and therefore, the learned trial Judge has rightly rejected the Motion. He submitted that petitioner has filed private complaint and in fact, one of the issues framed in the Suit, namely issue No.8 is whether the defendants prove that the letter dated 11.05.1993 was forged by the plaintiff by altering figure of 2 months to 12 months.

9. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The provisions of Sections 195 and 340 were considered by the Apex Court in the case of **Iqbal Singh Marwah** (*supra*). In paragraph 6, it was observed that,

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

10. In paragraph 9, it was observed thus,

“9. ... This being the scheme of two provisions or clauses of [Section 195](#), viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have

been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b) (ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court."

11. In paragraph 10, it was observed thus,

"10. ... The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice."

12. In paragraph 26, the Apex Court observed that in the present case, the Will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said Will after it has been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. In the present case, the learned trial Judge has specifically observed in paragraph 10 that it is not the contention of the defendant No.2 that when the original letter dated 11.05.1993 was in custody of the Court that is after producing the said letter in the Court as per the compilation of the documents, exhibit-8, the plaintiff forged that letter. Admittedly, the letter exhibit-D which alleged to have been filed by the plaintiff along with the plaint is the typed / copy of the original letter dated 11.05.1993. So it cannot be said that the plaintiff tampered with the original letter dated 11.05.1993 and forged it when that letter was in the

custody of the Court.

13. Mr. Kantawala relied upon the decision of Delhi Court in the case of **Arun Dhawan** (*supra*). In that case, respondent before the High Court filed resolution of Board of Directors of appellant No.2 Company, which was admittedly a forged and fabricated document. In the present case, plaintiff has not admitted that he has committed forgery. In view of the decision of the Apex Court in the case of **Iqbal Singh Marwah** (*supra*), I do not find that the decision in **Arun Dhawan's case** (*supra*) advances the case of the petitioner.

14. In view of the decision of the Apex Court in the case of **Iqbal Singh Marwah** (*supra*), I do not find that the learned trial Judge has committed any error in passing the impugned order. More so, when defendants have filed private complaint on the self-same allegations as also one of the issues framed is whether defendants prove that plaintiff has committed forgery of letter dated 11.05.1993 by altering figure of 2 months to 12 months. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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