

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.118 of 2014

Akbar Ram Korram, S/o Shri J.L. Korram, Age 54 years, working as Commandant, 1st Battalion, Bhilai, P.S. Mohannagar, District Durg (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Home, Mahanadi Bhawan, Naya Raipur, P.S. Rakhi, District Raipur (CG)
2. Director General of Police, Police Head Quarters, Raipur (CG)

---- Respondents

And

Writ Petition (Cr.) No.124 of 2014

Atma Ram Kunjam, S/o Shri R.R. Kunjam, Age 55 years, working as Incharge Jailor, Dhamtari (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Home, Mahanadi Bhawan, Naya Raipur, P.S. Rakhi, District Raipur (CG)
2. Superintendent of Police, Dhamtari (CG)

---- Respondents

For Petitioners:	Mr.Ali Asgar, Advocate
For Respondents/State:	Mr.Chandresh Shrivastava, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/04/2019

1. Since common question of law and fact is involved in these two writ petitions, they were heard together and are being disposed of by this common order.
2. Petitioner-Akbar Ram Korram preferred WP (Cr.) No.118/2014

seeking quashment of the order dated 11.6.2014 (part of Annexure P/4) by which the Sessions Judge, Dhamtari has directed to register an offence under Section 228 of the IPC against him and petitioner-Atma Ram Kunjam preferred WP(Cr.) No.124/2014 seeking quashment of the order dated 16.4.2014 (part of Annexure P/2) by which the Sessions Judge has directed to register an offence under Section 342 of the IPC for violation of Court's direction.

3. The Sessions Judge, Dhamtari on 9.4.2014 issued warrant of production of two accused namely Yuvraj and Chaturam on 10.4.2014, on that day, two accused persons could not be produced before the Court, pursuant to which, on 11.4.2014 the Court issued show-cause notice to Jailor-Atma Ram Kunjam as to why offence under Section 342 of the IPC be not registered against him, in which he submitted his explanation, but the Court was not satisfied and on 16.4.2014 the Sessions Judge directed the Superintendent of Police, Dhamtari to register an offence under Section 342 of the IPC against Jailor-Atma Ram Kunjam, which petitioner-Akbar Ram Korram in WP(Cr.) No.118/2014 did not register, pursuant to which, the Sessions Judge has directed to register an offence under Section 228 of the IPC against petitioner-Akbar Ram Korram in WP (Cr.) No.118/2014. Both orders have been questioned in these two writ petitions.
4. Return has been filed by the respondents/State stating inter-alia that judicial orders have been passed by learned Sessions Judge.

5. Mr.Ali Asgar, learned counsel for the petitioners, would submit that the Sessions Judge is absolutely unjustified in directing for registration of offence against petitioner-Akbar Ram Korram in view of provisions contained in Section 195 (1)(b)(i) of the CrPC, which specifically provides that no Court shall take cognizance of offence under Section 228 of the IPC when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court 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 and the provisions of Section 195(1)(b)(i) of the CrPC is mandatory in nature, therefore, the impugned order deserves to be set aside. He would further submit that order of learned Sessions Judge directing for registration of offence under Section 342 of the IPC for wrongful confinement of the accused persons is also unsustainable and bad in law.
6. Mr.Chandresh Shrivastava, learned Deputy Advocate General for the respondents/State, would support the impugned orders.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.
8. At this stage, it would be appropriate to notice Section 195(1)(b)(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—

(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

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.”

9. The aforesaid provision clearly and unmistakably mandates the Court not to take cognizance of an offence punishable under Section 196 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.

10. 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

¹ (2000) 1 SCC 278

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.”

11. 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.
12. 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.”

13. 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

2 (2010) 9 SCC 567

3 (2016) 9 SCC 647

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).”

14. Thus, there is no iota of doubt that for commission of alleged offence under Section 228 of the IPC, private complaint is absolutely barred and unless complaint in terms of Section 195(1)(b)(i) of the CrPC is filed by the officer authorised by that Court, no direction can be issued to the police for registration of offence under Section 228 of the IPC.

15. Applying the principles of law laid down in above-stated judgments to the facts of the present case, it is quite vivid that petitioner-Akbar Ram Korram is said to have committed offence under Section 228 of the IPC by not registering the offence against Jailor-Atma Ram Kunjam, which is an offence said to have committed in relation to the proceeding of the Court in compliance of the Court's order, thereby Section 195(1)(b)(i) of the CrPC squarely attracts, and therefore in absence of complaint in terms of the said provision, the petitioner cannot be prosecuted for the said offence, as such,

⁴ (1998) 2 SCC 493

direction of learned Sessions Judge for registration of offence against petitioner-Akbar Ram Korram for offence under Section 228 of the IPC is held to be not maintainable being hit by Section 195(1)(b)(i) of the CrPC.

16. I have next to consider the direction of learned Sessions Judge for registration of offence under Section 342 of the IPC against petitioner-Atma Ram Kunjam.

17. Learned Sessions Judge on 9.4.2014 directed to the Jailor to produce accused-Yuvraj and Chaturam before the Court on 10.4.2014, but they could not be produced. The Sessions Judge came to the conclusion that Jailor-Atma Ram Kunjam did not produce the accused persons on 10.4.2014 and therefore, custody of accused-Yuvraj and Chaturam for 10.4.2014 to 13.4.2014 was unauthorized, for which offence under Section 342 of the IPC is made out.

18. In this regard, petitioner-Atma Ram Kunjam has submitted before the Court that on account of non-availability of police force, two accused persons could not be produced before the Court though the petitioner has assigned sufficient cause showing that in absence of police force two accused persons could not be produced before the Court on 10.4.2014. The reason assigned by the Jailor cannot be said to be non-sufficient or it is deliberate. Direction for registration of offence under Section 342 of the IPC also involves civil consequences, for which, only reply was sought, but no further time has been given to the petitioner to explain his position with regard to non-production of the accused persons, as

such, direction for registration of offence under Section 342 of the IPC is unsustainable and bad in law.

19. In view of above-stated discussion, issuance of direction against petitioner-Akbar Ram Korram in WP(Cr.) No.118/2014 for registration of offence under Section 228 of the IPC is hereby set aside and issuance of direction against petitioner-Atma Ram Kunjam in WP (Cr.) No.124/2014 for registration of offence under Section 342 of the IPC is hereby set aside.

20. The writ petitions are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-