

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

CRR-1292-2018 (O&M)
Date of Decision:-29.01.2019

Ram Mehar & Others

... Petitioners

Versus

The State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Arav Gupta, Advocate
for the petitioners.

Ms. Aditi Girdhar, AAG, Haryana.

GURVINDER SINGH GILL, J.

1. The petitioners/accused have filed this revision petition assailing order dated 22.11.2017 passed by learned Additional Sessions Judge, Kurukshetra whereby an application dated 28.04.2017 filed by the petitioners/accused seeking their discharge has been dismissed.

2. A few facts, as extracted from the impugned order, are that complainant-Deva Singh is owner in possession of agricultural land situated in revenue estate of Ghararsi, Tehsil Thanesar, District Kurukshetra. Petitioner No.5/accused Parveen Kumar is brother-in-law (*Saala*) of petitioner's son Hakam Singh (petitioner No.4) whereas Ram Mehar, Jai Prakash and Daya Nand (Petitioners no.1 to 3) are friends /relatives of Parveen Kumar. The said accused in order to take forcible possession of complainant's land had caused injuries to Hardeep Kaur who is wife of Ram Lal, another son of the complainant regarding which FIR No.190 dated 04.06.2006 under Sections 323, 447, 506, 148, 149 of Indian Penal Code, 1860 also came to be lodged against Hakam Singh and others at the instance of complainant's son Ram Lal. The accused had been issuing threats to the complainant and her son Ram Lal and his wife Hardeep Kaur and also to their children and had been pressuring them to compromise the matter to which the complainant did not agree. The complainant alleged that subsequently accused Hakam Singh and his son in order to cheat the complainant hatched a conspiracy and forged an agreement dated 27.10.2007 regarding sale of complainant's land and also forged a cheque dated 22.11.2006 purported to be issued by the complainant for an amount of ₹2,20,000/-. The agreement dated 27.10.2007 was fabricated on a stamp paper which had never been purchased by the complainant. A civil suit was also filed by the accused on the basis of said agreement dated 27.10.2007 against the complainant seeking specific performance on the basis of the said agreement dated 27.10.2007 along with injunction and declaration that two subsequent

agreements dated 07.11.2007 were void and not binding on the rights of the accused Parveen Kumar and Ram Mehar. It is further the case of the complainant that his signatures as existing on the agreement dated 27.10.2007 were got examined by Handwriting and Finger Print Expert who vide report dated 08.08.2008 had opined that the same were forged. The accused Parveen Kumar also filed a complaint under Section 420 of Indian Penal Code, 1860 against the complainant so as to secure his conviction on the basis of the agreement dated 27.10.2007.

3. Based on the aforesaid allegations, the complainant thus filed a complaint on 26.08.2008 mainly on the allegations that the accused had forged agreement dated 27.10.2007 in respect of sale of land of the complainant and also had forged a cheque purposed to be issued by the complainant for an amount of ₹2,20,000/-. The complaint was referred to the concerned Police Station for registration of the case on the basis of which FIR No.253 dated 26.08.2008 came to be registered at Police Station Sadar Thanesar in respect of offences under Sections 420, 423, 467, 468, 471, 193, 195, 205, 120-B of Indian Penal Code, 1860. Upon conclusion of investigation, a challan was filed against the accused. Charges were framed against the accused, however, subsequently the Magistrate upon noticing that the case is exclusively triable by the Court of Sessions committed the case to the Court of Sessions. It was at that stage that the accused moved an application dated 28.04.2017 (Annexure P-1) seeking their discharge, which has been dismissed by the learned trial Court vide impugned order dated 22.11.2017.

4. The learned counsel for the petitioner while assailing the impugned order has focused his arguments on provisions of Section 195(1)(b) and has contended that it was only the Court where the allegedly forged agreement had been produced which could file a complaint against the accused and that the law does not provide for filing of any complaint/FIR at the instance of private complainant directly. The learned counsel in order to hammer forth his aforesaid submission presses into service following judgments:-

- i. 2017(4) RCR(Criminal) 572, Purushottam Narayan Singh and Others vs. Narendra Kumar Srivastava and Others (Patna High Court).
- ii. ILR 1997 Karnataka 3084, Dr. Manjunath vs. N.S. Nagarathna (Karnataka High Court).
- iii. 2007(5)RCR(Criminal) 443, Sanjiv Arora vs. State of Rajasthan (Rajasthan High Court).
- iv. 2005(2) RCR(Criminal) 178, Iqbal Singh Marwah and Others vs. Meenakshi Marwah and Others (Supreme Court).
- v. 1998(1) RCR(Criminal) 823, Sachida Nand Singh and Others vs. State of Bihar and Others (Supreme Court).

5. Opposing the aforesaid contentions, the learned State counsel has submitted that the position of law has been well settled by Hon'ble Supreme Court in Sachida Nand's case (supra) which has been reiterated by the Hon'ble Supreme Court in Iqbal Singh Marwah's case (supra) and

2014(4) RCR (Criminl) 501, George Bhaktan vs. Rabindra Lele and Others.

6. I have considered rival submissions addressed before this Court.
7. The question involved, put briefly is as to whether in a case where a document which is allegedly forged outside the Court but subsequently produced in the Court and relied upon, it is only the Court before which such document is produced which can initiate proceedings for prosecuting the accused or as to whether the affected private party can also proceed to lodge FIR/complaint directly against the accused.
8. Before proceeding further it is apposite to refer to provisions of Section 195 Cr.P.C. which reads as follows:-

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), 1 [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.]
- (2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.
- (3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or

under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

- (4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

8. A perusal of Section 195(1) (b) Cr.P.C. would show that it deals with two eventualities which may broadly be stated as follows:-

- i. Cases pertaining to offences punishable under Sections 193, 196, 199, 200, 205 to 211 and 228 of Indian Penal Code, 1860 relating to furnishing false evidence in the Court or in relation to any proceedings in the Court.
- ii. Offences pertaining to forging of documents when such forged document has been produced in evidence in Court.

9. Since the matter in hand pertains to a case where the allegedly forged document has been produced in the Court and Hon'ble Supreme Court has directly dealt with such matters at least on 3 different occasions i.e. in Sachida Nand's case (supra), Iqbal Singh Marwah's case (supra) and George Bhaktan's case (supra), therefore, this Court does not feel the necessity of referring to the judgments delivered by other High Courts as have been cited by learned counsel for the petitioners.
10. It was in Sachida Nand's case (supra) which was delivered at the earliest point of time amongst the aforesaid 3 judgments of Hon'ble Supreme Court. In Sachida Nand's case (supra) the accused had allegedly produced a forged 'Jamabandi' in the Court of Executive Magistrate during the course of proceedings under Section 145 Cr.P.C. The complainant filed a complaint in the Court of learned Chief Judicial Magistrate who forwarded the complaint under Section 156(3) Cr.P.C. to the police, who registered FIR. The accused moved High Court mainly on the ground that the Magistrate could not have taken cognizance in view of the bar contained in Section 195(b)(ii) of the Court. The said petition was dismissed by the High Court leading to filing of appeal before the Hon'ble Supreme Court. Hon'ble Supreme Court repelling the contention of the accused/appellant that it is only the Court which could have filed a complaint hold as follows:-

“That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in

the court. Any such construction is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgery is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long drawn litigation which was either instituted by himself or some body else who can be influenced by him and thereby preempt the prosecution for the entire long period of pendency of that litigation. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted. Quoting from *Gill vs. Donald Humberstone & Co. Ltd.* (1963-1-W.L.R.929) Maxwell has stated in his treatise (*Interpretation of Statutes*, 12th Edn. Page 105) that "if the language is capable of more than one interpretation we ought to discard the more natural meaning if it leads to unreasonable result and adopt that interpretation which leads to a reasonable practicable result". The clause which we are now considering contains enough indication to show that the more natural meaning is that which leans in favour of a strict construction, and hence the aforesaid observation is eminently applicable here.

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The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to case where forgery of the document was committed before the document was produced in a Court. Accordingly we dismiss this appeal.”

11. In Iqbal Singh Marwah's case (supra) a Constitution Bench of Hon'ble Supreme Court again considered the matter in view of the conflict of opinion between 2 decisions of Hon'ble Supreme Court i.e. Sachida Nand's case (supra) and another case reported as Surjit Singh vs. Balbir Singh, 1996 CLJ, 2304. Hon'ble the Supreme Court while discussing the case law at length held that Sachida Nand's case (supra) lays down the correct position of law. The relevant extract from the said judgment reads as follows:-

“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) Cr.P.C. 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.

In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b) (ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.”

12. Sachida Nand's case (supra) as well as Iqbal Singh Marwah's case (supra) have also been followed in a subsequent judgment rendered by Hon'ble Supreme Court in George Bhaktan's case (supra). In view of the ratio in Sachida Nand's case (supra) and reiterated by Constitution Bench in Iqbal Singh Marwah's case (supra), the contention raised on behalf of the petitioners as regards operation of bar as contained in Section 195(i)(b) Cr.P.C. can not be accepted as it is a case where the agreement in question was allegedly forged outside the precincts of the Court and is not a case where forgery was committed after the document had been produced in Court. In other words a complaint/FIR filed by the aggrieved person directly would be duly maintainable. There is no infirmity in impugned order dated 22.11.2017 passed by learned Additional Sessions Judge, Kurukshetra and same is upheld.
13. The petition is sans any merit and is hereby dismissed.

29.01.2019
Gaurav Sorot

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No