

C.O. 1196 of 2007
CAN 5 of 2019

In the matter of : Sukumar Prodhan, since deceased,
represented by Smt. Gita Prodhan & Ors.

Syed Nurul Arefin
Ms. Rashni Binayak
Syed Moyeemul Arefin ... for the petitioners

Mr. Ramdulal Manna
Mr. Nirmalendu Patra
Mr. Debnarayan Patra
Ms. Manju Manna ...for the O.P.

This proceeding stems out of an application under
Section 340 of Code of Civil Procedure.

Heard Mr. Arefin, learned counsel appearing on behalf of
the petitioners and Mr. Manna, learned counsel representing
the opposite parties.

My attention is drawn to the order passed in C.O. 1196
of 2007 passed by Hon'ble Justice Amitabha Chatterjee (as
His Lordship then was).

Upon perusal of the said order, I find that in course of
hearing, learned counsel representing the petitioners relied
upon copy of the injunction application bereft of any schedule
of the property and it was submitted that the learned Trial
Court committed error in passing the order of injunction in an
application which did not contain any schedule. But
subsequently, certified copy of the application was produced
and it transpired that the petition did contain the schedule of
the property. Hon'ble Justice Chatterjee observed that the
document relied upon by the learned counsel in course of

hearing was not genuine one. This observation inspired the petitioners to come back with an application under consideration.

Section 340 in the Code of Criminal Procedure, 1973 says:-

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.

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

In order to invoke the provision of Section 195 of Cr.P.C. cognizance is to be taken of the offence punishable under Sections 172 to 188. But the fundamental requirement for invoking the penal provision is to see the *mens rea* or the criminal intention. An advocate while presenting the case of his client admittedly produced certain document which was not complete. There is nothing to indicate that an attempt was made to mislead the Court with the intention to commit an offence within the meaning of the Indian Penal Code. It was rather an act smeared with carelessness. An act without civil intention is not an offence. This is not a fit case to spend judicial time for holding inquiry under Section 340 of the Code of Criminal Procedure.

The application does not merit any consideration and is thus dismissed, however, without any order as to costs.

(Siddhartha Roy Chowdhury, J.)