

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1847 OF 2004

Anil Anant Karkhanis,	]
Aged about 52 years,	]
Occupation : Service ,	]
Residing at C2-8/3-4, Sector – 16	]... Petitioner
Vashi, Navi Mumbai	] (Orig. Complainant

Versus

1]	The State of Maharashtra	]
	Through P P Mumbai	]
		]
1(A)	Subhash Ananta Karkhanis,	]
	Age : 56 years, Occ : Agriculture	]
	Residing at Patli, Tal. Sudhagad	]
	Dist. Raigad	]
		]
2]	Santosh Ramchandra Yadhav,	]
	Adult, Occ : Agriculture	]
	Residing at Talai	]
	Tal. Sudhagad,	]
	Dist. Raigad.	]
		]
3]	Vasant Waman Deshmukh,	]
	Adult, occ : Agriculture	]
	Residing at Bharaje	]
	Tal. Sudhagad	]
	Dist. Raigad	]
		]
4]	State of Maharashtra	]
	through Public Prosecutor	]... Respondnt
	High Court of Bombay	] (Orig. Accused)

Mr. Vinay Bhate a/w Ms. Siddhi Chimane for the Petitioner.
Mr.Ramesh Sawant I/by Mr.S V Pitre for Respondent Nos.1 to 3.
Mrs. G P Mulekar, APP for Respondent No.4/State.

CORAM	:	S. S. SHINDE, J
DATE	:	18 th June 2019

ORAL JUDGMENT :

1 Heard the learned counsel appearing for the Petitioner, learned counsel appearing for Respondent Nos.1 to 3 and the learned APP appearing for Respondent No.4/State.

2 The Petitioner herein is the original complainant in Regular Criminal Case No.155 of 2003. The said complaint was filed in the Court of Chief Judicial Magistrate, Raigad at Alibag. The grievance raised in the said complaint against accused No.1 who is the real brother of the complainant and other two accused was that accused No.1 has produced document, on which he forged the signature of the complainant and then produced the same in Special Civil Suit No.12 of 2002 pending before the learned Civil Judge, Senior Division, Raigad-Alibag. According to the complainant the said forged and bogus document was submitted in the pending suit for the reasons stated in paragraph no.4 of the complaint.

3 The learned Chief Judicial Magistrate, Raigad at Alibag by its order dated 01/12/2003 issued process against Respondent Nos.1 to 3 under Sections 463, 464, 465, 468, 469, 470, 471 r/w 120B of the Indian Penal Code.

4 Being aggrieved by the order of issuance of process, Respondent Nos.1 to 3 herein filed Criminal Revision Application No.198 of 2003 before

the learned IVth Ad hoc Assistant Sessions Judge Raigad, at Alibag. The learned Sessions Judge by the impugned judgment and order dated 03/07/2004 allowed the said Revision Application and set aside the order of the trial court issuing process against the Respondent Nos.1 to 3 herein. It is the said order dated 03/07/2004 passed by the learned IVth Ad hoc Assistant Sessions Judge, Raigad Alibag which is taken exception to by way of this Writ Petition.

5 The learned counsel appearing for the Petitioner submits that relying upon the judgment of a learned Single Judge of this Court (Coram : J G Chitre, J) in the matter of *C P Kotwal v/s. Ali Ashad & ors*, reported in *2003 All MR (Cri) 1212* the Sessions Court held that the complaint filed by the Complainant was not maintainable since the document was tendered in the evidence and therefore the complaint should have been filed by the said Court. The learned counsel for the Petitioner submits that the exposition of law by the Apex Court in *Sachida Nand Singh and another v/s. State of Bihar and another* reported in *AIR 1998 SC 1121* was not brought to the notice of the learned Single Judge in the case of *C P Kotwal* (supra). It is therefore submitted that the said judgment is per incuriam since the law laid down by the Apex Court in *Sachida Nand Singh's* case (supra) was not taken into consideration by the learned Single Judge of this Court in the case of *C P Kotwal* (supra). The learned counsel for the Petitioner also invited the attention of this Court to the

judgment of the Apex Court in the matter of *Iqbal Singh Marwah and another v/s. Meenakshi Marwah and another* reported in (2005) 4 SCC 370 and submitted that the view taken by the Apex Court in the case of *Sachida Nand Singh* has been confirmed by the larger Bench of the Apex Court consisting of five Hon'ble Judges. The learned counsel for the Petitioner therefore submits that the Writ Petition may be allowed.

6 On the other hand the learned counsel appearing for the Respondent Nos.1 to 3 relying upon the reasons/findings recorded by the Sessions Court in the impugned order submits that the Sessions Court has rightly allowed the Revision Application, and therefore, there is no reason to interfere with the impugned order by invoking writ jurisdiction of this Court.

7 At this stage, it would be apt to reproduce herein under the provisions of Section 195(1)(b)(i)(ii) of the Code of Criminal Procedure.:-

“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), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public

servant to whom he is administratively subordinate ;

(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) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

8 The Apex Court in the case of *Iqbal Singh Marwah* (supra) had an occasion to interpret the aforesaid provision and on interpretation of the aforesaid provision the Apex Court has explained the scope of said provision and in paragraph 10, 25 and 33 of the said judgment held as under :-

“10 The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X of the IPC and the heading of the Chapter is 'Of Contempts Of The Lawful Authority Of Public Servants'. These

are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice (Sections 205 to 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

“25 An enlarged interpretation to Section 195(1)(b) (ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed in Schida Nand Singh after preparing a forged document or committing

an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

33 In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.”

9 Even in the case of *Sachida Nand Singh* (supra) the larger bench of the Apex Court consisting of three Hon’ble Judges has taken a view that forgery of document committed before production of the said document in Court, bar under Section 195(1)(b)(ii) of the Code of Criminal Procedure is not applicable. When the learned Sessions Judge decided the Revision Application filed by Respondent Nos.1 to 3 herein at the relevant time the law laid down by the Apex Court in *Sachida Nand Singh’s* case (supra) was very much in force and therefore the Sessions Court was bound to follow the law laid down in the said judgment.

10 Admittedly, from the perusal of the complaint it is revealed that it was the assertion of the complainant that his brother i.e. Accused No.1 forged the document prior to tendering the said document in the evidence in Special Civil Suit No.12 of 2002, and Accused Nos. 2 and 3 assisted Accused No.1 in forging the said document. Therefore from the perusal of the averments made in the complaint it is abundantly clear that the document which was produced by Accused No.1 before the learned Civil Judge Senior Division in Special Civil Suit No.12 of 2002 was already alleged to have been forged before tendering/ filing in the said Special Civil Suit.

11 In that view of the matter, the ratio laid down by the Apex Court in *Sachida Nand Singh's* case (supra) and *Iqbal Marwah's* case (supra) is squarely applicable to the facts of the present case. In the light of discussion in the foregoing paragraphs, inevitable conclusion is that the impugned judgment and order of the Sessions Court deserves to be quashed and set aside, and accordingly the same is quashed and set aside. The Writ Petition is accordingly allowed. Rule is made absolute to the aforesaid extent. No order as to costs. The learned Chief Judicial Magistrate to proceed with the Complaint bearing No.155 of 2003 on its own merits and in accordance with law.

[S. S. SHINDE , J]