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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.243 of 2014 (O&M)
Date of Decision 01.04.2015.

MOHINDER SINGH AND ORS ...Petitioners

Vs

UMRAV SINGH ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Inderjeet Singh, Advocate
for the applicant/petitioners.

Mr. N.S. Dhillon, Advocate
for respondent.

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

RAJ MOHAN SINGH, J.

[1]. Interim order was passed by this Court on 18.03.2014 after due notice to the respondent. Thereafter case remained pending for arguments. With the concurrence of parties, arguments have been heard on merits of the main case.

[2]. In this criminal revision, petitioner have assailed the order framing charge for the offences under Section 195/34 IPC by Additional Sessions Judge, Yamuna Nagar at Jagadhri.

[3]. Umrav Singh-respondent filed a criminal complaint under Section 500/120-B IPC and Section 194 IPC against the petitioners.

In the said criminal complaint, allegations were made that death of

Lala Ram was illegally twisted and a false FIR No.37 of 2004 under Section 304, 34 IPC Police Station Bilaspur was registered. In the said complaint, accused were acquitted and the death of Lala Ram was not proved to have occurred on account of any injury received by him at the hands of accused.

[4]. In the criminal complaint, Judicial Magistrate Ist Class, Bilaspur vide order dated 01.10.2013 passed an order of summoning against the petitioners for the offence under Sections 500/120-B and under Section 194 IPC.

[5]. The trial Court proceeded to frame charge against the petitioners for the offences under Sections 195/34 IPC vide order dated 02.01.2014 and accordingly chargesheet was drawn on the same date.

[6]. Petitioners have assailed the order framing charge and the chargesheet primarily on the ground of bar created under Section 195(1)(b) Cr.P.C.

[7]. Firstly it would be relevant to see the nature of offence for which petitioners have been charged with. The offence in terms of Section 195 IPC has the following postulates:-

“195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment:-

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law for the time being in force in

[India]] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished"

[8]. In view of Section 195(1)(b) Cr.P.C., no Court can take cognizance of an offence of Section 195 when such an offence is alleged to have been committed in relation to any proceeding in the Court except on the complaint in writing made by that Court or by any officer authorised by that Court in writing or of some other Court to which that Court is subordinate.

[9]. For ready reference Section 195(1)(b) Cr.P.C., is reproduced as also:-

"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) xx xxx xxx

(ii) xx xxx xxx

(iii) xx xxx xxx

(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 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.]”

[10]. The aforesaid aspect being a pure question of law goes to the very roots of the case. The basic issue involved is in respect of very jurisdiction of the Court, taking cognizance of the offence under Section 195 IPC. In view of very nature of offence being non-cognizable in nature, it has to be tested whether the same is maintainable at the instance of private party or not?

[11]. In **M.S. Ahlawat v. State of Haryana 1999(4) RCR (Criminal) 718** the Apex Court held that it is the competence of the Court having jurisdiction to adopt procedure as envisaged under Section 195(1)(b) Cr.P.C in case offence under Section 195 IPC has been committed.

[12]. The jurisdiction of the courts have been well defined in the Code. One type of jurisdiction deals with respect to the power of the Courts to try particular kinds of offence. That is a jurisdiction which goes to the root of the matter and if a Court is not empowered to try a particular offence, does try it, the entire trial is void. The other

jurisdiction is what may be called as territorial jurisdiction to which no such importance is attached as is attached where special jurisdiction is conferred upon a Court.

[13]. In case of **Perumal v. Janaki 2014(1) RCR (Criminal) 851** the Hon'ble Supreme Court held that in view of bar created under Section 195 Cr.P.C., private complaint is not maintainable.

[14]. In view of what has been discussed hereinabove, this Court feels that Additional Sessions Judge, Yamuna Nagar at Jagadhri is not justified in framing charge and issuing chargesheet in respect of offences under Section 195/34 IPC.

[15]. Consequently, impugned order of charge dated 02.01.2014 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri (Annexure P-4) and chargesheet of the even date are hereby quashed.

[16]. Petition is allowed.

April 01, 2015
Atik

**(RAJ MOHAN SINGH)
JUDGE**