

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.99 OF 2017**

Mr. Hiro Kewalramani,
 Presently in Judicial Custody
 Colvale-Jail,
 R/o B. K. No.211/2,
 Bewas Chowk, Ulhasnagar,
 Mumbai, Maharashtra.
 Through his wife Mrs. Nidhi Hiro
 Kewalramani, aged 33 years,
 Indian National, House wife,
 R/o B.K.No.211/2,
 Bewas Chowk, Ulhasnagar,
 Mumbai, Maharashtra

.. Petitioner

V/s.

1. State of Goa
Through Public Prosecutor
2. Police Inspector
Anjuna Police Station,
Anjuna, Bardez, Goa
3. Mr. Kishore K. Keswani
S/o Kakumal Keswani,
Age 56 years,
Occupation Business
R/o Radhika Mahal,
Hill Area, Section 17,
Ulhasnagar 3, District Thane
Maharashtra

.. Respondents

Mr. I. Syed, Mr. Prithu Parimal and Mr. J. P. Supekar, Advocates for the Petitioner.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the respondent nos.1 and 2.

Mr. S. G. Dessai, Senior Advocate with Mr. G. Teles, Advocate for the respondent no.3.

CORAM: C. V. BHADANG &

PRITHVIRAJ K. CHAVAN, JJ.

Reserved on : 7th September, 2017.

Pronounced on : 5th December, 2017

JUDGMENT : (Per C. V. Bhadang, J.)

By this petition, under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (the Code, for short), the petitioner is seeking quashing of FIR bearing No.79/2016, registered with Police Station, Anjuna and the consequent chargesheet filed before the learned Judicial Magistrate, First Class, Mapusa, under Sections 384, 420, 465, 467, 468, 471, 474, 109, 114, 115, 182, 193, 195, 199, 200, 205, 201, 120-B, 511 read with Section 34 of Indian Penal Code (IPC, for short).

2. The principal ground on which the petitioner seeks to quash FIR/ chargesheet is that the second impugned FIR is not competent. It is contended that there were previous complaints lodged by the third respondent, who is the complainant with Sakinaka Police Station, Mumbai on 18/02/2016 and 11/03/2016, on the basis of which FIR No.478/2016 is registered against the

accused no.1 Anil Jaisinghani and others. Incidentally, the petitioner happens to be the accused no.9 in the impugned FIR No.79/2016 of Police Station Anjuna.

3. Brief facts, necessary for the disposal of the petition, may be stated thus :

That one Tulika Katare (Accused no.2 in the impugned FIR) filed a complaint with Police Station, Anjuna on 11/02/2016 alleging that the respondent no.3 had sexually assaulted her without her consent in the night intervening between 10th and 11th February, 2016 at Hotel Goan Darbar, Chapora, Goa, after lacing her drink with some stupefying substance. On the basis of the said complaint, an offence under Crime No.17/2016 was registered with Police Station, Anjuna, in which the third respondent was arrested and has since been released on bail. It appears that after the investigation of the complaint lodged by Tulika Katare against the third respondent, the Investigating Officer has filed a final 'B' summary report, which is pending consideration before the learned Judicial Magistrate, First Class, Mapusa.

4. The impugned FIR is registered on the basis of the complaint of the third respondent, alleging that there is a property

dispute between the third respondent and one Anil Jaisinghani (accused no.1 in the impugned FIR) and the said Anil Jaisinghani along with others, including Ms. Tulika Katare and the petitioners had hatched a criminal conspiracy and in furtherance thereof, had cooked up a false story of Tulika Katare being raped in the Hotel Goan Darbar. There are in all 12 accused named in the impugned FIR.

5. The Investigating Officer, during the course of the investigation of the impugned FIR, found that Anil Jaisinghani and others had hatched a conspiracy to falsely implicate the third respondent in an offence of rape, and hence, after completion of the investigation, a chargesheet has been filed against the petitioner and others. As noticed earlier, the only ground on which the FIR/ chargesheet is sought to be quashed, is that there is previous FIR registered concerning the same transaction with Police Station, Sakinaka, Mumbai and as such, the impugned FIR, which is registered later in point of time, is not competent.

6. We have heard Shri Syed, the learned Counsel for the petitioner and Shri Dessai, the learned Senior Counsel for the third respondent. We have also heard Shri Amonkar, the learned

Additional Public Prosecutor for the respondent nos.1 and 2 and perused record.

7. The learned counsel for the petitioner made the following submissions :

- (i) That unless the final B summary submitted in respect of the complaint of Tulika Katare is accepted, it is not permissible for the Investigating Officer to register an FIR against the petitioner and others, claiming that the complaint by Tulika Katare was false;
- (ii) That the impugned FIR is incompetent in view of the previous FIRs with the Sakinaka police station, Mumbai as they arise out of the same transaction;
- (iii) That in view of section 195(1)(a)(i) of the code, the prosecution for the offence under section 182 of the Indian Penal Code (IPC for short) can be initiated only by way of a complaint by the concerned public servant and not by way of a police report/charge sheet;
- (iv) That in any case no offence under section 384 of IPC is made out in this case.

8. On behalf of the petitioner, reliance is placed on the

judgment and order dated 08/12/2014 of this Court in W.P.No.2059/2014 (**Anil Agarwal Vs. State of Maharashtra**). the decision of this Court in Criminal Writ Petition No.4232/2016, decided on 04/07/2017 (**Kishore Kakumal Keswani Vs. State of Maharashtra and others**). Reliance is also placed on the decision of the Supreme Court in the case of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another; (2013)6 SCC 348**, **T. T. Antony Vs. State of Kerala and others; (2001)6 SCC 181**, **Bhagwant Singh Vs. Commissioner of Police and another, (1985)2 SCC 537**, **State of Karnataka Vs. Hemareddy, (1981)2 SCC 185**, **Saloni Arora Vs. State (NCT of Delhi)**. Reliance is also placed on the decision of the Gujarat High Court in the case of **Gowardhan Kumar Asrani Vs. State of Gujarat** (Criminal Misc. Application No.24632/2015) and **Sureshbhai Damaji Bhai Vs. State and another; (Criminal Misc. Application No.12768)**. He, therefore, submits that the impugned FIR and chargesheet be quashed.

9. On the contrary, it is submitted by the learned Additional Public Prosecutor that the offence covered by the FIR before the Sakinaka Police Station, Mumbai, and the subject matter of the impugned FIR are different and they are two distinct

offences. It is, thus, submitted that the impugned FIR cannot be said to be incompetent on the ground that it is a second FIR. On behalf of the State, reliance is placed on the decision of the Supreme Court in the case of ***Pankaj Aggarwal and others Vs. State of Delhi and others, 2001(3) Crimes (SC) 361, State of U. P. Vs. Suresh Chandra Shrivastav and others, AIR 1984 SC 1108*** and the decision of Madras High Court in the case of ***Sundararajan and others Vs. Inspector of Police CB CID Erode; 2008(1) LW (Cri) 715.***

10. Shri Dessai, the learned Senior Counsel for the third respondent has supported the impugned FIR. It is submitted that two FIRs are pertaining to two different incidents and the impugned FIR cannot be said to be connected with the FIR at Sakinaka Police Station, Mumbai. It is submitted that there are offences other than Section 182 of IPC and in respect of said offences, Section 195 of the Code would not be attracted. On behalf of the third respondent, reliance is placed on the decision of the Supreme Court in the case of ***Babubhai Vs. State of Gujarat and Ors.; MANU/SC/0643/2010, Central Bureau of Investigation Vs. M. Shivamani, (Criminal Appeal Nos.1261-1262 of 2017)*** and ***Iqbal Singh Marwah Vs. Meenakshi***

Marwah and another; (2005)4 SCC 370.

11. We have carefully considered the rival circumstances and the submissions made.

Ground No.(i) : Unless Final 'B' summary is filed, FIR cannot be registered.

12. Before considering the specific issue as raised, it may be noted that under the scheme of the Code, it is the exclusive jurisdiction and the power of the Investigating Agency to investigate into complaints alleging commission of cognizable offences. The Investigating Officer, on completion of the investigation, can either file a report (usually called a charge sheet) under section section 173(2) of the Code, where there is material sufficient in the opinion of the Investigating Officer to put the accused on trial. The Investigating Officer may also choose to send report (usually called a final summary report) under section 169 of the Code if in the opinion of the Investigating Officer, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate. The provisions of the Criminal Manual, which are in the form of administrative instructions to the Magistrates, classify such

summaries in three categories as A, B and C summaries. In the present case, the Investigating Officer in respect of crime no 17/2016 has sent a report under section 169 of the Code, which is classified as a 'B summary', which means that the complaint was found to be false and maliciously false. (See chapter I, Section 24 of the Criminal Manual). The question is whether the Investigating Officer is obliged to wait till the acceptance of the report by the Magistrate before investigating a counter complaint by the accused, that the complaint against him is false. On behalf of the petitioner, heavy reliance is placed on the decision of the Supreme Court in the case of ***Bhagwant Singh*** (supra). In that case, the Investigating Officer had sent a report under section 173(2) (i) of the Code (and not under section 169 of the Code as in the present case). The question was whether in a case where the Investigating Officer sends a report under section 173(2) of the Code and the Magistrate decides to drop the proceedings (on the ground that there is no sufficient evidence against the accused), the first informant/ complainant is entitled to a hearing. The Supreme Court has *inter alia* held that in such a case, the first informant is entitled to an opportunity of hearing. In our considered view, the decision does not take the case of the petitioner any further. In the first place, that was a case where the Investigating Officer had

sent a report under section 173 (2) of the Code and not under section 169 as in the present case and secondly, the only question involved was about the opportunity to the first informant in the event the Magistrate, disagreeing with the conclusion of the investigating officer, decides to drop the proceedings.

13. In this regard, a useful reference may be made to the decision of the Supreme Court in **R. N. Chatterji** (supra). The question in that case was whether on the basis of a petition (called as a protest petition) by the complainant, in a final summary sent by the Investigating Officer, the magistrate can direct the Investigating Officer to file a charge sheet. The supreme court has *inter alia* held that under the scheme of the Code, the Magistrate cannot ask the police to file a charge sheet. The Magistrate, in a given case, can direct further investigation under section 156(3) of the code . The Magistrate is also empowered to take cognizance under section 190(1)(c) of the Code, notwithstanding a contrary opinion of the police. None of this has happened in this case. The formation of the opinion on investigation, is something which is left to the police, albeit subject to the jurisdiction exercised by the Magistrate while dealing with such report. We are of the considered view that there is no prohibition in law, at least none

brought to our notice, that the police cannot register an FIR on the complaint of an accused (that the complaint against him is false and maliciously false) unless the Magistrate accepts the final summary report. The contention therefore cannot be accepted.

Ground No.(ii) : The impugned FIR is incompetent in view of the previous FIR no. 478/2016 with Sakinaka Police Station, Mumbai.

14. Before considering the question, the law on the subject may be briefly noticed. The Supreme court in the case of **T. T. Antony** (supra) has held that there can be no second FIR and no fresh investigation in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The Investigating Officer has to investigate not merely the cognizable offence as reported in the FIR but also connected offences found to have been committed in the course of the same transaction or the same occurrence. Even if after conclusion of the investigation and filing of the charge sheet, the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the court and forward further report if any under section 173(8) of the Code. In a more recent decision in the case of **Amitbhai Shah** (supra), the Supreme court after taking a survey

of various decisions holding the field including in the case of **T T Anthony** (supra) has reiterated the position of law as regards quashing of the second FIR, as noticed above.

15. It can, thus, be seen that there cannot be a second FIR registered in respect of the 'same cognizable offence' or 'same occurrence', giving rise to one or more cognizable offences. The principle apart, the question whether the second FIR pertains to or arises out of the same occurrence or transaction, would depend on facts and circumstances of each case.

16. Turning to the present case, the complaint dated 10.09.2016 on the basis of which FIR No.478/2016 is registered with Sakinaka Police Station, Mumbai reads thus : (True English translation)

“Mr. Kishor Kakumal Kesawani, age 54, occupation Hotel, resident of : 1) Radhika Mahal, Hill Area, Sector-17, Ulhasnagar-3, Dist. Thane, 2) A-1503, Florentine, Hiranandani Gardens, Powai, Mumbai, Mobile No.9890666600.

As State above, I stay at both the above addresses along with my family. My business is of running a hotel.

I have a plot of land owned by me at Ulhasnagar

- 1. Dist. Thane. The said plot has been illegally occupied by a person known as Mr. Anil Bhagawandas Jaisinghani, age 52, occupation Cricket Bookie, resident of Flat No.101, Mohan Life Style, Jaisinghani House, Goal Maidan, Ulhasnagar-1, Dist. Thane and his friends and therefore, I had lodged several police complaints in the Ulhasnagar-1 Dist. Thane police station. I have also lodged several complaints against them for falsely implicating me in criminal acts, threatening me with life and extortion. On account of this, there are frequent verbal altercations between us and the matter is under investigation by the Crime Investigation Department, Konkan Bhavan, Belapur, Navi Mumbai.

Because I have lodged complaints against Mr. Anil Jaisinghani and his accomplices as stated above, Mr. Anil Jaisinghani and his accomplices have conspired against me and to implicate me in a crime, managed to lodge a false rape complaint against me under section 328, 376 IPC in the Anjuna Police Station, Goa, in conspiracy with a lady named Smt. Tulika Katare (C.R. No.17/2016).

In connection with the above false complaint lodged against me, the police officers of the police station mentioned above came to arrest me on 06/03/2016 at about 9.30 a.m. in the jurisdiction of the Sakinaka Police Station. At this time, I was going from my Hirandani Gardens Powai residence to Mhada Market, Chandivali, in my Ford Eco Sports car no.MH-

05-BS-3908. I was alone in the car. While thus going, one Innova Car No.MH-05-AX-9808, came from behind my car. A person not known to me was driving the car. By his side were sitting Mr. Anil Jaisinghani's brother-in-law Mr. Hero Kewalramani, in the middle seat were sitting Mr. Tirthraj Mahamal and Suhas Joshi of Goa Police in plain clothes, and in the backseat were sitting a man named Mr. Anil Rajwani and two unknown people. At this very moment Mr. Anil Jaisinghani drove a white Maruti Ertiga, GJ-06-FC-6321, brought it in front of my car and dashed it against my car. At that time an unknown shooter was sitting next to him and in the back seat was sitting Goa PSI Mr. Mahesh Kerkar in plain clothes. Mr. Anil Jaisinghani halted his car mentioned above in front of my car and the unknown driver halted the Innova (MH-05-AX-9808) at the back of my car. At this time Mr. Anil Jaisinghani rang up on my mobile phone number 9890666600 from his mobile number 9324311111 and 9699999999 and threatened me to settle the dispute of the Ulhasnagar property and asked me to accompany him.

I was extremely frightened because of this happening and feared that these people would kidnap me. Therefore, I did not get down from car and spoke to my nephew Mr. Deepak Ashok Keswani, age 40, over my mobile to inform him of what was happening and asked for his help. He immediately informed the Police Control Room and the police from the Sakinaka Police Station came to my rescue. On seeing them, Mr. Anil

Jaisinghani and his accomplices fled from the scene in their Ertiga. Similarly, the unknown driver of the Innova car MH-05-AX-9808 also drove away.

After this incident, the Sakinaka police officers brought me and Goa PSI Mr. Mahesh Kerkar and 02 police constables to the Sakinaka Police Station. At that time, I had narrated the whole story to PSI Pandit.

When information was tried to obtain about the Ertiga car GJ-06-FC-6321 which Mr. Anil Jaisinghani was driving through the 'Vahan' government App, I came to know that the car was registered in the name of one Mr. Chandubhai and the model of the car is Maruti Eco, 07 seater petrol car. Thus it is clear that Mr. Anil Jaisinghani has knowingly and intentionally used false registration number on the said car with the intention of misleading. There is a possibility that the car may be a stolen one.

My nephew Mr. Deepak Keswani has recorded the above incident on his mobile phone. I am submitting a DVD an photographs of the said recording.

As stated above Mr. Anil Jaisinghani has used registration number GJ-06-FC-6321 on his car with full knowledge that it is a false number. He has thus violated the MV Act. I had submitted an application on 13/06/2016 praying that action be taken against Mr. Anil Jaisinghani. Action may be taken against him accordingly.

My statement was recorded on Marathi

computer. It was explained to me in Hindi and it is correct."

17. On the basis of the said complaint, offences under sections 465, 468, 471, 473, 506 of IPC read with section 192 of the Motor Vehicles Act have been registered against Anil Jaisinghani. The petitioner is not shown as an accused at least in the FIR. Be that as it may, it can clearly be seen that although there is a reference to the attempt of Anil Jaisinghani and others to falsely implicate the respondent no 3 in a rape case, on account of a property dispute between the respondent no 3 and the said Anil Jaisinghani, the incident, which is subject matter of the complaint in FIR no. 478/2016 is distinct. As noticed earlier, the petitioner is not shown as an accused in the said FIR. The respondent no 3 filed Criminal Writ petition no.4232/2016 before the principle seat of this Court, seeking inclusion of the name of the petitioner in the said FIR and for transfer of investigation. That petition has been dismissed on 04.07.2017. This court *inter alia* found that though the FIR discloses allegations about lawful restraint of the respondent no.3 (petitioner in the said petition), it was at the instance of the Goa Police in Crime no.17/2016. This court also found that there were no allegations disclosing an offence under section 384 of IPC. On a careful perusal of the FIR

No.478/2016 with Sakinaka Police station and the impugned FIR, we do not find that they can be said to be arising out of the same occurrence or forming part of the same transaction. The only common thread, if any, running through the two FIRs is the alleged rivalry between the respondent no 3 and Anil Jaisigani, over a plot of land at Ulhasnagar. Nonetheless the occurrence within the jurisdiction of the Sakinaka police station is a distinct incident. We also find that the earlier FIR is in respect of a distinct incident within the jurisdiction of a different police station than the impugned FIR at Anjuna Police station. The petitioner is also not an accused arrayed in the FIR with Sakinaka Police Station, Mumbai. Thus, the contentions as raised cannot be accepted.

18. In the case **Amitbhai Shah** (supra), there was a single conspiracy to carry out three fake encounter killings that of 'S', 'K' and 'T'. The first FIR was in respect of First two encounter killings by the police while the second FIR was in respect of the third encounter killing. The CBI filed a chargesheet and a supplementary chargesheet in respect of the first FIR (in respect of the killing of S and K) and a chargesheet in respect of the third killing (of T). It was found that the second FIR not being a counter case was incompetent and was quashed. Nonetheless the

Chargesheet filed in pursuance of the second FIR was directed to be treated as a supplementary chargesheet. The case, in our humble opinion, turned on its own facts and cannot come to the aid of the petitioner.

19. The case of **Anil Agrawal** (supra) also turned on its own facts and is distinguishable.

Ground No.(iii) : Contention based on section 195(1)(a)(i) of the Code.

20. In order to appreciate the rival submissions, it would be necessary to reproduce section 195 of the Code to the extent relevant. Section 195 (1) reads thus :

“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

(i) 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.”

21. The contention is that the Investigating Officer could not have filed a chargesheet as section 195 of the Code envisages filing of a 'complaint' by the public servant concerned. Let us now analyse the bar under section 195 (1) of the Code. Section 195(1)(a) pertains to offences under sections 172 to 188 of IPC where it is essentially the public servant concerned, who can be said to be aggrieved and has to file a complaint. Section 195(1)(b) of the Code pertains to offences under sections 193 to 196, 199,

200, 205 to 211, 228, 463, 471, 475 or section 476 when such offence is alleged to have been committed “in relation to proceedings in any Court.” In such a case, it is the court concerned, which can be said to be aggrieved, and has to file the complaint.

22. Out of the total nineteen different sections invoked against the petitioner and others, offences under sections 193, 195 199, 200, 205, 465 and 471 are covered by section 195(1)(b) of the Code, where it is the concerned court, which is required to file the complaint. Section 182 of IPC finds place in section 195(1)(a) of the Code, where it is the concerned public servant, who is supposed to file a complaint. In the present case, it is the concerned Police Officer, with whom the FIR in Crime no.17/2016 was lodged, has to file a complaint. The question is whether a chargesheet filed can be said to be competent and whether it would be permissible for the court to take cognizance of the matter in the face of section 195 of the Code. The question has to be considered separately in relation to the bar under section 195(1) (a) and section 195(1)(b) of the Code.

Bar under section 195(1)(b) of the Code.

23. The question may not detain us long in view of the

Constitution Bench decision of the Hon'ble Supreme court in the case of ***Iqbal Singh Marwah*** case (supra). There was a conflict of opinion between two three Judge Bench decisions of the Supreme Court namely in ***Surjeetsingh*** (1996) 3 SCC 533 and the decision in ***Sachidanandsingh*** (1998) 2 SCC 493 on the interpretation of the term "such offence alleged to have been committed in, or in relation to any proceeding in any Court ' as used in section 195(1) (b) of the Code and the matter was referred to the Constitution Bench. The Constitution Bench, approving the view taken in the case of ***Sachidanand*** case, held that the bar under the section 195(1)(b) of the Code would be attracted only when the offences enumerated in the said section have been committed with respect to documents after they have been produced or given in evidence in a proceedings in any court i.e. during the time when the document/s was/ were *custodia legis*. In the present matter, it is nobody's case that there was any forgery of any documents after they were produced before the court . Thus, in view of the decision in the case of ***Iqbal Singh Marwah*** (supra), the bar is not attracted.

Bar under section 195(1)(a) of the code

24. The offence in the present case, covered by section

195(1)(a) of the Code, is section 182 of IPC, which reads thus :

*“S. 182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-
(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

25. The gravamen of the allegations are that there was a conspiracy hatched between the petitioner and the co accused to falsely implicate the respondent no.3 in a rape case and this was owing to a property dispute between the respondent no.3 and Anil Jaisinghani, the accused no1. The complaint lodged by Tulika Katare (accused no 2), was an outcome of the said conspiracy. It is thus, the Police Officer - Investigating Officer, to whom the complaint is lodged, is the one who can be said to be aggrieved.

The contention is that the said Investigating Officer instead of filing complaint, as required by Section 195(1)(a) of the Code, has filed a police report/ chargesheet. It is contended that the Magistrate cannot take cognizance unless there is a complaint by the concerned public servant. The contention, in our view, cannot be accepted. Indisputably, the Investigating Officer, in the present case, has filed a chargesheet/ police report under Section 173(2) of the Code and not a complaint.

'Complaint' is defined under Section 2(d) of the Code as under :

“Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant. ”

(Emphasis supplied)

26. On behalf of the State, heavy reliance is placed on the decision of the Madras High Court in the case of **Sundarrajan**

and others (supra), in which the Inspector of Police, who was entrusted with the investigation, was the public servant, who was expected to lodge a complaint, when a chargesheet was filed by the Inspector of Police. The Madras High Court, placing reliance on its earlier decision in the case of **Periyasamy Nadar** in Re (1965 MLJ 348), held that the chargesheet laid by the Inspector of Police would amount to a 'complaint'. In a reference made in the case of **Periyasamy Nadar** (supra), the Madras High Court held thus :

“It would be unreasonable to classify the complaints of public servants under Section 195(1)(a) into complaints by public servants other than Police Officers and complaints by Police Officers and police reports by Police Officers and to exclude Police Reports by Police Officers from the purview of the section. The scope of the section is that before the Court could take cognizance of an offence against a public servant, the public servant should himself prefer a complaint in writing. There is no justification for treating the Police Officer differently and excluding the complaint from the Police Officer which is preferred in the form of a Police Report. The context of Section 195 clearly warrants the construction of the word complaint in Section 195(1) (a) to include even report of the Police Officer, when this is made by the Police Officer concerned as a

public servant with a view to taking action against a person.”

27. It can, thus, be seen that the Madras High Court has held that in such a case, where the public servant concerned, who could be said to be aggrieved, was a Police Officer himself, the chargesheet filed can be treated as a complaint. We do not propose to dwell on the law as laid down by the Madras High Court, for the reason that in the present case, the chargesheet filed can be considered as a complaint on a different ground. This is for the reason that the 'explanation', annexed to Section 2(d) of the Code makes it explicit that the report made by a Police Officer in a case, which discloses, after investigation, the commission of a non-cognizable offence, shall be deemed to be a complaint and the Police Officer by whom such report is made, shall be deemed to be the complainant. In the present case in hand, the offence under Section 182 of IPC, is a non-cognizable offence and in view of the explanation annexed to Section 2(d) of the Code, the police report will have to be treated as a complaint and the Police Officer as the complainant. In an offence under Section 182 of IPC, the public servant may be either a Police Officer (as in the present case) or any other public servant. In our considered view, where the public servant concerned is a Police Officer, the chargesheet can be

treated as a complaint. We would hasten to add that this will not apply where the public servant is one, who is other than a Police Officer. For the present purpose, it is sufficient to mention that in as much as the person aggrieved and the public servant concerned is a Police Officer, having regard to the explanation to Section 2(d) of the Code, the police report can be treated as a complaint. The ground as raised thus, cannot be accepted.

28. The reliance on behalf of the petitioner on the decision in the case of **Sureshbhai Damjibhai** (supra) and **Govardhankumar Asrani** (supra) is misplaced. By the judgment in **Govardhankumar Asrani** (supra), the Court had decided a batch of criminal applications seeking quashing of FIRs /Chargesheets in different unconnected cases mainly on the ground of the bar contained in section 195 of the Code. Although it is not possible to discern the detailed facts obtaining in the various cases, in most of the cases, the offences alleged were under sections 186 and 188 of IPC along with other offences under the IPC. The Court was also confronted with a question about the applicability of bar under section 195 of the Code, where apart from the offences covered by the said section, there are other offences involved, which are not so covered. The Court reiterated

the well established principle that in such cases, the bar would not apply if the offences not covered by section 195 of the code are distinct and are not integrally connected or interwoven with the offences covered by section 195 of the Code. However, what is material is that in none of these cases a police officer/ investigating officer was the person/ public servant aggrieved unlike in the present case.

29. In the case of **Sureshbhai Damjibhai** (supra), the FIR was lodged by a Taluka Development Officer alleging that the petitioner Sureshbhai in that case was creating obstruction in the smooth functioning of the administration. The offence alleged therein was under Section 186 of IPC. Although under the Code, the said offence is non-cognizable, by State Amendment dated 27/12/1979, the offence was made cognizable within the State of Gujarat. As such, the explanation to Section 2(d) of the Code, would not apply in that case. That apart, from the facts, it would be evident that it was the Taluka Development Officer, who was public servant, who can be said to be aggrieved and not a Police Officer, as in the present case. In that view of the matter, the chargesheet filed by the Investigating Officer was quashed.

30. In the case of **Saloni Arora** (supra), by an order dated 06/07/2015, the High Court of Delhi had directed the Registrar General of the said High Court to make a formal complaint for prosecution of the appellant therein under Section 182 of the IPC. The said order was subsequently modified on 01/02/2016, whereby the High Court directed the SHO, Police Station, Anand Vihar, Delhi to make a formal complaint in terms of earlier order dated 06/07/2015 in place of the Registrar General of the High Court. Para 8 of the judgment of the Supreme Court would make it clear that there was a concession on behalf of the respondent that the impugned order was not legally sustainable and the appeal was allowed by the Supreme Court, placing reliance on its earlier decision in the case of **Daulat Ram Vs. State of Punjab**; AIR 1962 SC 1206. It would be apparent that the facts are distinguishable and moreover, in the said case also, the public servant concerned was not a Police Officer. We, thus, find that the contention based on Section 195(1)(a) of the Code, cannot be accepted.

Ground No.(iv): Whether offence under Section 384 of IPC is made out.

31. This takes us to the last ground that in any case, no

offence under Section 384 of IPC, is made out in this case. The present petition was initially filed for quashing of the FIR. During the pendency of the petition, a chargesheet came to be filed in which charge is yet to be framed. It is, thus, evident that the petitioner shall be heard on the point of framing of charge. In our considered view, it would be appropriate to leave the question whether an offence under Section 384 of IPC is made out or not open, to be considered by the Magistrate at the time of framing of charge. We find that, with all the material collected during the course of investigation, the Magistrate would be better equipped to go into this question. Thus, we decline to go into this question at this stage, which is left open, to be agitated before the learned Magistrate at the time of framing of charge.

32. In the result, the petition is hereby dismissed.

PRITHVIRAJ K. CHAVAN, J. **C. V. BHADANG, J.**
SMA