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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.538 OF 2018

Baskar Mendon

...Petitioner

vs

Sadashiv Narayan Shetty & Ors.

...Respondents

.....

Ms. Jane Cox, i/b. Karishma Rao, for the Petitioner.

Mr. M.K. Kocharekar, i/b. Dushyant Pagare, for Respondent No.1.

Mr. R.S. Pai, a/w. Mr. Anand R. Pai and Mr. Aditya S. Bhat, i/b. M/s. Sanjay Udeshi & Co., for Respondent Nos. 2 and 3.

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CORAM : S.C. GUPTA, J.

DATED: 8 AUGUST, 2018

JUDGEMENT :

. This writ petition raises an important question of law concerning the nature of a proceeding before a labour court or an industrial tribunal in a reference made to it by the appropriate Government under Section 10 of the Industrial Disputes Act, 1947 – whether such proceeding can be termed as a proceeding in any court within the meaning of Section 195(1) (b) of the Code of Criminal Procedure. The question arises on a challenge to an order passed by the Labour Court on a miscellaneous application for initiating an enquiry under Section 340 of the Code of Criminal Procedure and thereafter making an appropriate complaint under Section 195(1)(b) to the competent court. By the impugned order, the Labour Court rejected the

application as untenable, presumably on the footing that the Labour Court was not a court to entertain such application.

2. Before we deal with this issue of law, facts of the case may be noted only so far as they are relevant for our purpose. The reference (Reference (IDA) No.382 of 2006) was filed before the Labour Court at the instance of the Petitioner herein and six others, who claimed to be workmen working in the canteen of Respondent No.3 herein. It was the case of the Petitioner and others that though they were employed in the canteen through different contractors, the contracts between Respondent No.3 and these contractors were sham and bogus and in fact the workmen were direct employees of Respondent No.3. The Petitioner filed the present application under Section 340 of the Code of Criminal Procedure on the ground that Respondent Nos. 1 and 3 herein, who were said to be accused Nos. 1 and 3, respectively, in the application, had intentionally made a false statement in their written statement rendering them liable to be tried for offences under Sections 191, 193, 199 and 200 of Indian Penal Code. The Petitioner's case was that since the false statement was made in a judicial proceeding, the accused could only be tried on a complaint made by the Court under Section 195(1) (b) of the Code of Criminal Procedure. The Petitioner, accordingly, prayed for a complaint to be made in writing by the Labour Court and forwarded to a Magistrate of First Class having jurisdiction to try offences under Sections 191, 193, 196, 199 and 200 of the Indian Penal Code. The Labour Court, as noted above, rejected the application as not tenable. That order is challenged in the present petition.

3. Chapter XI of the Indian Penal Code (“IPC”) deals with offences dealing with false evidence and public justice. Section 191 defines giving of false evidence. Section 193 provides for punishment for false evidence. It is in two parts. Under the first paragraph, 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, is to be punished with imprisonment of either description for a term which may extend to seven years, and is also to be liable to fine. The second paragraph deals with intentionally giving or fabricating false evidence in any other case, where the punishment is by either description for a term which may extend to three years, and also fine. The section has two explanations. Explanation 1 makes a trial before a Court-martial a judicial proceeding, whilst Explanation 2 makes an investigation directed by law preliminary to a proceeding before a Court of Justice, a stage of a judicial proceeding, even if such investigation itself does not take place before a Court of Justice. It is immediately apparent from these provisions that we are concerned here with a “judicial proceeding” and in particular, a stage of a judicial proceeding and not with the term “court” or a proceeding before a court or its stage. As the Explanations indicate, for a proceeding to be a judicial proceeding, it is not necessary that it must be conducted in “court”. The expression 'judicial proceeding', though not defined in IPC, is defined in Section 2(i) of the Criminal Procedure Code to include any proceeding in the course of which evidence is or may be legally taken on oath. The scheme of Sections 191 and 193, thus, conceives of proceedings in the course of which evidence is or may be legally taken on oath, though such proceedings need not, however, be before a court.

We need not, however, labour over this much for considering applicability of Section 193 in the present case, since, for our purposes, a reference before a Labour Court is without doubt a judicial proceeding. Sub-section (3) of Section 11 of the Industrial Disputes Act, 1947 provides that every enquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal in any existing or apprehended industrial dispute shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. Any false evidence intentionally given in any stage of an enquiry in a reference or any false evidence fabricated for the purpose of being used in any enquiry in a reference, thus, attracts punishment under the first paragraph of Section 193.

4. Coming now to the aspect of prosecution of this offence and particularly, cognizance to be taken of it, one must have regard to Section 195 of the Code of Criminal Procedure (“Cr.P.C.”). Clause b(i) of sub-section (1) of Section 195 requires that no court shall take cognizance of an offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on a 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. This provision uses the expression “proceeding in any court” as opposed to the expression “judicial proceeding” used in Section 193 of IPC.

5. That, at last, brings us to the central issue with which we are

concerned in the present case. Any enquiry in a reference before a Labour Court may be a judicial proceeding and if at any stage of such inquiry false evidence is intentionally given, the person giving such evidence does commit an offence under Section 193 of IPC. But for taking cognizance of such offence is a complaint in writing of the Labour Court a condition precedent, having regard to Section 195(1)(b)(i) of Cr. P.C.? That, in turn, brings us to the other and more fundamental question, which we started with, namely, whether a reference before the Labour Court, by virtue of being a judicial proceeding for the purposes of Section 193 of IPC, is a 'proceeding before a court' within the meaning of Section 195(1)(b)(i) of Cr. P.C.

6. In **Lalji Haridas vs. State of Maharashtra**¹, the Supreme Court considered a similar question in the context of Section 37 of the Indian Income Tax Act, 1922. In an income tax assessment proceeding, false evidence was given before the Income Tax Officer and as a consequence, a criminal complaint under Section 193 of IPC before a Presidency Magistrate came to be filed. That complaint was filed by a private party who was aggrieved (the party having to pay heavy taxes as a result of the false evidence). The accused raised a preliminary objection that the Magistrate could not take cognizance of the offence, because the proceedings, in which he was alleged to have made a false statement on oath, were proceedings before a court within the meaning of Section 195(1)(b) of Cr.P.C. and since no complaint was made in writing by that court, the bar under Section 195(1)(b) applied and no cognizance could be taken. The Presidency Magistrate rejected the preliminary objection, holding that the ITO was not a court within the meaning of Section

¹ (1964) 6 SCR 700

195(1)(b) of Cr.P.C. When the matter came before this Court in a criminal revision application, a division bench of our Court reversed the order of the Magistrate, holding that the ITO was a revenue court within the meaning of Section 195(1)(b) of Cr.P.C. The matter was then carried on a certificate under Article 134(1)(c) of the Constitution before the Supreme Court. The Supreme Court, by a majority of 3:2, dismissed the appeal upholding the High Court by ruling that cognizance could not be taken of the offence for non-fulfillment of the condition precedent prescribed by Section 195(1)(b) of Cr. P.C. inasmuch as there was no complaint by the ITO. It, however, did not agree with the High Court that the ITO was a revenue court. It decided the matter on an altogether different point. The Supreme Court held that Section 37(4) of the Income Tax Act, 1922 made the proceedings before the ITO 'judicial proceedings' for the purpose of Section 193 of IPC and being thus classed under the first paragraph of Section 193, they attracted the protection of Section 195(1)(b) of Cr.P.C. and the cognizance was barred except on a complaint by the ITO. The Court held that on this reasoning, it was no longer necessary to consider whether the ITO was a court or not. In other words, the ratio of the Supreme Court's judgment was that every judicial proceeding under Section 193 of IPC must be treated as proceeding in a court for the purpose of Section 195(1)(b) of Cr.P.C., for that, as the Court held, would really carry out the intention of the legislature in enacting a provision such as Section 37(4) of the Income Tax Act.

7. The considerations which weighed with the Court need to be separately stated, since some High Courts have held the reasoning of the

Supreme Court in **Lalji Haridas** to be no more applicable after the amendment of Section 195(3) of Cr.P.C. and we will need to examine these decisions in the light of the reasons which the Supreme Court applied in **Lalji Haridas** to arrive at its decision. These reasons may be stated as follows :

(a) In the first place, the Supreme Court held that the plain effect of Section 37(4) of the Income Tax Act was to make a false statement made before an ITO in an assessment proceeding a false statement 'at any stage of a judicial proceeding' within the meaning of Section 193 of IPC. (Section 37(4) of Income Tax Act, 1922, which is in *pari materia* with Section 11(3) of the Industrial Disputes Act, with which we are concerned here, provides that any proceeding before any authority referred to in Section 37 shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of IPC.)

(b) Section 193 of IPC consists of two parts: the first part deals *inter alia* with false evidence intentionally given in any stage of a judicial proceeding and prescribes a higher punishment, i.e. a sentence of seven years, whereas the second part deals with cases where false evidence has been intentionally given in any other case, prescribing a lesser punishment, i.e. a sentence of three years.

(c) The whole basis of providing a higher sentence for offences committed at any stage of a judicial proceeding appears to be that these offences were treated by the legislature as more serious in character, and so, it distinguished them from similar offences at any stage of other

proceeding. The idea of doing so was that the legislature intended a safeguard in respect of complaints as regards such more serious offences and that safeguard was provided by Section 195(1)(b) of Cr.P.C.

(d) Thus, an offence which is treated as more serious by the first paragraph of Section 193 of IPC because it is an offence committed during the course of a judicial proceeding should be held to be an offence committed in any proceeding in a court for the purpose of Section 195(1)(b) of Cr.P.C.

8. This whole analysis and the conclusion which followed squarely apply to our case. Here, Section 11(3) of the Industrial Disputes Act makes an inquiry in a reference before the Labour Court a judicial proceeding within the meaning of Section 193 of IPC. If that is so, it follows as a sequitur that an offence would be committed, if false evidence were to be intentionally given in a reference, under the first paragraph of Section 193, that is to say, in a proceeding in a court for the purpose of Section 195(1)(b) of Cr.P.C.

9. Learned Counsel for the Respondents, however, submits that Section 195 of Cr.P.C. has undergone a decisive change after the judgment in **Lalji Haridas**. Section 195(3), as it stood when that judgment was rendered, provided that the term 'court' in clause (b) of sub-section (1) included a civil, revenue or criminal court, but did not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877. The new Cr.P.C., which came into force on 1973, has the following corresponding provision (Sub-section (3) of Section 195):

“(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.”

Learned Counsel submits that under this new provision, a tribunal constituted by a Central or State Act may be a 'court' for the purpose of clause (b) of Section 195(1) of Cr.P.C. **only** if that Act declares it to be such court. Learned Counsel relies on the judgments of Madras High Court in **Associated Industries vs. First Income-Tax Officer, City Circle-IV, Madras**² and Kerala High Court in **Balakrishnan, Managing Director, Terelac Furnaces Pvt. Ltd. vs. Income-Tax Officer, Special Circle, Ernakulam**³, in support of his submission. Learned Counsel argues that after the new Cr.P.C. came into force in 1973, the effect of the decision in **Lalji Haridas** has been taken away; the proceedings before a Labour Court, even if they be judicial proceedings within the meaning of Section 193 of IPC, are no more proceedings in a 'court', since the Industrial Disputes Act constituting the Labour Court does not declare them to be so for the purpose of Section 195.

10. In **Associated Industries** (supra), the Madras High Court did say so. The Court noticed the change introduced in Section 195(3) from the old law (i.e. Cr.P.C. of 1898 considered in **Lalji Haridas**). It then relied on the decision of Kerala High Court in **Balakrishnan's** case (supra). In **Balakrishnan's** case, a learned single judge of Kerala High Court had held that the effect of the decision of the Supreme Court in

² 1982 Income Tax Reports 565

³ 1982 Income Tax Reports 573

Lalji Haridas had been taken away by the insertion of the words “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 purpose of this Section” in Section 195. The learned judge held that by reason of these words, under the new Code, ITO could be said to be a court only when, as a tribunal constituted by the Income Tax Act, that Act had declared the said tribunal to be a court for the purpose of Section 195 and since that was not so, the ITO was not a court within the meaning of Section 195(1) (b). The learned single judge of Madras High Court in **Associated Industries** was in respectful agreement with this view. The learned judge also referred to the Law Commission Report with reference to Section 195(1) of Cr.P.C. of 1973. The Law Commission, whilst explaining that provision, stated that it considered, for the purposes of clauses (b) and (c) thereof, 'court' to mean a civil or revenue or criminal court, properly so called, but “where a tribunal created by an Act has all or practically all the attributes of a court, it might be regarded as a court only if it is declared by that Act to be a court for the purposes of this section.” The Learned Judge, in the premises, held as follows :

“Therefore, even though the proceedings before the ITO are judicial proceedings under s. 193, IPC and even though those judicial proceedings must be treated as proceedings in any court for the purpose of s. 195(1)(b), Cr.PC, as laid down by the Supreme Court, yet, after the Cr.PC of 1973 came into effect, the position has been rendered different and in my view inasmuch as in the I.T. Act there is no provision declaring the Tribunal to be a court, the ITO is not a court.”

11. With utmost respect to learned single judges of Kerala and Madras High Court, I am unable to persuade myself to accept the above

as the correct statement of law. The Supreme Court, in **Lalji Haridas**, in the first place, did not concern itself about whether the ITO was a 'court' within the meaning of Section 195 of Cr.P.C. (then, Section 195(2) of the old Cr.P.C., equivalent to Section 195(3) of the new Cr.P.C.). In fact, it did not hold him to be one, under the definition of 'court' as it then stood under Section 195. What it instead considered was the effect of Section 37(4) of the Income Tax Act, 1922. Since under that section an assessment proceeding before the ITO was a "judicial proceeding" within the meaning of Section 193 of IPC, the Court held it to be a 'proceeding before a court' for the purpose of Section 195(1)(b) on the reasons discussed above. There is no difference in the position even after the introduction of the new Cr.P.C. with its addition of the words "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 purpose of this section" in the description of 'court' in Section 195. Even after addition of these words, the proceeding would continue to be a 'judicial proceeding' within the meaning of Section 193 of IPC and thus, justifying its claim to be a 'proceeding in a court' for the purpose of Section 195(1) (b) of Cr.P.C., on the principle of law stated in **Lalji Haridas**. The legislative intent of addition of the words noted above was really to expand the meaning of the term 'court' and not to restrict it. There is no reason, in that case, to restrict the application of law laid down by the Supreme Court in **Lalji Haridas**. The effect of that judgment would continue as before, the change in law notwithstanding.

12. Two recent Supreme Court judgments support this

conclusion. In **Babita Lila vs. Union of India**⁴, the Supreme Court reiterated its statement of law in **Lalji Haridas** on the footing that having regard to the higher sentence for the offence under Section 193 of IPC *qua* a judicial proceeding compared to 'any other case', the legislature had intended that there ought to be a safeguard in respect of complaints pertaining to the offence relatable to judicial proceedings as engrafted in Section 195(1)(b) of Cr.P.C. The Court held that that was the basis for the conclusion in **Lalji Haridas** that an offence, which was treated as more serious by the first paragraph of Section 193 of IPC, being one committed during the course of a judicial proceeding, should be held to be an offence committed in a proceeding in a court for the purpose of Section 195(1)(b) of Cr.P.C. In **Amit Vashistha vs. Suresh**⁵, the Supreme Court held proceedings under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which *inter alia* provides that such proceedings shall be judicial proceedings for the purpose of Section 228 of IPC, as proceedings before a court within the meaning of Section 195(1)(b)(i). The Court held that if the proceedings under Section 7A are deemed to be judicial proceedings by fiction, such fiction must be carried to its logical conclusion, and the proceedings should be equated with proceedings before a court under Section 195(1)(b)(i) for the purpose of offence covered under Section 228 of IPC, following the law stated in **Lalji Haridas**.

13. There is another way of looking at the post-amendment scenario. Earlier a proceeding could come within the purview of Section 195(1)(b) of Cr.P.C. by reason of its being declared as a 'judicial

⁴ AIR 2016 Supreme Court 4061

⁵ 2017(10) SCALE 368

proceeding' for the purpose of any particular section or sections mentioned in Section 195(1)(b) (Sections 193 and 228 of IPC as in **Lalji Haridas**) under the law stated by the Supreme Court in **Lalji Haridas**. After the amendment the proceeding could come within Section 195(1)(b) as a proceeding before a Court by either of the following two routes : one, by declaring it as a 'judicial proceeding' for the purpose of any of the sections of IPC mentioned in Section 195(1)(b) and the other, by declaring the particular forum as a court for the purpose of Section 195 of Cr.P.C. by the Act constituting the forum. We must also note a distinguishing feature of these two routes. If a proceeding is declared by law to be a 'judicial proceeding' under Section 193 of IPC, it would only be a 'proceeding before a court' for the purpose of Section 195 of Cr.P.C. for the offence under Section 193 of IPC and not for other offences mentioned in Section 195(1)(b) such as Sections 194 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of IPC in clause (i) of Section 195(1)(b) or Sections 463, 471, 475 or 476 in clause (ii) of Section 195 (1)(b), or of criminal conspiracy to commit, or attempt to commit, or the abatement of any of these offences as per clause (iii) of Section 195(1)(b). To cover these other offences within the net of Section 195(1)(b), the deeming fiction treating them as judicial proceedings for the purpose of those sections may be necessary. On the other hand, if the proceedings are to be considered as proceedings before a court on account of the forum itself being declared a 'court' for the purposes of Section 195, cognizance of all these offences committed in, or in relation to, any proceedings before that forum or in respect of a document produced or given in evidence in such proceedings, shall be subject to the rigour of Section 195(1)(b).

14. Learned Counsel for the Respondents also relies on the decision of Patna High Court in **R.S. Murthy vs. R.K. Naug**⁶ and submits, on its authority, that labour courts or tribunals constituted under the Industrial Disputes Act are not courts within the meaning of Section 195(1)(b) of Cr.P.C. It was held by Patna High Court in that case that even if proceedings before these courts or tribunals are judicial proceedings by reason of the fiction contained in sub-section (3) of Section 11 of that Act, they are not courts for the purposes of Section 195(1)(b) of Cr.P.C. The High Court, having regard to Sections 17 and 17A of the Industrial Disputes Act, held that the award by a court or a tribunal under that Act is not final or binding in nature; and the court or tribunal has power to even travel beyond the *lis* and issue directions altering the terms and conditions of the contract of service in order to maintain industrial peace. The High Court held that, in the premises, it was difficult to hold that they would be deemed to be 'court' within the meaning of Section 195(1)(b) of Cr.P.C. The Court considered the law stated by the Supreme Court in the case of **Lalji Haridas**, which was cited before it. The Court observed that in **Lalji Haridas**, the test regarding final or binding nature of the verdict of an income tax officer was not discussed; that was obviously because the findings of income tax officers under the Income Tax Act were final, subject to appeal. The Court also observed that what was primarily examined and answered in **Lalji Haridas** was whether the proceeding was judicial in nature. The Court, accordingly, did not apply the ratio of **Lalji Haridas** to the facts of the case before it. With utmost respect to the learned Judges of Patna

6 II L.L.J. 1976 High Court, Patna 53

High Court, I am unable to agree with this view. I do not see how finality or binding nature of an award declared by the Labour Court or Tribunal under the Industrial Disputes Act has any bearing on the question as to whether or not the proceedings should be termed as proceedings before a Court within the meaning of Section 195(1)(b) of Cr.P.C. The reasons applied by the Supreme Court for its decision in **Lalji Haridas**, which are noted above, have nothing to do with finality or binding nature of any order passed by the concerned forum which is to be treated as a Court within the meaning of Section 195(1)(b) of Cr.P.C. It is also pertinent to note that in **Lalji Haridas**, the Supreme Court, whilst examining provisions similar to Section 37(4) of the Income Tax Act, 1922, referred to the provision of Section 11 of the Industrial Disputes Act as expressing a legislative intent to extend the provisions of Section 195 of Cr.P.C. to the proceedings thereunder. In any event, as we have noted above, the law stated by the Supreme Court in **Lalji Haridas** was affirmed by it in its two subsequent judgments in **Babita Lila** and **Amit Vashistha** (supra) without reference to the considerations of finality or binding nature of orders passed in the concerned judicial proceedings. The judgment of Patna High Court in **R.S. Murthy** may, thus, be considered as impliedly overruled.

15. In the premises, the impugned order of the Labour Court, insofar as it holds the application under Section 340 of Cr.P.C. for a complaint under Section 195(1)(b)(i) of Cr.P.C. as untenable, is liable to be quashed and set aside. Any application made under Section 340 of Cr.P.C. is merely a matter of following the applicable procedure in cases referred to in Section 195 of Cr.P.C. As we have noted above, insofar as

the offence covered by Section 193 of IPC is concerned, the proceedings in the pending reference before the Labour Court being proceedings in a Court within the meaning of Section 195(1)(b)(i), though not for the other offences referred to in the application, namely, Sections 196, 199 and 200 of IPC, the application was rightly made under Section 340 of Cr.P.C. for a preliminary enquiry to be followed by a complaint under Section 195(1)(b) (i) of Cr.P.C for that offence.

16. In the premises, the following order is passed :-

(i) The impugned order of the Labour Court dated 27 December 2017 in Reference (IDA) No.382 of 2006 is quashed and set aside.

(ii) The application of the second party workmen under Section 340 of the Code of Criminal Procedure, being Exhibit U-58, is remanded to the Labour Court at Mumbai for a fresh hearing on merits in accordance with law.

(iii) It is clarified that so far as the offence under Section 193 read with Section 191 of IPC is concerned, the proceeding in the reference before the Labour Court is a proceeding in a Court within the meaning of Section 195(1)(b)(i) of Cr.P.C. and no cognizance of it can be taken without a complaint made by the Labour Court under that provision.

(iv) The parties shall remain present before the Labour Court on 13 August 2018 at 11.00 a.m. and produce a copy of this order duly

authenticated by the Associate of this Court. The Labour Court shall thereupon give directions for hearing of the application.

(v) The Labour Court shall dispose of the application, being Exhibit U-58, as expeditiously as possible and preferably, within a period of eight weeks from that day.

(vi) The writ petition is disposed of in the above terms.

Smita
Johnson
Gonsalves

Digitally
signed by
Smita Johnson
Gonsalves
Date:
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(S.C. GUPTE, J.)