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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ CRIMINAL MISCELLANEOUS CASE 1443 OF 2013

Between:-

**PANDIT DIGAMBER SHARMA
S/O. SHRI DALCHAND
R/O. SHRI SANATAN DHARAM MANDIR,
71,GURU ANGAD NAGAR EXTENSION,
LAXRNI NAGAR, DELHI-92.
.....PETITIONER**

(Through: Mr. R.S. Rathie & Ms. Kusum, Advocates).

AND

**SHRI RAM PRAKASH ANAND
S/O. SHRI BHAGAT RAM
R/O. H. NO. 87-B,
GURU ANGAD NAGAR EXTENSION,,
LAXMI NAGAR, DEIHI-92. RESPONDENT NO. 1**

**SHRI MADAN LAI ARORA,
S/O. SHRI JUMMA RAM
R/O. H.NO. 36-B,
GURU ANGAD NAGAR EXTENSION,
LAXMI NAGAR, DELHI-92.RESPONDENT NO. 2**

**SHRI PRUSHOTTAM BABBAR
S/O. SHRI HARIBANSA
R/O. H. NO. 76-A,
GURU ANGAD NAGAR EXTENSION,**



LAXMI NAGAR, DELHI-92. ...RESPONDENT NO. 3

**SHRI RAJENDER
S/O. SHRI DIWAN CHAND
R/O. H. NO. F-112,
MANGAL BAZAR,
LAXMI NAGAR, DELHI-92. ...RESPONDENT NO. 4**

**SHRI GANGA RAM
S/O. SHRI HOTILAL
R/O. H. NO. 96,
GURU ANGAD NAGAR EXTENSION,
LAXMI NAGAR, DELHI-92.RESPONDENT NO. 5**

**SHRI RAM PARAS SHUKLA
S/O. SHRI SIDH NATH SHUKLA
R/O. H. NO. 555 (NEAR TEMPLE)
WEST GURU ANGAD NAGAR,
DELHI-92.RESPONDENT NO. 6**

**SHRI S.K. ARORA,
S/O. SHRI RAM PYARE LAI
R/O. 79, GURU ANGAD NAGAR EXTENTION,
LAXMI NAGAR, DELHI-92.RESPONDENT NO. 7**

*(Mr. Manoj V. George, Ms. Shilpa Liza George & Mr. Nisab,
Advocates.)*

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Pronounced on : 30.08.2022

**J U D G M E N T****PURUSHAINDRA KUMAR KAURAV, J.**

1. This petition under Section 482 of the Code of Criminal Procedure, 1973, (Cr.P.C.) is directed against the order dated 05.03.2013, whereby the learned Additional District Judge affirmed the order passed by the learned Civil Judge (East) dated 03.08.2012, rejecting an application under Section 340 of the Cr.P.C. filed by the petitioner.

2. The brief facts of the case are that the petitioner filed a civil suit bearing No.370/2010 on 16.11.2010 seeking permanent injunction against the respondents before the court of Civil Judge, Karkardooma courts, New Delhi. The petitioner therein stated that he is *Poojari/Priest* in the suit premises since 1972 and had been looking after the suit premises bearing '*Plot No. 71, Sanatan Dharam Mandir, Guru Angad Nagar Extn. Laxmi Nagar, Delhi-92*'. After issuance of notice in the concerned civil suit, the defendants therein, who are respondents in the present petition, filed their written statements allegedly relying on a forged registration certificate bearing Certificate No. S/44972/2003.

3. It is the case of the petitioner that on 02.02.2011, the learned trial court, while placing reliance on the said forged certificate filed by respondents herein, only partly allowed his application under Order 39 Rule 1 & 2 CPC. The petitioner realised that the certificate in question was a forged certificate and, therefore, after getting relevant documents under the Right to Information Act 2005, the petitioner filed an application under Section 340 of the Cr.P.C. before the concerned Court for initiation of the criminal proceedings against the respondents. The learned trial court did not find it appropriate to issue notice on the



aforesaid application and rejected the same vide order dated 03.08.2012. The order passed by the learned Civil Judge has been affirmed in R.C.A. No. 83/2012 by the learned ADJ vide impugned order and hence, the present petitioner before this Court under Section 482 of Cr.P.C.

4. Learned counsel appearing on behalf of the petitioner vehemently submitted that the approach adopted by the Civil Judge and the Additional District Judge is erroneous, inasmuch as the courts below have not considered the facts of the case in the right perspective. According to him, the judgment relied upon by the learned Civil Judge in the matter of *Iqbal Singh Marwah and Anr, v. Meenakshi Marwah & Anr.*¹, if perused carefully, would support the case of the petitioner and hence, while placing reliance on the said decision, the application in question ought not to have been dismissed. He further submits that the certificate in question available on record and the other materials would clearly demonstrate that the same is a forged document and in any case, the respondents have adversely affected the administration of justice and have abused the process of law. He has placed reliance on paragraph Nos. 11, 12 & 33 of the judgment of the Constitution Bench in the case of *Iqbal Singh Marwah and Anr (supra)*. Besides that, learned counsel for the petitioner has also placed reliance on the decisions in the matters of *Babu Lal v. State of Uttar Pradesh and Ors.*², *M.S. Ahlawat v. State of Haryana and Anr.*³ & *Ashok Kumar Aggarwal v. Union of India & Ors.*⁴

¹ (2005) 4 SCC 370

² AIR 1964 SCC 725

³ (2000) 1 SCC 278

⁴ 2013(14) SCALE



5. Learned counsel for the petitioner, therefore, submitted that the impugned order deserves to be quashed and the respondents may be prosecuted, in accordance with law for committing forgery.

6. Learned counsel appearing on behalf of the respondents, vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that this court in exercise of its power under Section 482 of Cr.P.C. should not substitute its own view, when two courts have concurrently held that the forgery in question, if at all is made was committed before filing of the documents before the concerned court. While taking this court through paragraph Nos. 7, 10, 11, 33 & 34, of the judgment in the case of *Iqbal Singh Marwah and Anr. (supra)*, he submits that the same has been rightly relied upon, and therefore, no interference is called for. According to him, the civil suit was filed on 16.11.2010 and the certificate in question was filed on 23.12.2010. He, therefore, submits that if at all there is any forgery of the certificate, the same happened before 23.12.2010 and hence, the court in exercise of its power under Section 340 of the Cr.P.C. cannot enter into the aspect of any forgery which had taken place before filing of the said document in the court. He also submits that the learned trial court did not place reliance on the said forged document, and therefore, the submissions made by the other side are controverted. He, therefore, submitted that no interference is called for.

7. I have heard learned counsel for the parties and have perused the material available on record.



8. A Constitutional Bench of the Hon'ble Supreme Court in the matter of *Iqbal Singh Marwah and Anr (supra)* had an occasion to resolve conflict of opinion between two earlier decisions of the Hon'ble Supreme Court, each rendered by a Bench of three Hon'ble Judges in *Surjit Singh v. Balbir Singh*⁵ and *Sachida Nand Singh & Anr. v. State Of Bihar & Anr.*⁶ regarding interpretation of Section 195(1)(b)(ii) of the Cr.P.C. In that case, a probate case was filed by the appellants therein against the respondents Nos.1 & 2 therein, who were widow and son of the appellants respectively. It was alleged that probate petition was filed on the basis of a forged Will and was contested by the respondents on the said ground. The appellant thereafter filed original Will in the court and the respondents thereafter filed the application under Section 340 of the Cr.P.C. requesting the court to file a criminal complaint against appellant No.1 therein. The application remained pending and therefore, respondent filed the complaint against the appellants under Section 340 read with Sections 420/467/468/469/470/471 & 120-B of the IPC. The concerned Magistrate dismissed the said complaint while holding that the question whether the Will was genuine document or forged one, was under consideration before the District Judge in the probate proceedings. According to him, Section 195(1)(b)(i)(ii) of the Cr.P.C. operated as a bar for taking cognizance of the offence under the Section invoked by the respondents. The respondents thereafter filed criminal revision before the Sessions Court. The Sessions Court allowed the revision and remanded the matter to the Metropolitan Magistrate for proceeding in accordance with law. The appellant in that case challenged the order before the High Court under Section 482 of Cr.P.C. which was also

⁵ (1996) 3 SCC 533

⁶ (1998) 2 SCC 493



dismissed and, therefore, the appellant approached the Hon'ble Supreme Court.

9. The Hon'ble Supreme Court in the said case opined that on a plain reading of Clause (b)(ii) of Sub-Section (1) of Section 195 of Cr.P.C., the same is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Sections 471, 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any court, a complaint by the court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any court and thereafter an offence, described as aforesaid, is committed in respect thereto, a complaint by the court would be necessary. It has also been held that if the offence, as described in the Section is committed prior to production or giving in evidence of the document in court, no complaint by court would be necessary and a private complaint would be maintainable.

10. The Hon'ble Supreme Court has considered the law laid down in the matter of ***Sachida Nand Singh & Anr. (supra)*** and paragraph Nos. 11, 12 & 13 of the said case was reproduced therein. Paragraph No. 6 of the judgment of ***Iqbal Singh Marwah and Anr (supra)*** is reproduced as under:-

“6. In Sachida Nand Singh after analysis of the relevant provisions and noticing a number of earlier decisions (but not Surjit Singh), the Court recorded its conclusions in paragraphs 11, 12 and 23 which are being reproduced below:



"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."

11. The Hon'ble Supreme Court after analyzing the legal position has held that the decision in the case of ***Sachida Nand Singh & Anr. (Supra)*** has laid down the correct law. It has been held that Section 195(1)(b)(ii) of Cr.P.C. would be attracted only when the offence enumerated in the said provision has 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*. The Hon'ble Supreme Court, therefore, dismissed the appeal.

12. In the instant case, in paragraph No. 6 of the order dated 03.08.2012 passed by the Civil Judge, it has been held that no offence is committed with respect to Certificate of Registration issued by Registrar of Societies after it had been produced in court or during the time when it is in *custodia legis*. Learned Additional District Judge in R.C.A. No. 83/2012 vide impugned judgment dated 05.03.2013, has found that the object of Section 340 of the Cr.P.C. is to ascertain whether any offence



affecting administration of justice in relation to any document produced or given in evidence in court during the time when the document or evidence was in *custodia legis* and whether it was also expedient in the interest of justice to take such action as required under Section 340 of Cr.P.C.

13. So far as the judgment relied upon by learned counsel for the petitioner in the case of ***Babu Lal v. State of Uttar Pradesh and Ors.*** (*supra*) is concerned, the same relates to the prayer made by the plaintiff in that case to take action against ***Babu Lal*** under Section 479-A of Cr.P.C., as according to the plaintiff, ***Babu Lal*** had given false evidence before the court. The concerned court held that no action could be taken against ***Babu Lal*** for the offence of intentionally giving false evidence or fabricating false evidence for the purpose of being used in the suit, such an action is barred by Section 479-A of Cr.P.C. In the opinion of the court, it was expedient in the interest of justice that a complaint case can be filed against ***Babu Lal***. ***Babu Lal*** challenged the said order unsuccessfully before the Sessions Court and before the Hon'ble High Court and ultimately his case was also dismissed by the Hon'ble Supreme Court. It is, thus, seen that the case of ***Babu Lal*** cited by the petitioner would not support his stand.

14. Another decision cited by learned counsel for the petitioner in the matter of ***M.S. Ahlawat*** (*supra*) would also not support the case of the petitioner as in paragraph No. 6 thereof general procedure has been laid down as to how a complaint may be preferred under Section 195 of the Cr.P.C.



15. The last judgment cited by learned counsel for the petitioner in the case of *Ashok Kumar Aggarwal (supra)* is distinguishable on the facts. In that case, the application filed by the appellant therein against respondent No. 5 under Section 340 read with Section 195(1)(b) of the Cr.P.C. was dismissed and order of dismissal was affirmed by the Hon'ble Supreme Court.

16. In view of the aforesaid analysis, this court is of the considered opinion that the view taken by the Civil Judge and affirmed by the Additional District Judge is based on the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of *Iqbal Singh Marwah and Anr. (supra)*, and hence no interference is called for in exercise of power under Section 482 of the Cr.P.C. by this court.

17. Accordingly, the petition stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 30, 2022
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