

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Coram :

*** The Honourable Sri Justice K. LAKSHMAN**

+ CRIMINAL APPEAL No.1023 of 2006

% Delivered on: 15-11-2019

Between:

V. Ramesh Babu,
Advocate, Khammam

.. Appellant

Vs.

\$ State of A.P., Rep. by P.P.,
High Court of A.P., Hyderabad

.. Respondent

! For Petitioner

: Sri Vinod Kumar Deshpande for
Sri Subba Rao Posani

^ For Respondent

: Public Prosecutor

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> Head Note

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? Cases Referred

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- 1) 2017 1 Supreme Court Cases 113
- 2) (2018) 11 SCC 659
- 3) [(2005) 4 SCC 370
- 4) 1998 (2) Supreme Court Cases 493
- 5) AIR 2017 SC 3583
- 6) 1992 (3) Supreme Court Cases 178

HONOURABLE SRI JUSTICE K. LAKSHMAN**CRIMINAL APEAL No.1023 OF 2006****JUDGMENT:**

Mr. V. Ramesh Babu, an Advocate, the appellant herein, preferred the present appeal assailing the order of the Principal Sessions Judge, Khammam in Crl.M.P. No.369 of 2000 in M.V.O.P. No.98 of 1995 dated 05.06.2006.

2. The appellant herein filed O.P. No.98 of 1995 under section 166 of Motor Vehicles Act, for grant of compensation of Rs.1,60,000/- for the injuries said to have been received by his client i.e. Goggilla Papaiah on the file of the Motor Accidents Claims Tribunal (District Judge), Khammam (hereinafter referred as 'MACT'). On 01.05.2000, the MACT, Khammam, passed an award dismissing the said O.P. But in the said award, MACT, Khammam, has given a finding that the appellant herein created an accident, produced fabricated documents in the Court and therefore, directed to initiate proceedings under Section 340 of Code of Criminal Procedure, 1973. It is relevant to note that no appeal was filed challenging the said award dated 01.05.2000 in OP No.98 of 1995 passed by the MACT, Khammam, under the provisions of the Motor Vehicles Act. However, proceedings were referred to the Bar Counsel of Andhra Pradesh, which ordered suspension of the appellant from practice for a period of five years, upon being found him guilty of misconduct as per its order dated 16.02.2002 in C.C. No.11 of 2001. It also appears

from the record that the appellant herein preferred an appeal with Disciplinary Committee of Bar Council of India in D.C. Appeal No.44 of 2002 and the Bar Council of India vide its judgment dated 12.09.2004 set a side the said order dated 16.02.2002 passed by the Bar Council of Andhra Pradesh.

3. It appears from the record that pursuant to the Award dated 01.05.2000, MACT, Khammam, the Principal Sessions Judge, Khammam, initiated proceedings vide Crl. M.P. No.369 of 2000 in MVOP No.98 of 1995. After conducting enquiry, the Principal Sessions Judge, Khammam, passed an order dated 05.06.2006 allowing the said Crl.M.P., and directing to file a complaint in writing against respondents 1 to 3 therein including the appellant herein and the *de facto* complainant in Crime No.10 of 1994 of Mothugudem Police Station before the Judicial Magistrate of First Class, having jurisdiction to take appropriate and proper criminal action against them on the ground that they have not only cheated the Government, but also tried to misguide the Chairman, MACT, Khammam, in preparing and producing the fake documents or giving false oral evidence to have wrongful gain for themselves. The said order dated 05.06.2006 in Crl.M.P. No.369 of 2000 passed by the Principal Sessions Judge, Khammam, is under challenge.

4. In the impugned order, the Principal Sessions Judge, Khammam, referred that matter came up before him and show cause notices were issued to the respondents therein as per the order dated

01.05.2000 in OP No.98 of 1995 of MACT, Khammam, which ordered to initiate proceedings under Section 340 of Code of Criminal Procedure, 1973 (for short 'Code') against the appellant herein with a view to file criminal complaint before the competent Judicial Magistrate of First Class and also against the persons responsible for commission of offence punishable under Sections 471, 174, 191, 192, 193, 196, 197 and 198 IPC. In the impugned order, the Principal Sessions Judge, Khammam, recorded the point that arise for consideration as to whether the Court must make a preliminary enquiry or complaint, if the Court decides to do so, whether that Court should make a finding that on facts it is expedient in the interest of justice that the offence should be further probed into.

5. As stated above, after conducting the enquiry, the Principal Sessions Judge, Khammam, vide order dated 05.06.2006 allowed the said petition with a direction to file a complaint in writing against the respondents 1 to 3 therein.

6. It appears from the impugned order that the Principal Sessions Judge, Khammam, conducted preliminary enquiry to come to a conclusion as to whether there was any offence made out against the respondents therein including the appellant herein in preparing and producing the fake documents or giving false oral evidence to have wrongful gain to themselves affecting administration of justice.

7. As discussed supra, MACT, Khammam, after coming to a conclusion that the appellant and others created an accident and fake documents in respect of the said fake accident and filed a false claim vide award dated 01.05.2000 in OP No.98 of 1995, directed his office to send a copy of the judgment to the Andhra Pradesh State Bar Council to take action against the appellant herein to initiate proceedings under Section 340 of the Code. There is further direction to take out the photostat copies of the entire pleadings and evidence on record both oral and documentary and substitute the same in the record and to transfer the original record of the OP viz., pleadings, depositions and documents to the criminal proceedings to be initiated under Section 340 of the Code.

8. It is now relevant to mention the scope of enquiry under Section 340 of the Code. Chapter XXVI of the Code deals with provisions as to offences affecting administration of Justice. Though there are four provisos in Section 340 of the Code according to this Court, the first proviso of Section 340 of the Code is relevant, which is extracted hereunder:

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;*
- (b) make a complaint thereof in writing;*
- (c) send it to a Magistrate of the first class having jurisdiction;*

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and (e) bind over any person to appear and give evidence before such Magistrate.”

9. From the above said provision, the court, which conducts enquiry under Section 340 of the Code has to record a finding to that effect, making a complaint thereof in writing, send it to a Magistrate of the Judicial First Class, having jurisdiction and takes sufficient security for appearance of the accused before such Magistrate etc.

10. Section 343 of the Code deals with procedure of the Magistrate taking cognizance and Section 344 of the Code deals with summary procedure for trial for giving false evidence. Section 341 of the Code deals with appeals. As discussed above, in the present case, no appeal was filed by the appellant challenging the award dated 01.05.2000 passed by MACT, Khammam with a direction to initiate proceedings under Section 340 of the Code. The said award attained finality.

11. As stated above, the Court which is conducting enquiry under Section 340 of the Code after conducting preliminary enquiry, recording a finding to the effect that it is expedient in the interest of justice that the enquiry should be made into any offence referred to in Clause 195(1)(b)(i) of the Code, which appears to have been committed in or in relation to a proceeding in that Court or as the case may be in respect of a document produced or orally given in evidence

in a proceeding in that court, such Court may after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect, make a complaint thereof in writing, send it to a Magistrate of First Class having jurisdiction. Thus, the Court is having power to conduct preliminary enquiry as it thinks necessary.

12. 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.

13. 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.

14. 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.

¹ 2017 1 Supreme Court Cases 113

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 Cr.P.C., having regard to the overall factual matrix as well as the probable consequences of such prosecution. The Hon'ble Supreme Court by referring a case in **Pritish 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. 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.

15. 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

². (2018) 11 SCC 659

³ [(2005) 4 SCC 370

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. 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.

16. 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.

17. 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

⁴ 1998 (2) Supreme Court Cases 493

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 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.

18. The learned Public Prosecutor relying upon a judgment of the Hon'ble Supreme Court in **Central Bureau of Investigation v. M. Sivamani**⁵, would contend that there is no error in the impugned order and prays for dismissal of the appeal.

19. As discussed supra, the MACT gave a categorical finding with regard to fabrication of documents, creation of an accident and production of the same in Court during the trial in OP No.98 of 1995. The MACT, Khammam, directed its office to initiate proceedings under Section 340 of the Code. At the cost of repetition it is once again noted here that no appeal under the provisions of the MV Act filed and the said Award dated 05.06.2006 in OP No.98 of 1995 attained finality.

20. Under the said backdrop of the facts, the only question that requires consideration by this court is that whether the Principal Sessions Judge, Khammam, is right in initiating preliminary enquiry

⁵. AIR 2017 SC 3583

under Section 340 of the Code and passing the impugned order dated 05.06.2006 in Crl.M.P. No.369 of 2000.

21. It is also relevant to mention that the appellant participated in the enquiry before the Principal Sessions Judge, Khammam in Crl.M.P. No.369 of 2000 in MVOP No.98 of 1995 and invited the impugned order wherein Principal District Judge, Khammam, directed his office to file a complaint in writing against the respondents therein including the appellant herein in Crime No.10 of 1994 of Mothugudem Police Station before the Judicial Magistrate of First Class having jurisdiction. As discussed supra, MACT, Khammam, has directed his office only to initiate proceedings under Section 340 of the Code. But, there is no direction to the Principal Sessions Judge, Khammam, to conduct preliminary enquiry under Section 340 of the Code. As stated above, the purpose, object and scope of inquiry under section 340 of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. After forming an opinion on conducting preliminary enquiry, the Court has to record a finding and file a complaint to the jurisdictional Magistrate. But, surprisingly, in the present case, the Principal Sessions Judge conducted preliminary enquiry and passed the impugned order directing to file a complaint before the Judicial Magistrate of First Class. It also appears from the record that the Principal Sessions Judge, Khammam, did not take note of the order,

dated 12.09.2004, passed by the Disciplinary Committee of Bar Council of India, in D.C. Appeal No.44 of 2002.

22. The Apex Court in a decision in **K.T.M.S. Mohd. And another v. Union of India**⁶ held that Section 340 of the Code confers an inherent power of a Court to make complaint in respect of an offence committed in or in relation to a proceeding ‘in that court’, as the case may be, in respect of a document produced or given in evidence in a proceeding ‘in that court’, if ‘that court’ is of the opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (b) of sub-section (1) of Section 195 and authorises such court to hold preliminary enquiry as it thinks necessary and then make a compliant thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of Section 340 of the Code. The words “in or in relation to a proceeding *in that court*’ show that the court which can take action under this section is only the court operating within the definition of Section 195(3) of the Code before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration.

⁶ 1992 (3) Supreme Court Cases 178

23. It is also relevant to note that Section 195 (3) of the Code deals with the term 'Court' as referred in Clause (b) of sub-section (i) of Section 195 of the Code means a civil, revenue or criminal court, and includes a Tribunal constituted by or under a Central or Provincial or State Act if declared by that Act to be a Court for the purposes of the said section. Therefore, Motor Accidents Claims Tribunal, Khammam, which passed award in O.P. No.95 of 1998 dated 05.06.2006, is also a Court.

24. The above said proviso and the principle held by the Hon'ble Supreme Court in the above said judgment, the Court before which forged documents were filed is having power to conduct a preliminary enquiry to form an opinion to ascertain whether any offence affecting administration of justice has been committed in respect of document produced in Court or given in evidence in a proceeding in that Court, the offence should have been committed during the time when the document was in *custodia legis*, whereas, in the present case, the Principal Sessions Judge, Khammam, conducted an enquiry without there being any direction from MACT, Khammam. Therefore, the Principal Sessions Judge, Khammam, is not having jurisdiction to conduct preliminary enquiry more particularly, in view of Section 195 (3) of the Code and also as the principle held by the Hon'ble Supreme Court in **K.T.M.S. Mohd. case** (supra 3).

25. In view of the discussion supra, the impugned order is liable to be set aside and accordingly, the same is set aside.

26. In the result, the present Criminal Appeal is allowed.

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

K. LAKSHMAN, J

November 15th, 2019.

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L.R. Copy to be marked.

