

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.1266 OF 2007

JUDGMENT:

There are two appellants in this appeal. They are aggrieved by the order dated 18.06.2007 passed in CC No.444 of 2007 by Judicial Magistrate of First Class, Mahabubnagar.

2. The I Additional District and Sessions Judge, Mahabubnagar, in Judgment dated 02.06.2007 in NDSC No.1 of 2004 gave a finding that the claim of PWs.1 and 2 that they have either signed or affixed thumb impressions in white papers brought by the excise officials and that PW.1 has audacity to say that because Excise S.I. was his friend, he had readily obliged to put his signatures in some white paper and that the same *prima facie* attracts offence punishable under section 193 IPC. PW.2 has also no explanation why he had obliged the Excise Officials to affix his thumb impressions in the criminal records and that the very conduct of readily obliging excise officials to sign indiscriminately in white papers tantamounts to fabrication of false evidence for the purpose of being used in any stage of judicial proceedings. Therefore, both PWs.1 and 2 are liable to be prosecuted under Section 193 IPC and accordingly complaint is to be lodged by the office.

3. On perusal of the record, pursuant to the said judgment, the I Additional District and Sessions Judge, Mahabubnagar, lodged a

compliant dated 14.06.2007 with the Judicial Magistrate of First Class, Mahabubnagar, against the appellants herein for taking necessary action against them as per law. It is relevant to note that the appellant No.1, G. Narasimulu, is PW.1 and appellant No.2 - J. Narayana, is PW.2 in NDSC No.1 of 2004. Thereafter, the Judicial Magistrate of First Class, Mahabubnagar, passed an order on 18.01.2007 in CC No.444 of 2007, which is as follows:

“Perused the complaint and other record.

Cognizance taken for the offence punishable u/sec.193 I.P.C. against the accused mentioned in the complaint. Issue summons to accused. Call on 19.08.2007.”

4. Feeling aggrieved by the said order, the appellants preferred the present appeal.

5. Heard Mr. V. Ravi Kiran Rao, learned counsel for the appellants and the learned Public Prosecutor appearing for the respondent.

6. Learned counsel for the appellants contended that the I Additional District and Sessions Judge, Mahabubnagar and also the Judicial Magistrate of First Class, Mahabubnagar, did not follow the procedure laid down under law, more particularly, Section 340 Cr.P.C. The impugned order, dated 18.06.2007, passed by the Judicial Magistrate of First Class, Mahabubnagar, is in violation of the procedure laid down under Section 340 Cr.P.C., and also the law laid down by the Supreme Court. No preliminary enquiry, after giving notice to the appellants as envisaged under Section 340 Cr.P.C., was

conducted and the Magistrate has taken cognizance of the matter in a hasty manner. It is also further contended by the learned counsel for the appellants that the I Additional District and Sessions Judge, Mahabubnagar, failed to consider that the appellants herein were examined as PWs.1 and 2 and they deposed before the Court in NDSC No.1 of 2004 that the Excise S.I. obtained their signatures on white papers and appellant No.2 stated that no samples were seized in his presence from any person. Therefore, they have not committed any offence punishable under Section 193 IPC. It is further contended by the learned counsel for the appellants that the Magistrate has erroneously taken cognizance of the offence without appreciating the entire material available on record, and the fact that ingredients of Section 193 of IPC are lacking.

7. On the other hand, supporting the impugned order, learned Public Prosecutor would contend that the judgment dated 02.06.2007 in NDSC No.1 of 2004 passed by the I Additional District and Sessions Judge, Mahabubnagar, attained finality. There is a clear finding given by the said Court with regard to *prima facie* case which attracts offence punishable under Section 193 IPC and therefore, on the complaint given by I Additional District and Sessions Judge, Mahabubnagar, the Judicial Magistrate of First Class, Mahabubnagar, has passed the impugned order, taking cognizance for the offence punishable under Section 193 IPC against the appellants. According to him there is no error in it and the Magistrate did not commit any

irregularity in passing the impugned order. He would further contend that the appellants herein instead of facing the trial on receipt of summons, approached this court by way of filing the present appeal challenging the impugned order wherein cognizance was taken for the offence punishable under Section 193 IPC and summons were issued to them. With the said contentions, learned Public Prosecutor prayed for dismissal of the appeal.

8. On perusal of the material, the Judicial Magistrate of First Class, Mahabubnagar, passed the impugned order taking cognizance against the appellants for the offence punishable under Section 193 IPC and ordered to issue summons to the accused.

9. Section 193 IPC deals with punishment for false evidence and as per which 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, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

10. As discussed above, there is a finding given by the I Additional District and Sessions Judge, Mahabubnagar, in judgment dated 02.06.2007 in NDSC No.1 of 2004 that there is *prima facie*

evidence which attracts offence punishable under Section 193 IPC against PW.1 and 2 therein, the appellants herein. There is no challenge to the said judgment and the same attained finality. Thus, the above said finding of the I Additional District and Sessions Judge, Mahabubnagar, that there is *prima facie* case which attracts offence punishable under Section 193 IPC by the appellants herein is also attained finality.

11. In view of the said admitted facts, the only question that falls for consideration by this Court is whether the impugned order passed by the Judicial Magistrate of First Class, Mahabubnagar, taking cognizance for the offence punishable under Section 193 IPC against the appellants herein is sustainable?

12. Section 340 Cr.P.C., deals the with procedure in cases mentioned in Section 195 I.P.C., and Section 195 I.P.C. deals with prosecution for contempt of lawful authority. As per Section 340 Cr.P.C., the Court after conducting preliminary enquiry has to record a finding, making a complaint thereof in writing send it to Magistrate of First class having jurisdiction etc. In the presence case, admittedly, the I Additional District and Sessions Judge, Mahabubnagar, did not conduct any preliminary enquiry and did not record any finding to the effect that there is *prima facie* evidence that attracts offence punishable under Section 193 IPC against the appellants herein. No opportunity was given to the appellants herein as required in law. The I Additional District and Sessions Judge, Mahabubnagar, lodged

complaint relying upon the finding in the judgment dated 02.06.2007 in NDSC No.1 of 2004.

13. The issue of circumstances under which proceedings under Section 340 of the Code to be initiated and procedure to be followed was fell for consideration before Hon'ble Supreme Court.

14. In a case reported in **Amarsang Nathaji v. Hardik Harshadbhai patel**¹, the Hon'ble Supreme Court categorically held that there are two pre conditions for initiating proceedings under Section 340 of the Code. They are:

- (i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 CrPC, and
- (ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

15. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under sections 199 and 200 of IPC, but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the Court has to form an opinion that it is expedient in the interest of justice to initiate an enquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340 (1) of

¹ 2017 1 Supreme Court Cases 113

Cr.P.C., having regard to the overall factual matrix as well as the probable consequences of such prosecution.

16. The Hon'ble Supreme Court by referring a case in **Prithish v. State of Maharashtra [(2002) 1 SCC 253]** also held that it is open to the court to hold a preliminary inquiry though it is not mandatory and even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory as a matter of course.

17. By taking a similar view, the Apex Court in **the State of Goa v. Jose Maria Albert Vales Alias²**, held that as a complaint under section 340 or Section 341 may be filed even without holding a preliminary inquiry into the facts, on which it appears to the complainant Court prima facie that an offence, as contemplated, had been committed and that it is expedient in the interests of justice that an inquiry should be made into such offence by a Magistrate.

18. A Constitution Bench of the Hon'ble Supreme Court in **Iqbal Singh Marwah v. Meenakshi Marwah³** also categorically held that in view of the language used in Section 340 Cr.P.C., the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) of the Code as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice requires and not in every case", such course will be adopted only if the interest of justice requires and not in every

² (2018) 11 SCC 659

³ [(2005) 4 SCC 370

case. Before filing of the compliant, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b) of the Code. The said expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a compliant.

19. By referring the said judgment, the Hon'ble Supreme Court further held that formation of an opinion that it is expedient in the interest of justice to initiate an inquiry into any offence punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 IPC, when such an offence is alleged to have been committed in relation to any proceedings before the court. On forming such an opinion in respect of such an offence which appears to have been committed, the court has to take a further decision as to whether any complaint should be

made or not. Such an opinion can be formed even without conducting preliminary inquiry, if the formation of opinion is otherwise possible. And even after forming the opinion also, the court has to take a decision as to whether it is required, in the facts and circumstances of the case, to file the complaint. Only if the decision is in the affirmative, the court needs to make a complaint in writing and the complaint thus made in writing is then to be sent to a Magistrate of competent jurisdiction. Then Magistrate has to deal with the complaint referred to in Section 340 of the Code as if it was instituted on a police report.

20. In another case reported in **Sachidanand Singh and another v. State of Bihar and another**⁴, the Hon'ble Supreme Court by referring the provisions of Section 195 and 340 of the Code held the bar under Section 195 is not applicable in a case where there is production of fabricated/forged document during the course of proceedings. Thus, Section 340 (1) of the Code has an interlink with Section 195(1) (b). The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in *custodia legis*. It would be a strained thinking that any offence involving forgery of a document if

⁴ 1998 (2) Supreme Court Cases 493

committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

21. In the above said backdrop of facts and legal position, in the present case, admittedly, there was no preliminary enquiry conducted by the I Additional District and Sessions Judge, Mahabubnagar, and there was no findings recorded, which are mandatory conditions as per Section 340 Cr.P.C. The I Additional District and Sessions Judge, Mahabubnagar, lodged a complaint dated 14.06.2007 by citing judgment, dated 02.06.2007, in NDSC No.1 of 2004 and referred the finding recorded in the said judgment against the appellants herein and requested the Magistrate to take cognizance against the appellant for the offence under Section 193 Cr.P.C. On perusal of the said complaint dated 14.06.2007, the I Additional District and Sessions Judge, enclosed a copy of the judgment in NDSC No.1 of 2004, the depositions of PWs.1 and 2 and Panchanama. Admittedly, no opportunity was given to the appellants herein as required under law. The Magistrate without examining the material and without appreciating the procedure to be followed under Section 340 Cr.P.C., passed the impugned order.

22. As discussed supra, the impugned order is in violation of the procedure laid down under Section 340 Cr.P.C., and also contrary to the principle held by the Apex Court in the judgments referred

supra. Admittedly, there was no preliminary enquiry conducted by the I Additional District and Sessions Judge, Mahabubnagar, and no finding recorded by it with regard to the *prima facie* evidence against the appellants herein for the offence punishable under Section 193 IPC. No opportunity was given to the appellants. The impugned order does not refer any reasons recorded by the Magistrate and therefore, is liable to be set aside

23. Accordingly, the Criminal Appeal is allowed and the order dated 18.06.2007 passed in CC No.444 of 2007 by the Judicial Magistrate of First Class, Mahbubnagar, is set aside.

As a sequel, miscellaneous applications, pending if any, shall stand closed.

December 27th, 2019
KTL

K. LAKSHMAN, J