

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.20 of 2017

M/s. Moonlight Agency, Through its Proprietor Aasandas Mohnani, S/o Hariram Mohnani, aged about 49 years, R/o Opposite Sheetal Ashram, Patankar Colony, Sindhi Colony, Durg, Tehsil & District Durg (C.G.)
(Accused)
---- Petitioner

Versus

State of Chhattisgarh, Through District Magistrate, District Durg (C.G.)
---- Respondent

Criminal Misc. Petition No.33 of 2017

M/s. Moonlight Agency, Through its Proprietor Aasandas Mohnani, S/o Hariram Mohnani, aged about 49 years, R/o Opposite Sheetal Ashram, Patankar Colony, Sindhi Colony, Durg, Tehsil & District Durg (C.G.)
(Accused)
---- Petitioner

Versus

State of Chhattisgarh, Through District Magistrate, District Durg (C.G.)
---- Respondent

AND

Criminal Misc. Petition No.27 of 2017

M/s. Moonlight Agency, Through its Proprietor Aasandas Mohnani, S/o Hariram Mohnani, aged about 49 years, R/o Opposite Sheetal Ashram, Patankar Colony, Sindhi Colony, Durg, Tehsil & District Durg (C.G.)
(Accused)
---- Petitioner

Versus

State of Chhattisgarh, Through District Magistrate, District Durg (C.G.)
---- Respondent

For Petitioner:	Mr. Amrito Das, Advocate.
For Respondent/State:	Mr. Arun Sao, Deputy Advocate General.
For Complainant :	Mr. Punit Ruparel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/05/2017

1. This order will govern the disposal of Cr.M.P.Nos.20/2017, 33/2017 and 27/2017.
2. Complainant Bhagwan Das filed three complaints against the petitioner for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 in which, in all three, the petitioner filed bank counterfoil bearing signature of the complainant. In one criminal case bearing Criminal Complaint Case No.632/2009, the petitioner has been acquitted by the jurisdictional criminal court on the ground that the complainant has failed to establish the offence beyond reasonable doubt whereas, other two complaints are pending consideration before the jurisdictional criminal court and in which the petitioner has produced similar counterfoil in defence alleging that it bears the signature of the complainant. Thereafter, the complainant filed application under Section 156 (3) of the CrPC before the jurisdictional Magistrate for registering first information report against the petitioner for offence under Sections 193, 196, 420, 467, 468 and 471 of the IPC in which the learned Magistrate directed for investigation and thereafter, FIR has been registered for aforesaid offences against the petitioner and thereafter, charges have been framed. Questioning the registration of offence and framing of charges, these writ petitions have been filed by the petitioner stating inter alia that the said registration of offence is

barred under Section 195(1)(b)(i) of the CrPC, therefore, registration of offence and subsequent proceeding of framing charge etc., are without jurisdiction and without authority of law. The orders passed by the revisional court affirming the orders of the trial Court deserve to be set aside.

3. Mr. Amrito Das, learned counsel appearing for the petitioner, would submit that the main offences alleged against the petitioner are under Sections 193 and 196 of the IPC i.e. giving false evidence and for using evidence known to be false that is said to have been committed while filing the documents before the court. In one case, the petitioner has already been acquitted and two other cases are pending consideration before the court. Therefore, bar is squarely attracted and unless the complaint has been preferred by the said court in which such forged/fabricated documents are produced or by any other Court to which such court is subordinate to, the prosecution of the petitioner is bad in law, as Section 195 of the CrPC is mandatory in nature.
4. On the other hand, Mr. Punit Ruparel, learned counsel appearing for the complainant, would submit that Section 195(1)(b)(i) of the CrPC is not attracted in view of the facts and circumstances of the case. He would further submit that clearly, offence is made out against the petitioner which has been investigated by the police upon direction under Section 156 (3) of the CrPC and therefore all the present petitions under Section 482 of the CrPC deserve to be dismissed. He would place reliance upon the decisions of the

Supreme Court in the matters of Iqbal Singh Marwah and another v. Meenakshi Marwah and another¹ and George Bhaktan v. Rabindra Lele².

5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
6. It is not in dispute that the petitioner has filed three counterfoils of cheque book bearing signature of the complainant and further it is not dispute that the complainant is disputing his signature on the said counterfoils which have been produced in the Court holding it to be forged and to be filed and used before that Court and on the basis of that document, in one case, the petitioner, according to him, has been acquitted. Therefore, it is the case of the complainant that the document has been fabricated and using that document, the petitioner has got the order of acquittal. In view of that, the complainant has filed application under Section 156 (3) of the CrPC before the Judicial Magistrate for the offence punishable under Sections 193 and 196 of the IPC and subsequently to the allied offences viz., Sections 420, 467, 468 and 471 of the IPC. Therefore, the question would be, whether Section 195 of the CrPC which relates to prosecution for offences relating to documents given in evidence, is attracted or not. Admittedly, that document has been acted upon and it has been given in evidence and the said documents i.e. counterfoils produced by the petitioner have

1 (2005) 4 SCC 370

2 (2014) 4 CGLJ 446

actually been used and relied upon by the Court.

7. At this stage, it would be appropriate to notice Section 195(1)(b)(i) of the CrPC which 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—

(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

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.”

8. The aforesaid provision clearly and unmistakably mandates the Court not to take cognizance of an offence punishable under Section 196 of the IPC except on the complaint made in writing of that Court or by such officer of the Court as that Court may authorise in writing in that behalf.
9. Section 195(1)(b)(i) of the CrPC came to be considered before the Supreme Court in the matter of **M.S. Ahlawat v. State of Haryana and another**³ in which Their Lordships of the Supreme Court have clearly held that private complaints are absolutely barred in respect of an offence relating to documents actually used in a court and observed as under: -

“5. Chapter XI IPC deals with “false evidence and offences against public justice” and Section 193

3 (2000) 1 SCC 278

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.”

10. Thus, the provisions of Section 195 of the CrPC are mandatory and no court has jurisdiction to take cognizance unless the conditions precedent as mandated in Section 195 of the CrPC are satisfied.
11. The principle of law reiterated in **M.S. Ahlawat** (supra) has been revisited and reaffirmed by Their Lordships of the Supreme Court in the matter of **C. Muniappan and others v. State of Tamil Nadu**⁴ clearly holding that the provisions of Section 195 of the CrPC are mandatory and non-compliance of the same would vitiate the prosecution. Paragraph 33 of the report states as under: -

“33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”

4 (2010) 9 SCC 567

12. Thus, there is not an iota of doubt that for commission of alleged offence under Sections 193 and 196 of the IPC, private complaint is absolutely barred and unless complaint in terms of Section 195(1)(b)(i) of the CrPC is filed by the officer authorised by that Court in which the said documents have been tendered and used in evidence, the prosecution is not maintainable.
13. The decisions cited by learned counsel for the complainant are not applicable to the facts of the present case and are distinguishable to the present case, as the present case squarely falls under the ambit of Section 195(1)(b)(i) of the CrPC.
14. Applying the principles of law laid down in above-stated judgments to the facts of the present case, it is quite vivid that the petitioner is said to have mainly committed offences under Sections 193 and 196 of the IPC by tendering the counterfoil in evidence before the trial Court, thereby Section 195(1)(b)(i) of the CrPC squarely attracts, and therefore in absence of complaint in terms of the said provision, the petitioner cannot be prosecuted for the said offences and other offences being registered consequent to registration of offences under Sections 193 and 196 of the IPC, the complaint as framed and filed is held to be not maintainable being hit by Section 195(1)(b)(i) of the CrPC.
15. As a fallout and consequence of aforesaid discussion, the petitions are allowed and the order registering offences as well as the revisional order and consequent action, if any, are hereby quashed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge