

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Revision No. 755 of 2010 (O&M)
Date of Decision : 14.02.2019**

Jai Bhagwan

... Petitioner

Versus

Satbir and another

...Respondents

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.K.Agnihotri, Advocate for the petitioner.

Mr. Keshav Pratap Singh, Advocate for respondent No.1.

HARNARESH SINGH GILL,J.

The present criminal revision has been filed by petitioner-Jai Bhagwan (complainant) being aggrieved by the judgment dated 30.11.2009 passed by the learned Additional Sessions Judge, Narnaul, vide which criminal appeal filed by Satbir, against the judgment and order dated 28/29.07.2008 passed by Sub-Divisional Judicial Magistrate, Mohindergarh, whereby he was convicted under Section 420 IPC and was sentenced to undergo RI for 3 years and to a fine of Rs.1000/- and in default thereof, to further undergo RI for three months, had been allowed.

Brief facts of the case are that on the complaint of Jai Bhagwan, adopted son of Sheo Chand, FIR No.451, dated 30.10.1992 under Sections 192/196/199/205/467/468/420/120-B IPC, was registered at Police Station Mohindergarh against Satbir, Jhabdu Ram and Rajbir Singh. As per complainant-Jai Bhagwan, during his lifetime, Sheo Chand had adopted the complainant as his son. When Sheo Chand was alive, the complainant used to provide him all the services. Sheo Chand expired on 20.04.1992. Satbir and Jhabdu Ram would nurse a grudge in their mind against the

complainant on the aforesaid count. Vide judgment and decree dated 01.06.1972 passed in a civil suit filed by Sheo Chand, half of his land (Sheo Chand's) was transferred in favour of complainant-Jai Bhagwan. Jhabdu Ram had a bad eye on the property of the Sheo Chand and he wanted to grab the same. A fake and frivolous civil suit No. 305/72 was got filed through Sheo Chand. However, when complainant-Jai Bhagwan came to know about this fact, the same was dismissed after recording his statement. Later on, Satbir by way of fraud obtained a Will from Sheo Chand, which was later on revoked and cancelled by Sheo Chand himself on 12.01.1998.

Again Satbir and Jhabdu Ram conspired to grab the property of Sheo Chand. Jhabdu Ram through Satbir, had filed Civil Suit No.194 in the year 1989 by impersonating some other person in place of Sheo Chand. By way of fraud and mis-representation, Satbir filed written statement on behalf of Sheo Chand admitting the claim in the suit, whereas as a matter of fact Sheo Chand had never appeared in the Court nor did he engage any Advocate. Even Vakalatnama was filed in the said suit by Satbir showing himself to be the son of Sheo Chand. Thus, the judgment and decree dated 08.04.1989 obtained by Satbir and Jhabdu Ram was on the basis of fraud and mis-representation as both had obtained the said judgment and decree by hatching a conspiracy. On the basis of said judgment and decree, the mutation was sanctioned qua half of the property of Sheo Chand. Thus, by doing this, it was alleged in the complaint the accused had committed fraud. Accordingly, the above noted FIR had been registered against Satbir, Jhabdu Ram and Rajbir Singh.

The trial Court after considering the evidence on record acquitted

Jhabdu Ram and Rajbir whereas respondent-Satbir was convicted under Section 420 IPC and accordingly, sentenced as noticed above.

Against the judgment and order passed by the learned trial Court, respondent-Satbir, had preferred an appeal. The Appellate Court allowed the appeal by holding that prosecution had failed to prove its case against Satbir beyond reasonable doubt, vide judgment dated 30.11.2009.

Aggrieved of the judgment dated 30.11.2009, complainant-Jai Bhgwan approached this Court by way of present criminal revision.

Learned counsel for the petitioner, at the outset, has argued that guilt of the accused has been duly proved from the prosecution evidence including PW1 to PW7. He has submitted that on the evidence of the prosecution witnesses, complaint Ex. PW7/A, recovery memo of the documents Ex. P1, FIR Ex. P2 and FSL reports Ex. PX and Ex.PY, stood duly proved on record. It has also been argued that in fact, respondent-Satbir accused wanted to grab the land of Sheo Chand whereas, it was complainant Jai Bhagwan, who was entitled to inherent the land of Sheo Chand, being his adopted son.

Learned counsel appearing for the respondent-Satbir, per contra, has argued that the prosecution has miserably failed to prove the guilt of Satbir beyond reasonable doubt. He has further submitted that under Section 195 Cr.P.C., the trial court had not taken cognizance as it was the offence against public interest. Moreover, no evidence was led by the prosecution to reach a conclusion that the respondent-Satbir had committed any illegal act. There is lack of evidence as in respect of offence adverted to in Section 193 Cr.P.C. there is a restriction that the same cannot be entertained unless a complaint is made by Court. The constable who conveyed the entire report

to the police as Ex.P1 had not been examined by the prosecution.

I have carefully gone through the evidence contained in the records requisitioned from the trial Court.

The testimony of PW-7 Jai Bhagwan, complainant, does not prove the prosecution case against the respondent-Satbir beyond the reasonable doubt. Even the opinion given by Senior Scientific Officer, FSL seems to be vague as it has been mentioned therein as "appears" instead of giving a definite opinion. Above all, the report Ex. PX, is silent regarding the physical and chemical tests performed by analyst for forming his definite opinion. In the absence of any specific test as it is admissible under Section 293 Cr.P.C., this report cannot be read as an incriminating evidence against the accused in any manner giving definite opinion regarding typing. To prove the handwriting, no handwriting expert was examined. Even the written statement with questioned thumb impressions was not collected from FSL, Madhuban, while obtaining the second opinion Ex.PX.

It is settled law that Section 195 Cr.P.C. stipulates that no Court shall take cognizance of any offence alleged to have been committed in, or in relation to, any proceeding in any Court, except in writing of that Court, or of some other Court to which that Court is subordinate.

It may be noticed that though a complaint dated 17.8.1993 was made in writing by the Sub Judge, Ist Class, Mahendergarh, in compliance with Section 195 Cr.P.C. that Satbir, Jhabdu and Rajbir, be summoned under Sections 192/196/199/205/467/468/420/120-B IPC. However, the said complaint was dismissed by the the learned Sub Divisional Judicial Magistrate, Mohindergarh, vide order dated 21.7.2007, holding that said complaint was illegal and vitiated one for non compliance of Section 340(1)

Cr.P.C.

The co-ordinate Bench in the case titled as ***Rajinder Kumar Chhibar versus Aseem Bakshi***, 2006(3) R.C.R. (Criminal) 586, in para 13 held as under:-

"13. In my opinion, case of the petitioner falls in the first two categories of cases. First of all. I will deal with category (i). In the present case, the summoning order has been passed under Section 420 read with Section 511 I.P.C. and Section 182 I.P.C. It is apparent from the reading of the complaint itself that both the alleged offences have been committed in the course of same transaction i.e., while filing the application dated 9.9.1999 accompanied by affidavit and the indemnity bond. All these documents were submitted in the course of one transaction, namely for seeking transfer/mutation of a part of house No. 721, Sector 8-B, Chandigarh. In the said transaction, the petitioner is alleged to have committed two offences i.e. Under Section 420 read with Section 511 I.P.C. and under Section 182 I.P.C. Section 182 I.P.C. reads as under:

"Section 182 I.P.C.- False information, with intent to cause public servant to use his lawful power to the injury of another person - Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant -

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury of annoyance of any person, shall be

punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

The petitioner is stated to have committed the said offence by moving the application before the Estate Officer, a public servant, in terms of Section 182 I.P.C. with alleged false information given with intention to cause the Estate Officer to use his lawful power to the injury of the complainant and his brother. Section 195 of the Code creates a bar that the offence under Section 182 I.P.C. cannot be prosecuted either by a private complaint filed by a citizen or by the police by filing challan under Section 173 of the Code on the basis of an F.I.R. in such a case. Section 195 of the Code provides as under-

"Section 195 Criminal Procedure Code- Prosecution for contempt of lawful authority of public servant, 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 Section 172 to 188 (both inclusive) of the Indian Penal Code, 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.

*It is clear from the reading of the above provision that only public servant concerned or some other public servant to whom he is administratively subordinate can initiate action by way of a complaint in writing to the context of the present case, only the Estate Officer or his superior officer, to whom the former is subordinate, is competent to file the complaint. A complaint by any other person is not maintainable at all and suffers from an insurmountable legal bar. The opening words of Section 195 of the Code stating that "No Court shall take cognizance" enact an absolute bar on the initiation of proceedings by any other person than the one stipulated in the provision. Thus, the existence of a legal bar is one of the well established ground on which the inherent jurisdiction of the High Court can be exercised to quash the criminal proceedings. Though the offence under Section 420 read with Section 511 I.P.C. is not covered by the bar created under Section 195 of the Code, but in my opinion, where an offence attracting the bar of Section 195 of the Code and another offence not directly attracting the bar are committed in the course of the same transaction and it is not possible to split the said transaction, then the bar envisaged by Section 195 of the Code shall cover all the offences in the course of the same transaction. The Supreme Court in **State of Karnataka v. Hemareddy and Anr. (supra)** has observed as under:*

"In case where in the course of the same transaction an offence for which no complaint by a Court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in

Section 195(1)(b) of the Code of Criminal Procedure should be upheld.(emphasis added).

The judgment of the Supreme Court in State of U.P. v. Suresh Chandra Srivastava and Ors. (supra) relied upon by learned Counsel for the respondent also supports case of the petitioner. The allegations in that case was that the accused had removed the used stamps from Court cases and reused the same. The accused had claimed protection under Section 195 of the Code on the ground that the offences and Sections 467, 471 and 120-B I.P.C. fall within the preview of Section 195 of the Code. The Supreme Court found, as a fact, in para 4 of the judgment that the above mentioned offences were not at all made out and the only offences under Sections 262, 263, 380 and 420 I.P.C. were made out, which are obviously not covered by Section 195 of the Code. Having held so, the Supreme Court again reiterated the principles with regard to the offences committed in course of the same transaction. The relevant part of the said observation is re-produced below:-

"The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in Section 195, Section 196 will affect only the offences mentioned therein unless such offences form integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Code."

Thus, in my opinion, in the instant case, both the alleged offences i.e. Under Section 420 read with Section 511 Indian Penal Code and 182 Indian Penal Code form integral part so as to amount to offences committed as a part of the same transaction. Therefore, if there is bar

for taking cognizance of one offence, the complaint qua the second offence for the same transaction is also liable to be quashed."

The co-ordinate Bench in the case titled as ***Panni versus Lachhman and others***, 2000(2) R.C.R. (Criminal) 668, in para 9 held as under:-

"9. A reading of the above would show that only the Court in which the alleged forged document had been produced is competent to file the complaint. As the present complaint has not been filed by the Court of competent jurisdiction, therefore, the criminal Court has no jurisdiction to take cognizance into the matter and the complaint has been rightly dismissed by the learned Magistrate. I do not see any illegality or infirmity in the said order."

The Co-ordinate Bench of this court in the case titled as ***Raj Singh versus State of Punjab***, 1997(2) R.C.R.(Criminal) 100, in paras 14 to 16 held as under:-

"14. Learned counsel for the respondents 2 and 3/complainants contended that Section 195 Criminal Procedure Code bars only the Court from taking cognizance of the offences enumerated therein except where the complaint in writing is given by the Court/public-servant, and it does not bar the registration of the FIR. In support of his contention, he relied upon a judgment of this Court rendered by a single Judge in ***Rishi Pal v. State of Haryana, 1996(3) RCR 357***. That was a case where the complainant alleged that she never appeared in the Court but was falsely identified and that the accused had got a decree by impersonation. On the basis of the complaint, FIR was registered under sections 418, 420, 471, 468 and 120B Indian Penal Code. The petitioner before the High Court prayed for

*quashing of the FIR on the ground that the Court cannot take cognizance of these offences in view of Section 195 (1)(b)(ii) of the Criminal Procedure Code. But this Court held that though the Court cannot take cognizance of such offences except on the complaint in writing of the public servant, there is no bar for initiating the offence, and that the police can register the case without the sanction of the Court. The learned counsel for the respondents 2 and 3 also relied upon the decision of the Hon'ble Supreme Court in **Anil Saran v. State of Bihar and others, 1996(1) RCR 43** and contended that only when the Magistrate applied his judicial mind to the offences stated in the complaint or the police report, cognizance can be said to have been taken. Relying upon these decisions, learned counsel for the respondents 2 and 3 contended that in this case, the Court has not so far taken cognizance, that Section 195 Criminal Procedure Code bars only the Court from taking cognizance of offences enumerated therein except on a complaint by the Court/public servant concerned and, therefore, when there is only the FIR, the bar of section 195 Criminal Procedure Code does not enable the Court to quash the FIR. But with very great respect to the learned Judge who rendered the decision in Rishi Pal's case (supra), I am unable to agree with the view taken that the provisions of section 195 Criminal Procedure Code bar only taking of cognizance by the Court and that the police is entitled to register the FIR and initiate the proceedings. It may be that Section 195(1) specifically bars a court from taking cognizance of the offences enumerated therein except on a complaint by the Court/public servant concerned, but no useful purpose will be served by registering the FIR and allowing the police to investigate the same if, ultimately, the same cannot be taken cognizance of by a Court. That*

will be an exercise in futility and on that ground, I am of the view that the FIR can also be quashed. In this regard, I am also supported by the decision of this Court in Sardul Singh's case (supra) wherein it was held as follows :-

"The reading of the above referred provisions of Section 195 coupled with the procedure prescribed in Section 340 of the Criminal Procedure Code absolutely leave to doubt that not only cognizance of such offences without the complaint in writing of the Court concerned is barred but also the investigation into such offences because that will amount to taking over the function of the Court, where forgery was committed, by the investigating agency which is against mandate of Section 340 of the Criminal Procedure Code.

*The above referred view also finds support from the observations of Justice D.S. Tewatia (as he then was) in **Sheela Devi v. State of Punjab, 1979 Chand. L.R. (Cri.) 195 (Punj. and Har.)**. In that case also, the first information report for the offences under sections 467, 468, 471, 420 and 120B read with Section 109 of the Penal Code was quashed by holding that the provisions of Section 195(1)(b)(ii) and (iii) read with Section 340 of the Criminal Procedure Code not only bar the taking of cognizance of the offences by the criminal court but also the investigation into the allegations of such offences by necessary implication, as that will be a futile exercise if the Criminal Court cannot take cognizance of the offence except on the complaint in writing of the Court where such offences were committed regarding giving of false evidence or forged documents etc."*

15. *Therefore, in view of this decision and also the decision of another Single Judge of this Court in Sheela Devi's case (supra), it is clear that this Court can quash the FIR also as it would be futile and meaningless to allow the police to investigate the case, if no court could take cognizance of these offences which fall within the ambit of Section 195 Criminal Procedure Code.*

16. *Therefore, though a court can be said to take cognizance of the offence only when it applies its judicial mind to the offences stated in the complaint or police report, it is clear that the investigation agency cannot be allowed to take the functions of the Court and has therefore to be barred from investigating into these offences. If that is so, there is no purpose in allowing the FIR or the consequential proceedings to continue if ultimately the Court cannot take cognizance of the offences. In these circumstances I am of the view that the accused or this Court need not wait till the Court concerned takes cognizance of the offences in question, but can quash the FIR itself."*

Taking into account the totality of facts and circumstances of the case, this Court finds that the learned first Appellate Court has rightly acquitted respondent-Satbir of the charges framed against him. As discussed above, there being no definite opinion about the alleged thumb impressions on the documents stated to have been produced before the Court, the learned first Appellate Court has rightly found that the prosecution had failed to prove its case against respondent-Satbir Singh, beyond reasonable doubt. The proceedings initiated in compliance with Section 195 Cr.P.C., culminated into dismissal of the complaint filed by the learned Judicial Magistrate Ist Class, Mohindergarh, vide order dated 21.7.2007 passed by the learned Sub Divisional Judicial Magistrate, Mohindergarh, holding that

said complaint was illegal and vitiated one for non complaine of Section 340(1) Cr.P.C., as no inquiry was conducted before filing such complaint.

In view of the above, I do not find any illegality or infirmity in the order dated 30.11.2009 passed by the learned Additional Sessions Judge, Narnaul. Hence, the present revision petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

14.02.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No