

HIGH COURT OF CHHATTISGARH, BILASPURWP (227) No.1086 of 2015

Rajkumar Sori, aged about 50 years, son of Late Shri Anandi Sori, Caste-Gond, occupation-Service, posted as – Station House Office, Police Station-City Kotwali, Dhamtari, Civil and Revenue Distt.- Dhamtari (CG)
 ---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Law and Legislature, New Mantralaya, Mahanadi Bhawan, New Raipur, Civil and Revenue Distt. Raipur (CG)
2. The Secretary, Department of Home Affairs, New Mantralaya, Mahanadi Bhawan, New Raipur, Civil and Revenue Distt. Raipur (CG)
3. Superintendent of Police, Distt. Dhamtari (CG)

---- Respondents

For Petitioner:	Mr.Neeraj Mehta, Advocate
For Respondents/State:	Mr.Apurv Goyal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/04/2019

1. The petitioner was working as Station House Officer at Police Station-City Kotwali, Dhamtari at the relevant time. He had filed charge-sheet in Sessions Trial No.23/2015 (Mohd. Tanveer and others v. State of Chhattisgarh) against accused persons therein. The Sessions Judge, Dhamtari at the time of trial found that there are some discrepancies in original FIR and carbon copy of that report annexed with challen. He sought clarification from the petitioner and found the explanation not satisfactorily, thereafter learned Sessions Judge directed to register an offence against the

petitioner under Sections 193 and 471 of the IPC, against which, this writ petition has been filed by the petitioner herein.

2. Mr. Neeraj Mehta, learned counsel for the petitioner, would submit that learned Sessions Judge is absolutely unjustified in directing the registration of the aforesaid offence *dehors* the provisions contained in Section 195(1)(b)(i) & (ii) of the CrPC, as such, the impugned order deserves to be set aside.
3. On the other hand, Mr. Apurv Goyal, learned State Counsel would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.
5. At this stage, it would be appropriate to notice Section 195(1)(b)(i) & (ii) 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

(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) xxx xxx xxx

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.”

6. The aforesaid provision clearly and unmistakably mandates the Court not to take cognizance of an offence punishable under Sections 193 and 471 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.
7. 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**¹ 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 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

1 (2000) 1 SCC 278

discretion to order prosecution only in the larger interest of the administration of justice.”

8. 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.
9. 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**² 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.”

10. The principle of law laid down by the Supreme Court in **C. Muniappan** (supra) has been recently followed with approval in **Babita Lila and another v. Union of India**³ and it has been held as under:-

“46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, has been ruled by this Court, amongst others in *C. Muniappan v. State of T.N.* (supra) wherein the following observations in *Sachida Nand Singh v. State of*

² (2010) 9 SCC 567

³ (2016) 9 SCC 647

*Bihar*⁴ were recorded with approval: (SCC pp. 497-98, para 7)

“7.....Section 190 of the Code empowers “any Magistrate of the first class” to take cognizance of “any offence” upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.....”. (emphasis supplied).”

11. Thus, there is no iota of doubt that for commission of alleged offence under Sections 193 and 471 of the IPC, FIR for above-stated offences cannot be registered except in accordance with Section 195(1)(b)(i) & (ii) read with Section 340 of the CrPC in terms of complaint filed by the officer authorized by that Court.
12. Applying the principle of law laid down by the Supreme Court in the above-stated cases (*supra*) to the facts of the present case, it appears that the petitioner is government servant and he is said to have been committed above-stated offence under Section 193 and 471 of the IPC in relation to court proceedings/documents given in court proceedings as recorded by learned Sessions Judge, thereby Section 195(1)(b)(i) & (ii) of the CrPC is squarely attracted. In absence of complaint in terms of Section 195(1)(b)(i) & (ii) read with Section 340 of the CrPC is filed, the petitioner cannot be prosecuted for the said offences by directing registration of offence under Section 193 and 471 of the IPC and the impugned order directing registration of above-stated offences is hit by Section

4 (1998) 2 SCC 493

195(1)(b)(i) & (ii) read with Section 340 of the CrPC.

13. As a fallout and consequence of aforesaid discussion, the writ petition is allowed and the impugned order dated 18.9.2015 passed by the Sessions Judge, Dhamtari in Sessions Trial No.23/2015 is hereby set aside. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-