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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.08.2021	31.08.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.1472 OF 2018

1. K.Mohammed Iqbal Sheriff
2. K.Mohammed Arif Sheriff
3. Mohammed Ghouse Sheriff
4. K.Sadatha Unissa Begum .. Petitioners/Complainants

- Vs -

S.M.Razack .. Respondent/Accused

Criminal Original Petitions filed u/s 482 Cr.P.C. praying this Court to set aside the order of the learned Principal Judge, City Civil Court, Chennai, in Crl. R.C. No.13 of 2017 dated 20.10.2017. Confirming the order dated 18.05.2017 made in Crl.MP.No.2596/2017, passed by the VII Metropolitan Magistrate Court, George Town, Chennai.

For Petitioners: Mr. R.Vijayaraghavan

For Respondent : Mr. Madhusudhanan

ORDER

The present petition has been instituted at the instance of the petitioners, who are the landlords of the property in which the respondent was a tenant. The petitioners had filed RCOP No.30/08 on the file of the XI Judge, Court of Small Causes, Chennai seeking eviction of the respondent from the premises. It is the case of the petitioners that the respondent created fabricated and false documents and filed the same in the rent control proceedings and assailing the said documents, the petitioners filed application to refer the documents for forensic analysis, which was acceded to by the trial court and forensic analysis revealed that the documents were forged as the signature contained in the said documents does not belong to the petitioner's mother and the 1st petitioner. Thereafter, the rent control proceedings ended in favour of the petitioners.



2. In view of the fact that false and fabricated documents were used during court proceedings, the petitioners preferred a private complaint before the XIII Metropolitan Magistrate, Egmore, against the respondent herein for the offences u/s 406, 480, 420 and 468 IPC, which was returned by the Magistrate Court with a direction to file it before the appropriate court. However, inadvertently, the counsel for the petitioners had filed the same before the Court of Small Causes (XI Judge, Court of Small Causes), which was dismissed. Thereafter, the petitioners filed the present complaint before the VII Metropolitan Magistrate Court, George Town, Chennai in CrI. M.P. No.2596/16, which was dismissed on the ground that the Rent Control Court alone can initiate a complaint before the respondent police in relation to offences which falls u/s 195 (1) (b) (ii) Cr.P.C., and, accordingly, dismissed the complaint. Aggrieved by the same, revision was preferred by the petitioners before the Principal Sessions Judge in R.C. No.13/17, which also ended in dismissal endorsing the view of the trial court. Against the said order of dismissal, the present petition has been filed.

3. Learned counsel appearing for the petitioners submitted that the order of the courts below are patently erroneous for the reason that Section 195 (1)(b)(ii) pertains to falsification or tampering of documents, when the documents are in the custody of the Court. It is the submission of the learned counsel for the petitioners that the documents have been fabricated and, thereafter, produced in court during the rent control proceeding and, therefore, the bar engrafted u/s 195 (1)(b)(ii) Cr.P.C. would not be applicable. In support of his contention, learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in K.Vengadachalam - Vs - K.C.Palanisamy & Ors. (2005 (7) SCC 352).

4. Per contra, learned counsel appearing for the respondent submitted that the courts below have taken into account the fact that the documents were in the custody of the court when it was sought to be referenced to the forensic lab for analysis and the report having been concluded the documents to be rank forgery, the rent control proceedings ended in favour of the petitioners. However, the rent control court, which was seized of the said matter, did not think it fit to enforce the provision of law u/s 195 (1) (b) (ii) Cr.P.C. and that being the case, the petitioner, as an individual, is estopped from raising a complaint u/s 195 (1) (b) (ii) Cr.P.C.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



6. In Sachida Nand Singh & Anr. - Vs - State of Bihar & Anr. (1998 (2) SCC 493), the Hon'ble Supreme Court had occasion to consider the scope and interpretation of Section 195 (1) (b) (ii), which is analogous to Section 195 (1) (b) (i), and held as under :-

"6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. If so, will its production in a court make all the difference?

7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise (Abdul Waheed Khan v. Bhawani [AIR 1966 SC 1718 : (1966) 3 SCR 617]).

8. 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 forgerer is sure that he would imminently be embroiled in



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prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either instituted by himself or somebody else who can be influenced by him and thereby pre-empt 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 v. Donald Humberstone & Co. Ltd.* [(1963) 1 WLR 929 : (1963) 3 All ER 1803] Maxwell has stated in his treatise (*Interpretation of Statutes*, 12th Edn., p. 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 reasonably 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.

9. As Section 340(1) of the Code has an interlink with Section 195(1)(b) it is necessary to refer to that sub-section in the present context. The said sub-section reads as follows:

"340. When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest 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



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(e) bind over any person to appear and give evidence before such Magistrate."

10. The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195 (1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. It has to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the chapter appellates. So the offences envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.

11. 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 of 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.

12. 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.

* * * * *

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

(Emphasis Supplied)

7. The above view in Sachida Nand Singh's case (supra) received affirmation from the decision of the Constitution Bench in Iqbal Singh Marwah & Anr. - Vs - Meenakshi Marwah & Anr. (2005 (4) SCC 370), wherein the Supreme Court had considered the bar provided under the analogous provision, i.e., Section 195 (1) (b) (ii) Cr.P.C. and in that context, held as under :-



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"10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC 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 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 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 authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 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 any 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 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to



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a document subsequent to its production or giving in evidence in a proceeding in any court.

11. Section 195(1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is – “Provisions as to Offences Affecting the Administration of Justice”. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See Craies on Statute Law, 7th Edn., pp. 207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

* * * * *

23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires



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and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This 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 complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are



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challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

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 out in *Sachida Nand Singh* [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] 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.

26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an



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unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong."

(Emphasis Supplied)

8. From the above proposition of law laid down, it is unambiguously clear that in the absence of the Court making a complaint to the law enforcing agency with regard to any falsification or fabrication of records, which have been used during the court proceedings, there is no bar on the launching of a complaint at the behest of the other party to the lis. In the case on hand, it is evident from the records that the fabrication and falsification of the documents, which have been placed as documentary evidence during the rent control proceedings were forged prior to it entering into the domain of the Court. As held by the Hon'ble Apex Court, the mere reluctance of the courts to direct filing of a criminal complaint and non-filing of any complaint should not lead to hindrance to the administration of justice and it should not lead to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. The duty of the Court is to see that a workable solution is arrived at and the provision of law is not frustrated due to the inaction of the Court.

9. In the case on hand, it is the finding of the Rent Control Court that the documents, which were placed in evidence by the respondent were fabricated and forged documents. Once the court arrived at the said decision, the logical course open to the said court was to have filed a complaint as per the provisions of Section 195 (1)(b)(ii) Cr.P.C. However, it is evident from the record that the Rent Control Court did not file such a complaint, which led the petitioners herein to file a complaint before the Magistrate Court. Such being the admitted position, the trial court ought to have entertained the complaint and taken judicial action on the same. Instead of adopting such procedure, the trial court, merely relying on Section 195 (1)(b)(ii) Cr.P.C. dismissed the petition filed by the petitioner, which has been endorsed by the appellate court.



Though the appellate court has adverted to the decision in Iqbal Singh Marwah's case (supra), however, the said decision has not been rightly appreciated, which has led to the petitioners coming before this Court.

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10. In view of the aforesaid discussions, this Court is of the considered view, that the orders passed by trial court, which has been endorsed by the appellate court are patently erroneous as they do not reflect the correct position of law and are, therefore, liable to be set aside.

11. For the reasons aforesaid, this criminal original petition is allowed setting aside the order passed in R.C. No.13/2017 passed by the Principal Sessions Judge, Chennai, dated 20.10.2017.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

GLN

To

- 1.The Principal Sessions Judge
Principal Sessions Court
Chennai.
- 2.The Principal Judge,
City Civil Court, Chennai.
- 3.The VII Metro Politan Magistrate,
George Town, Chennai.

+1cc to Mr.R.Vijayaraghavan, Advocate, S.R.No.44126

CRL. O.P. NO. 1472 OF 2018

NMI (CO)
CB(20/09/2021)