

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.111 of 2017

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1. Purushottam Narayan Singh, S/o Shri L.P. Singh, at present Deputy Director Programme-cum-Office Head Doordarshan Kendra Patna- 800001.
 2. Ajaya Kumar K.P. @ Ajaya Kumar K. P., S/o Shri M.R. Nair, o/o Director General Akashwani Nideshalaya Akashwani Bhawan Sansad Marg, New Delhi, Police Station- Sansad Marg, District- New Delhi- 110001.
 3. F. Sheheryar, S/o N. D. Neda, Director General, All India Radio Akashwani Bhawan Sansad Marg, New Delhi- 110001.

.... Petitioner/s

Versus

1. Narendra Kumar Srivastava, Son of Late Munna Lal Srivastav, Resident of G-2/80, Rail Vihar Pratham Charganw, Gorakhpur, Post- Charganwa (U.P.), at present- Doordarshan Anurakshan Kendra, Motihari, P.S.- Motihari, District- East Champaran, Bihar.
2. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, ASG

For the Respondent/s : Mr. Ashok Chaudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 30-03-2017

Whether a Court can take cognizance of an offence punishable under Section 193 of the Indian Penal Code (*hereinafter referred to as the "IPC"*), on the basis of a private complaint is the



short legal issue, which the present criminal revision application involves. Put differently, the question is as to whether a Court of competent jurisdiction can take cognizance of an offence, punishable under Section 193 of the IPC, only on the complaint in writing of a Court when such offence is alleged to have been committed in or in relation to any proceeding of that Court and not otherwise. The answer of the question lies in interpretation of Section 195 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*).

2. An order, dated 22.12.2016, passed by the learned Assistant Chief Judicial Magistrate-VII, Motihari, in Complaint Case No. 1759(C) of 2016, whereby, he has taken cognizance of an offence punishable under Section 193 of the IPC, on the basis of private complaint filed by opposite party No. 1 and has summoned the petitioners, who have been arraigned accused in the complaint petition is under challenge in present criminal revision, filed under Section 397 read with Section 401 of the Cr.P.C.

3. The petitioners are officials of *Doordarshan* and All India Radio. Petitioner No. 3 is Director General, All India Radio at New Delhi, whereas, petitioner No. 2 is an officer, working in the office of the Director General. Petitioner No. 1 is presently working



as Deputy Director Programme-Cum-Office Head, *Doordarshan* Kendra, Patna.

4. Opposite party No. 1 is the complainant of said Complaint Case No. 1759(C) of 2016 and at the time of filing of the complaint petition, he was posted an Engineering Assistant in *Doordarshan Kendra*, Motihari. He was appointed on 13.09.1990 in the pay-scale of Rs. 1400/- to 2600/-. It is his case in the complaint petition that the said pay-scale of Engineering Assistants was revised, with effect from 01.01.1986, to Rs. 2000/- to 3200/- by the Ministry of Information and Broadcasting by its decision dated 15.05.1995. The pay-scale of Senior Engineering Assistant was revised to Rs. 2000/- to 3275/- with effect from 01.01.1986. It is his further case that replacement scale of all the categories, with effect from 01.01.1996, was fixed as Rs. 6500/- to 10500/-. The Employees Association of the concerned cadre, upon coming into force of Assured Career Progression (*hereinafter referred to as the "ACP"*) Scheme, had represented for grant of 1st ACP in the pay-scale of Rs. 8000/- to 13500/-, which was not being allowed, which led to filing of an application before Central Administration Tribunal (*hereinafter referred to as the "CAT"*), Patna Bench, which gave rise to O.A. No. 514 of 2002. The said O.A. No. 514 of



2002 was allowed by CAT, Patna Bench by an order dated 07.09.2009. The Union of India challenged the said order, dated 07.09.2009, by filing a writ application before this Court. The order of the CAT was allowed by this Court with an observation that no generalized direction could be given for grant of ACP and ACP has to be granted on individual basis. The complainant-opposite party No. 1, thereafter, represented the competent authority for grant of 1st ACP. On refusal, he filed O.A. No. 173 of 2009 before the CAT, Patna Bench, which was dismissed on 13.02.2013. He, thereafter, approached this Court by filing a writ application, giving rise to CWJC No. 2797 of 2014, which was disposed of by an order, dated 29.06.2014, with a direction to the respondents, in that case, to pass appropriate order on the representation filed by him. Alleging non-compliance of the said order, dated 29.06.2014, he filed a contempt petition before this Court, which gave rise to MJC No. 2912 of 2015.

5. In the said contempt case, the petitioners are said to have been filed a show-cause showing compliance of the order, dated 29.06.2014, and, accordingly, the contempt case was dropped, with a liberty to the complainant-opposite party No. 1 to challenge the order passed in compliance of this Court's directive, before



appropriate forum.

It is the case of the complainant that because of false and wrong statement made in their show-cause affidavit, this Court dropped the contempt case. With this allegation he filed complaint case, alleging commission of offence punishable under Section 193 read with Section 34 of the IPC.

6. Learned Assistant Chief Judicial Magistrate-VII, Motihari, by the impugned order, dated 22.12.2016, has taken cognizance of the offence punishable under Section 193 of the IPC after examining the complainant-opposite party No. 1 on solemn affirmation in support of the complaint case and some other witnesses.

7. I have given in detail the background in which the opposite party No. 1 filed the complaint case for two reasons. Firstly, for the purpose to decide as to whether the court below could have entertained the private complaint and taken cognizance of the offence under Section 193 of the IPC at all, in view of bar put under Section 195 of the Cr.P.C. Secondly, to consider the conduct of opposite party No. 1 in filing complaint petition for ventilating his grievance pertaining to service matter by filing complaint petition against his controlling officers and Head of the Department.



8. Mr. Sanjay Kumar, learned counsel, appearing on behalf of the petitioners, has submitted that Section 195 of the Cr.P.C. puts a clear bar on taking of cognizance by a Court, of an offence punishable under Section 193 of the IPC, unless it is on a complaint in writing of the Court or such officer of the Court as that Court may authorize in writing in this behalf, in relation to a judicial proceeding in that Court in judicial proceeding of which Court, the offence is alleged to have been committed.

9. In order to appreciate submission made on behalf of the petitioners, it will be useful to extract Section 193 of the IPC and Section 195 of the Cr.P.C., which read thus:-

Section 193 of the IPC :

“193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and whoever intentionally gives or fabricates false evidence in any



other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.”

Section 195 of the Cr.P.C. :

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—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 in 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.”

10. On careful reading of Section 195(1) of the Cr.P.C., it can be easily discerned that it refers to three (3) categories of offences, namely;

(i) Offences punishable under Sections 172 to 188 of the IPC; which fall under Chapter-X of the IPC and relate to offences of contempt of lawful authority of public servants. [Section 195 (1) (a)];

(ii) Offences punishable under Sections 193 to 196, Sections 199, 200, 205 to 211 and Section 228 of the IPC, falling under Chapter-XI of the IPC, relating to false evidence and offences against public justice. [Section 195 (1) (b) (i)]; and

(iii) Offences described under Section 463, or punishable under Sections 471, 475 or 476 of the IPC, 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. [Section 195 (1) (b) (ii)].

11. Upon close scrutiny of categories of offences,



specified under Section 195 (1) (b) (i) and Section 195 (1) (b) (ii) of the Cr.P.C., it can be easily seen that distinction between the two sets of offences are crystal clear. The category of offences mentioned in Section 195 (1) (b) (i) of the Cr.P.C. refer to offences of false evidence and offences against public justice, whereas, the category of offences mentioned in Section 195 (1) (b) (ii) of the Cr.P.C. refer to those offences, which are alleged to have been committed in respect of a document “*produced or given in evidence in a proceeding in any Court*”.

12. It is also evident from reading of Section 195 of the Cr.P.C. that no Court can take cognizance of an offence, which fall in either of the three (3) categories except on the complaint in writing of the Court during proceeding of which such offence is alleged to have been committed. Further, Chapter-XXVI of the Code of Criminal Procedure, 1973 lays down the procedure for the cases mentioned in Section 195 of the Cr.P.C. For the benefit of quick reference Section 340 of the Cr.P.C., under Chapter-XXVI, is being extracted hereinbelow:-

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 authorize in writing in this behalf.]

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

13. Mr. Sanjay Kumar, learned counsel, appearing on behalf of the petitioners, has placed reliance on Supreme Court decision in case of *M.S. Ahlawat Vs. State of Haryana & Anr., reported in (2000) 1 SCC 278*, to buttress his contention that provisions of Section 195 of the Code are mandatory and no Court can have the jurisdiction to take cognizance of the offence



mentioned therein unless there is a complaint in writing as required under that section. He has also relied on recent decision of Supreme Court in case of *Amarsang Nathaji Vs. Hardik Harshadbhai Patel & Ors., reported in (2017) 1 SCC 113*, to submit that even before initiating a proceeding under Section 340 of the Cr.P.C., the Court, in whose proceeding offence punishable under Section 193 of the IPC is alleged to have been committed, must be satisfied on materials on record that a *prima facie* case for complaint for the purpose of enquiry into an offence referred to in Clause (b) (1) of Section 195 of the Cr.P.C. is made out and that it is expedient in the interests of justice that an enquiry should be made into alleged offence.

14. Mr. Ashok Chaudhary, learned counsel, appearing on behalf of opposite party No. 1, on the other hand, has placed heavy reliance on Supreme Court decision in case of *Sachida Nand Singh & Anr. Vs. State of Bihar & Anr., reported in (1998) 2 SCC 493*, with particular reference to paragraphs 6 and 7 of the judgment. He has also placed reliance on Supreme Court decision in case of *Perumal Vs. Janaki, reported in (2014) 5 SCC 377*.

15. I have given my anxious consideration to the submissions advanced on behalf of the parties. I do not find any



merit in the submission, made on behalf of opposite party No. 1, in placing reliance on Supreme Court decision in case of *Sachida Nand Singh* (supra). In the said decision, in case of *Sachida Nand Singh* (supra), the Supreme Court had occasion to deal with Section 195 (1) (b) (ii) of the Cr.P.C., which refers to offence described in Section 463 or punishable under Sections 471, 475 or 476 of the IPC, 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. The Supreme Court clearly laid down in paragraph 6 of the said decision that Section 195 (i) (b) (ii) of the Cr.P.C. reveals two main postulates for operation of the bar mentioned thereunder. Firstly, there must be allegation that an offence of the kind, mentioned therein, had been committed in respect of document produced or given in evidence in a proceeding in any Court. The Supreme Court categorically held that there should not be any dispute that if forgery was committed with a document, while the document was in the custody of a Court, then the prosecution can be launched only with a complaint made by that Court. At the same time, if the forgery was committed with the document, which has not been produced in the Court then the prosecution would lie at the instance of any person. Whereas, the



category of offences, which fall under Section 195 (1) (b) (i) of the Cr.P.C., are concerned, they refer to the offence of giving of false evidence and offences against public justice, under Chapter-XI of the IPC. There cannot be any dispute in relation to the category of the offences falling under Section 195 (1) (b) (i) of the Cr.P.C.. Situation may be different in case the offence is one, which falls under Section 195 (1) (b) (ii) of the Cr.P.C., in which case a dispute may arise whether the offence of forging a document was committed outside the Court or when it was in the custody of the Court.

16. The Supreme Court decision in case of *Sachida Nand Singh* (supra), which primarily deals with Section 195 (1) (b) (ii) of the Cr.P.C., will not apply in category of cases falling under Section 195 (1) (b) (i) of the Cr.P.C. for the aforesaid apparent reason.

17. In subsequent decision in case of *M.S. Ahlawat* (supra), the Supreme Court in clear terms has held in paragraphs 5 and 6 as follows:-

“**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 (CrPC) 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](#) CrPC 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 (*sic*) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.”

“6. [Section 340](#) CrPC prescribes the procedure as to how a complaint may be preferred under [Section 195](#) CrPC.



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

18. In case of *Chajoo Ram Vs. Radhey Shyam & Anr.*, *reported in 1971 (1) SCC 774*, the Supreme Court has categorically held that where the offence relates to a Court under Section 195 Cr.P.C., sanction of the Court should be obtained first and such sanction should be granted only in those cases where the breach appears to be deliberate and conscious.

19. In view of the discussion as above, the impugned order, dated 22.12.2016, passed by the learned Assistant Chief



Judicial Magistrate-VII, Motihari, in Complaint Case No. 1759(C) of 2016, is set-aside.

20. This application is, accordingly, allowed.

21. Before I part with the present judgment and order, I deprecate the conduct of opposite party No. 1 in approaching criminal Court for making an attempt to prosecute his superiors with the allegation of commission of offence punishable under Section 193 of the IPC, since his superiors did not grant him service benefits what he wanted. He went before the criminal Court, apparently with his personal vendetta against his superiors to unduly harass them. The conduct of opposite party No. 1 is highly reprehensible.

22. In the facts and circumstances of the case, while allowing the present criminal revision application, I consider it fit to impose a cost of Rs. 30,000/- (Rs. 10,000/- each to the petitioners) on opposite party No. 1, to be paid within a period of three (3) months from the date of passing of the present judgment.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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