

HIGH COURT OF CHHATTISGARH, BILASPURWPCR No. 63 of 2014

Ramgopal Sahu S/o Shri Ganpat Ram Sahu, Aged about 40 years,
Occupation- Service (Patwari) R/o Ramanujnagar, P.O., P.S. & Tehsil-
Ramanujnagar, Revenue & Civil District- Surajpur C.G.

----**Petitioner**

Versus

1. State of Chhattisgarh, through Secretary Department of Home Affairs (Police), Mahanadi Bhawan, Naya Raipur, Revenue & Civil District- Raipur C.G.
2. Director General Of Police, Raipur Civil And Revenue Distt. Raipur C.G., District : Raipur, Chhattisgarh
3. Inspector General Of Police Police Range, Surguja P.S. Ambikapur District Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh
4. Superintendent Of Police, Surajpur District Surajpur Cg, District : Surajpur, Chhattisgarh
5. Station House Officer P.S. Ramanujnagar, Civil And Revenue Distt. Surajpur C.G. , District : Surajpur, Chhattisgarh
6. The Sub Divisional Officer Revenue Surajpur, Revenue And Civil District Surajpur C.G., District : Surajpur, Chhattisgarh
7. S. Bharti Dasan S/o K. Solai, Aged About 35 Years Posted As Collector Surajpur, Post And P.S. Surajpur, Civil And Revenue Distt. Surajpur C.G. , District : Surajpur, Chhattisgarh
8. The Collector Distt. Surajpur C.G., District : Surajpur, Chhattisgarh
9. Tehsildar, P.S. Ramanujnagar, Civil And Revenue Distt. Surajpur C.G., District : Surajpur, Chhattisgarh

---- **Respondents**

For petitioner	:	Mr. Surfaraj Khan, Advocate.
For respondents	:	Mr. Priyank Rathi, P.L. for the State.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08.04.2019

1. The petitioner is a Patwari and at present working as Patwari Halka
No. 5, Ramanujnagar, District Surajpur (C.G.)

2. By order dated 30/7/2012, the Collector, Surajpur transferred the petitioner to P.H. No. 15 Odagi, against which he represented before the transfer Committee and the Transfer Committee constituted by the State Government on 6/7/2013 recommended for cancellation of his transfer. But meanwhile, the Sub-Divisional Officer (Rev.) by order dated 21/3/2013 directed the Tahsildar, to ensure registration of criminal case against the petitioner and get back the records, as the petitioner has not handed over the charge of the post of Patwari though he has been relieved from the said post. At the instance of the Tahsildar, F.I.R. has been registered vide Crime No. 57/2013 on 22/3/2013 for offences under Sections 174, 175 and 188 of the IPC against the petitioner, which has been questioned in this writ petition.
3. Mr. Surfaraj Khan, learned counsel for the petitioner, firstly submits that direction for registration of offence under Sections 174, 175 and 188 of the IPC is hit by provisions contained under Section 195 (1)(a)(i) of the CrPC and secondly, non-compliance of any transfer order, at the most, be subject-matter of departmental enquiry, as such, criminal prosecution cannot be initiated for non-compliance of the said order.
4. Mr. Priyank Rathi, learned State counsel would support the impugned order.
5. I have heard learned counsel for the parties, and considered their rival submissions made herein-above and went through the Record with utmost circumspection.

6. At this stage, it would be appropriate to notice Section 195(1)(a)(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—

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860),

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.”

7. The aforesaid provision clearly and unmistakably mandates the Court is not legally obliged to take cognizance of an offence punishable under Sections 174, 175, 188 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.
8. 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

¹ (2000) 1 SCC 278

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.”

9. 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.

10. 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.”

11. Thus, there is no an iota of doubt that for commission of alleged offence under Sections 174, 175 and 188 of the IPC, private

² (2010) 9 SCC 567

complaint is absolutely barred and unless complaint in terms of Section 195(1)(a)(i) of the CrPC is filed by the officer authorised by that Court in relation to proceedings in any Court, prosecution is not maintainable.

12. 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 India³ 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 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).”

13. Thus, it is well settled legal position that for offence under Sections 174, 175 and 188 of the I.P.C., complaint in writing has to be filed before the competent court by authorized officer and unless complaint in terms of 195 read with Section 340 of the Cr.P.C. is filed by the authorized Officer of that Court, no prosecution for offence under Sections 174, 175 and 188 of the I.P.C. would lie.

³ (2016) 9 SCC 647

⁴ (1998) 2 SCC 493

Even otherwise, if the petitioner has not complied with the order of the learned Collector, he can be subjected to departmental proceeding for non-compliance of the order, but cannot be subjected to criminal prosecution like this and he cannot be prosecuted for offence under Sections 174, 175 and 188 of the IPC.

14. In view of above, registration of offence under Sections 174, 175 & 188 of the I.P.C. are hereby quashed, however State Government is at liberty to proceed in accordance with law.

15. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge