

CRR 2136 of 2023

In re : An application under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of : **Sivam Singh @ Saheb Singh**

..... petitioner

**Mr. Moyukh Mukherjee,
Mr. Pritam Roy,
Mr. Soewel Bhattacharya.**

.... For the petitioner

**Mr. Ranabir Roychowdhury
Mr. Mainak Gupta.**

.... For the State

This revision application has been filed challenging the order dated 07.06.2023 passed by learned Chief Judicial Magistrate refusing the prayer under Section 156 (3) of the Code of Criminal Procedure.

Petitioner's Case: According to petitioner, he himself along with other persons were made an accused in connection with Watgunge Police Station case No 44/2023 dated 25th February, 2023, under sections 324/114 of the Indian Penal Code read with sections 25/27 of the Arms Act, on the basis of a complaint made by the Opposite Party No. 2 of this revision application.

It was alleged that on 25th February, 2023, at about 10.15 hours, near Jan Kalyan School, the petitioner along with other co-accused assaulted cousin brother of the complainant, namely, Shankar Nag with iron and gum handle (revolver). Further case of the petitioner that on 23.02.2023 he had been to Dubai in UAE and returned back on 1st March, 2023 to India. Petitioner also filed a writ petition being WPA 5646 of 2023 before this Hon'ble Court.

The case was investigated and ended with final report discharging the petitioner from this case.

Thereafter, petitioner filed one application under Section 156 (3) of the Code of Criminal Procedure, 1973 against Amit Nag and Shankar Nag for giving false statement before the police to implicate him to knowingly well that he was nowhere involved or on the date of incident alleged, he was not in India, let alone within the jurisdiction of Watgunge Police Station.

Learned Chief Judicial Magistrate, Alipore refused the application on the following reason:

“However statements made under section 161 Cr. P.C. being not made under oath would hardly come under “evidence” as contemplated under section 195 A I.P.C. so no question of anyone being threatened to give false evidence as contemplated under section 195A I.P.C. arises.

In above premises no case for taking cognizance of offence punishable under section 195A I.P.C. in above circumstances arises either.

Hence alleged offences under sections 176/177/193/211 IPC being non cognizable and alleged offence under section 195A I.P.C. being not made out from petition of complaint, instant application under section 156 (3) Cr. P.C. stands rejected.

Instant application hence disposed of.”

Learned advocate appearing on behalf of the petitioner Sivam Singh @ Saheb Singh admitted the observation of the learned Chief Judicial Magistrate on the ground that the statement before the Police under Section 161 of the Criminal Procedure Code is an evidence within the meaning of Section 191 of the Indian Penal Code to constitute an offence under Section 195 (A) of the Indian Penal Code.

On the other hand, Mr. Ranabir Roychowdhury, learned advocate appearing on behalf of the State has drawn my attention to Section 3 of the Indian Evidence Act and has submitted that the statement before the Police Station under Section 161 of the

Criminal Procedure Code cannot be construed as evidence in any manner.

Section 161 of the Code is hereunder:-

“161. Examination of witnesses by police.- (1)

Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.”

I would also like to reproduce Section 191 of the Indian Penal Code; hereunder:-

“191. Giving false evidence.- *Whoever, being legally bound by an oath or by an express provision of law to state the truly, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.*

Explanation 1.- A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2- A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by

stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.”

To construe an offence under Section 195 (A) of the Indian Procedure Code we have to take assistance of Section 191 of the Indian Penal Code where false evidence has been elucidated. A person being legally bound to state truth on oath or to make any statement by any express provision of law, makes false statement, is said to give false evidence.

Therefore, within the meaning of Section 191 of the Indian Penal Code false evidence means either by giving false evidence before any institution on oath or before any authority, by an express provision of law, to state the truth, makes any false statement.

After conjoint reading of Section 161 of Criminal Procedure Code and Section 191 of the Indian Penal Code it comes to my view that even a statement within the meaning of Section 161 (2) of the Criminal Procedure Code will come within the preview of false evidence under Section 191 of the Indian Penal Code.

What I find from the Section 3 of the Indian Evidence Act, it deals with the procedural aspects of the evidence before the Court, i.e. all statements permitted by the Court to be given by the witness, within the preview of definition of evidence only in relation to the matters of fact under enquiry by the Court, but to constitute an offence under Section 195 (A) of the Indian Penal Code even false statement given before police will be considered as “false evidence” within the meaning of Section 191 of the Indian Penal Code.

In the aforesaid view of the matters, I am sorry to subscribe to the view of the learned Chief Judicial Magistrate for rejecting the application under Section 165 (3) of the Criminal Procedure Code on the ground that the statement under Section 161 of the Criminal Procedure Code is not an evidence, is liable to be set aside. Learned Chief Judicial Magistrate is requested to rehear the

application in terms of the observation made above and to dispose of that application according to law.

With the aforesaid observation and direction CRR 2136 of 2023 stands disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Bibhas Ranjan De, J.)