

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3128 of 2019

Sri Kamakhya Singhdeo

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Satadru Lahiri.

For the State : Mr. S.G. Mukherji, Learned PP,
Ms. Zareen N. Khan,
Mr. Md. Kutubuddin.

Heard on : 20.12.2022

Judgment on : 11.01.2023

Shampa Dutt (Paul), J.:

The revisional application under Section 482 of the Code of Criminal Procedure, 1973 is against the Judgment and order dated 29th June, 2019 passed by the Learned Additional Sessions Judge, Fast Track Court-II, Bichar Bhawan, Calcutta in connection with Criminal Revision No. 253 of 2018, thereby affirming the order dated 14th November, 2017 passed by the Learned Executive and Metropolitan Magistrate, 10th Court, Calcutta in connection with M. Case No. 125/2013 under Section 144(2) of the Code of Criminal Procedure, 1973 preferred by the Petitioner.

The Petitioner/Complainant's case is that he preferred an application under Section 144(2) of Cr.P.C. before the Learned Executive/Metropolitan Magistrate, 10th court, Calcutta being M. Case No. 125 of 2013. On 5th March, 2013, the Learned Magistrate was pleased to direct the Officer-in-charge, Shakespeare Sarani Police Station to see that the peace and tranquility at the disputed locale is not disturbed and also to ensure that no illegal act/construction/obstruction/nuisance is committed by the Opposite Party No. 2.

On or about 9th April, 2014, the inquiry officer of the instant case submitted a police report before the Learned Magistrate to the

effect that a ply board made mezzanine floor has been constructed in the said shop room and there is no rolling shutter in the place of wooden door.

The Opposite Party No. 2 constructed the mezzanine floor after 5th March, 2013 in clear violation of the specific order passed by the Learned Magistrate, which is not only showing disregard to the order passed by a Court of Law but also contemptuous, willfully violating a judicial order and is punishable under respective provision of the Indian Penal code, 1860.

Since the police personnel attached to Shakespeare Sarani Police Station showed their inertia to take any action against the Opposite Party No. 2 for continuing the illegal construction in spite of the specific order of the Learned Magistrate and also refused to protect the sanctity of the solemn order passed by the Learned Magistrate, on or about 06.10.2015 the Complainant/Petitioner preferred an application under Section 340 of the Code of Criminal Procedure, 1973 before the Learned Magistrate, thereby narrating the entire situation as well as praying for conducting necessary enquiry in terms of provision of Section 340 of Code of Criminal Procedure, 1973 and for initiating necessary prosecution against the Opposite Party No. 2 for commission of the complained offences punishable under Section 188 of the Indian Penal Code, 1960. But the Learned Magistrate upon hearing the Learned

Advocates appearing for the Complainant/Petitioner kept the said application with the record, without passing any order therein.

The Petitioner states that the instant proceeding was pending for hearing before the Learned Magistrate for a considerable period of time and all on a sudden on or about 14th November, 2017 the Learned Magistrate after hearing the Learned Advocates appearing for the respective parties was pleased to dismiss the instant case. The Learned Magistrate was pleased to observe that the disputes between the parties are civil in nature and any application under Section 144(2) of the Code of Criminal Procedure, 1973 cannot live for more than six months. But the Learned Magistrate did not pass any order as far as the application under Section 340 of Code of Criminal Procedure, 1973 preferred by the Complainant/Petitioner in connection with the instant proceeding.

The Complainant/Petitioner states that being aggrieved and/or dissatisfied by the order dated 14th November, 2017 passed by the Learned Magistrate in connection with M. Case No. 125 of 2013 the Petitioner preferred a revisional application being Criminal Revision No. 253 of 2018 before the Learned Chief Judge, City Sessions Court, Bichar Bhawan, Calcutta.

After hearing the Learned Advocates appearing for the respective parties, the Learned Judge on 29th June, 2019, vide the impugned judgment and order was pleased to dismiss the said revisional

application on contest, thereby affirming the order dated 14th November, 2017 passed by the Learned Magistrate, in connection with M. Case No. 125 of 2013.

The Complainant/Petitioner states that the Learned Judge while dismissing the revisional application was pleased to hold that in a proceeding under Section 144 of Code of Criminal Procedure, 1973, the Learned Magistrate has no scope to pass any order in connection with any application filed under Section 340 of Code of Criminal Procedure, 1973 as there is a specific provision, specific law and specific procedure for dealing with any application under Section 340 of Code of Criminal Procedure, 1973. The Learned Judge was further pleased to hold that disposal of the proceeding under Section 144 of Code of Criminal Procedure, 1973 without disposing of the application under Section 340 of Code of Criminal Procedure, 1973 preferred by the Complainant/Petitioner in connection with the said proceeding has no illegality as application under Section 340 of Code of Criminal Procedure, 1973 requires initiation of separate proceeding. It is needless to state that such observation of the Learned Judge is absolutely contrary to the respective provisions of Code of Criminal Procedure, 1973.

Mr Satadru Lahiri, Learned Counsel for the Petitioner has submitted that the Learned Session Judge, erred in law and fact

without appreciating that as per the specific mandate and/or legal bar contained in Section 195 of Code of Criminal Procedure, 1973, only the Learned Magistrate or his superior authority is competent to initiate any criminal proceeding against the Opposite Party No. 2 for violating the specific order passed by the Learned Magistrate after conducting necessary enquiry thereto.

The Learned Judge, while erroneously forming an opinion that the Learned Magistrate has no Jurisdiction/authority to entertain any application under Section 340 of Code of Criminal Procedure, 1973 in connection with the impugned proceeding under Section 144 of Code of Criminal Procedure, 1973, failed to appreciate the true content and purport of Section 340 of Code of Criminal Procedure, 1973. The Learned Judge denied to consider that the very genesis of the application under Section 340 of Code of Criminal Procedure, 1973 is violation of the solemn order passed by the Learned Magistrate in connection with the instant proceeding and the Learned Magistrate is one of the authority who can take cognizance of the violation and after conducting necessary enquiry may take appropriate steps for initiating any prosecution against the Opposite Party No. 2 for violating his order.

The Learned Judge while passing the impugned order erred in law and fact without appreciating that the purpose for preferring the application under Section 340 of Code of Criminal Procedure, 1973 by

the Complainant/Petitioner before the Learned Magistrate was not to initiate any criminal proceeding against the Opposite Party No. 2 at his instance on immediate basis but it was simply to draw the kind attention of the Learned Magistrate to the audacity, arrogant and contemptuous act of the Opposite Party No. 2 as well as the offence committed by him by violating the specific order passed by the Learned Magistrate. True and proper appreciation of the prayer made by the Complainant/Petitioner before the Learned Magistrate under Section 340 of Code of Criminal Procedure, 1973 would make it palpable that the same is restricted to cause an inquiry into the facts narrated and to form an independent opinion whether initiation of any such criminal proceeding against the Opposite Party No. 2 is expedient in the interest of administration of justice or not. It is mandatory under the law of the land that before dismissing/disposing of any proceeding, the Learned Magistrate who is conducting the trial /enquiry of the said proceeding shall consider each and every application preferred by the respective parties of the said proceeding and shall dispose of the applications vide reasoned and speaking order, which is missing in the instant case. The observation of the Learned Judge that disposal of the main proceeding without dealing with the application preferred under Section 340 of Code of Criminal Procedure, 1973 in connection with the said proceeding is not suffering from any illegality is contrary to well settled and basic principles of judicial discipline.

Both the Learned Judge as well as the Learned Magistrate erred in law and fact without appreciating that the Opposite Party No. 2 by his conduct not only violated the order passed by the Learned Magistrate but also made an attempt to violate the sanctity and/or sacrosanctity of the authority of the judicial forum. Such conduct of the Opposite Party No. 2 is not only an offence but also an offence against administration of justice, which has grave ramification in the society. The act amounts to undue interference with administration of justice.

Hence the revision praying for setting aside of the judgment and order dated 29th June, 2019 passed by the Learned Additional Sessions Judge, Fast Track Court –II City Sessions Court, Calcutta in Criminal Revision 253 of 2018 and also a prayer for a direction on upon the Learned Metropolitan Magistrate, Calcutta, to dispose of the application under Section 340 of the Cr.P.C. in M. Case 125 of 2013.

Learned Public Prosecutor has fairly submitted that the petition under Section 340 Cr.P.C. should have been disposed of, either before or with the main proceedings.

Section 340 Cr.P.C. lays down:-

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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

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

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, " Court" has the same meaning as in section 195."

Section 195 Cr.P.C. lays down:-

"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) of any offence punishable under sections 172 to 188 (both inclusive) of

(i) 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) of any offence punishable under any of the following sections of the

(i) 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), except on the complaint in writing of that Court [or by such officer of the Court as that Court may authorize in writing in this behalf], or of some other Court to which that Court is subordinate.....”

A division Bench of the Supreme Court **M/s Kapil Corepacks**

Pvt. Ltd. & Ors. vs. Shri Harbans Lal, on 3 August, 2010, held:-

“para 20.Section 195 of Cr.P.C. provides that whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished. Section 195 (1)(b) of the Cr.P.C. provides that no court shall take cognizance of any offence punishable under section 195 of IPC when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court. Section 340 of the Cr.P.C. provides that when upon an application made to it in that behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195 of Cr.P.C. 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, record a finding to that effect, make a complaint thereof in writing, sent it to a Magistrate of the first class having jurisdiction etc. Thus the power under section 340 CrPC read with section 195 IPC can be exercised only where someone fabricates false evidence or gives false evidence.....”

A reference answered/decided **on 15.09.22** by a Three Judge Bench of the Supreme Court in **Criminal Appeal No. 335/2020 (The State of Punjab vs. Jasbir Singh)** was as follows:-

“The reference order is a conflicting view in Sharad Pawar vs. Jagmohan Dalmiya & Ors.² to the extent that in para 7 while noticing the submissions of the counsels it was observed that it was necessary to conduct a preliminary inquiry as contemplated under Section 340 Cr.P.C. and “also to afford an opportunity of being heard to the defendants, which was admittedly not done.” The latter was stated to be contrary to the view in Pritish’s case (supra).

The reference order also simultaneously noted the observations in the Constitution Bench of this Court in Iqbal Singh Marwah vs. Meenakshi Marwah³ which was post the judgment in Pritish’s case (supra) but prior to the judgment in Sharad Pawar’s case (supra). In this behalf the extracted portion in 23 of the judgment reads as under :

“In view of the language used in Section 340 Cr.P.C. 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 interest of justice.” This shows that such a course will be adopted only if the interest of justice requires 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(i)(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.

Emphasis supplied”

On having considered the matter, it is our view that the Constitution Bench’s view would naturally prevail that makes the legal position quite abundantly clear. Not only that, if we may notice, what is reported in Sharad Pawar’s case (supra) is only an order and not a judgment. An order is in the given factual scenario. The judgment lays down the principles of law. The scenario is that any order or judgment passed by this Court becomes a reportable exercise to create more volumes of reported cases! This thus has a possibility at times of causing some confusion on the legal principles prevalent. The observations in the quoted paragraph extracted aforesaid apparently came out of the flow of the order rather than pronouncing any principles of law and that is why the Bench itself categorized what is observed as an order i.e, in the given factual scenario.

We have little doubt that there is no question of opportunity of hearing in a scenario of this nature

and we say nothing else but that a law as enunciated by the Constitution Bench in Iqbal Singh Marwah's case (supra) is in line with what was observed in Pritish's case (supra).

Interestingly both the judgments in Pritish's case and the Constitution Bench judgment in Iqbal Singh Marwah's case (supra) have not been noted in order passed in Sharad Pawar's Case (supra). The answer thus to the first question raised would be in the negative.

Insofar as the second question is concerned, the scope and ambit of such a preliminary inquiry, also stands resolved in terms of the Constitution Bench judgment of this Court in the Iqbal Singh Marwah's case (supra) as referred to aforesaid.

The reference is answered accordingly."

A Division Bench of The Supreme Court **on 2 September, 2020**
in **M/s Bandekar Brothers Pvt. Ltd. vs. Prasad Vassudev Keni,**
Criminal Appeal no. 546-550 of 2017, held:-

"9. Having heard the learned counsel appearing on behalf of the parties, it is necessary to set out the relevant sections of the CrPC and the IPC.

"190. Cognizance of offences by Magistrates.—

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

“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),

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; 10 (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."

"340. Procedure in cases mentioned in section 195.—*(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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 nonbailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

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

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint; 11

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, “Court” has the same meaning as in section 195.

341. Appeal.—*(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of*

section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.”

“343. Procedure of Magistrate taking cognizance.—(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.”

10.Section 190 of the CrPC states that a Magistrate may take cognizance of any offence in one of three situations: (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. However, Section 195 of the CrPC states that in the offences covered by it, no Court shall take cognizance except upon the complaint in writing of a public servant, insofar as the offences mentioned in sub-clause (1)(a) 15 are concerned, and by the complaint in writing of the “Court” as defined by sub-section (3), insofar as the offences delineated in sub-clause (1)(b) are concerned. The reason for the enactment of Section 195 of the CrPC has been stated felicitously in *Patel Laljibhai Somabhai v. State of Gujarat* (1971) 2 SCC 376, as follows:

“7. The underlying purpose of enacting Section 195(1)(b) and (c) and Section 476, seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offence and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by Section 190 CrPC, of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party.”

11. This section has been construed to be mandatory, being an absolute bar to the taking of cognizance under Section 190 of the CrPC, unless the conditions of the section are met, as held by this Court in *Daulat Ram v. State of Punjab* (1962) Supp. 2 SCR 812 as follows (at page 815):

“The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tahsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge-sheet had satisfied the requirements of Section 195. The words “no court shall take cognizance” have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.”

12.*Under Section 340 of the CrPC, the procedure in cases mentioned in Section 195 of the CrPC is set out. The Court may make a preliminary enquiry if it thinks necessary, and then record a finding to the effect that the provisions of Section 195(1)(b) of the CrPC are attracted, as a result of which the Court itself is then to make a complaint in writing, and send it to a Magistrate of the first class having jurisdiction. Where the Court declines to make any such complaint, an appeal is provided under Section 341 of the CrPC. The appellate power of the Court under Section 341 can also be invoked, insofar as a complaint has been made under Section 340, by the person so aggrieved. By Section 341(2), the appellate order shall be final and shall not be subject to revision. Finally, a Magistrate to whom a complaint is made under these sections shall proceed to deal with the case as if it were instituted on a police report – vide Section 343(1).*

19.*At this stage, it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the CrPC. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of the CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence*

punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court.

20. *The words “in relation to” have been the subject matter of judicial discussion in many judgments. Suffice it to say that for the present, two such judgments need to be noticed. In **State Wakf Board, Madras v. 25 Abdul Azeez Sahib and Ors.**, AIR 1968 Mad. 79, the expression “relating to” contained in Section 57(1) of the Wakf Act, 1954 fell for consideration before the Madras High Court. The High Court held:*

*“8. We have no doubt whatever that the learned Judge, (Kailasam, J.), was correct in his view that even the second suit has to be interpreted as within the scope of the words employed in S. 57(1) namely, “In every suit or proceeding relating to title to Wakf property”. There is ample judicial authority for the view that such words as “relating to” or “in relation to” are words of comprehensiveness which might both have a direct significance as well as an indirect significance, depending on the context. They are not words of restrictive content and ought not to be so construed. The matter has come up for judicial determination in more than one instance. The case in *Compagnie Financiere Dae Pacifique v. Peruvian Guano Co*, is of great interest, on this particular aspect and the judgment of Brett, L.J., expounds the interpretation of O. 31, R. 12 of the Rules of the Supreme Court, 1875, in the context of the phrase “material to any matter in question in the action”. Brett, L.J., observed that this could both be direct as well as indirect in consequences and according to the learned Judge the test was this (at page 63):*

“...a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary if it is a document which may fairly lead him to a train of inquiry, which may have either of these consequences.”

23.*In Iqbal Singh Marwah* (supra), a 5-Judge Bench was constituted in view of a conflict between decisions of this Court as follows:

“2. In view of conflict of opinion between two decisions of this Court, each rendered by a Bench of three learned Judges in *Surjit Singh v. Balbir Singh* [(1996) 3 SCC 533] and *Sachida Nand Singh v. State of Bihar* [(1998) 2 SCC 493] regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short “CrPC”), this appeal has been placed before the present Bench.”

24.The Court first spoke of the broad scheme of Section 195 of the CrPC, which deals with three distinct categories of offences, and held that the category of offences contained in Section 195(1)(b)(ii) ought to be read along with the offences contained in Section 195(1)(a) and 195(1)(b)(i), which are clearly offences which directly affect either the functioning or discharge of duties of a public servant or of courts of justice. This was stated in paragraph 10 of the judgment as follows:

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

25.*The Chapter heading of Chapter XXVI of the CrPC, which contains Sections 340 and 341 was then referred to – the heading reading “Provisions as to Offences Affecting the Administration of Justice”, which according to the Court also indicated that the offences mentioned in Section 195(1)(b)(ii) are offences which directly affect the administration of justice. After referring to various judgments, the Court then explained the difference between Section 195(1)(c) of the Code of Criminal Procedure, 1898 and Section 195(1)(b)(ii) of the CrPC, 1973 as follows:*

“19. *As mentioned earlier, the words “by a party to any proceeding in any court” occurring in Section 195(1)(c) of the old Code have been omitted in Section 195(1)(b)(ii) CrPC. Why these words were deleted in the corresponding provision of the Code of Criminal Procedure, 1973 will be apparent from the 41st Report of the Law Commission which said as under in para 15.39:*

“15.39. The purpose of the section is to bar private prosecutions where the course of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige. On principle there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of Section 195.”

20. *Since the object of deletion of the words “by a party to any proceeding in any court” occurring in Section 195(1)(c) of the old Code is to afford protection to witnesses also, the interpretation placed on the said provision in the earlier decisions would still hold good.”*

26. *Importantly, the Court then stated that Section 195 of the CrPC is an exception to the general provision contained in Section 190 thereof, and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated under Section 195, which must be necessarily follow the drill contained in Section 340 of the CrPC.*

44. *Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 of the CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the CrPC must be followed. Thus, in **State of Karnataka v. Hemareddy** (1981) 2 SCC 185, this Court referred to a judgment of the Madras High Court (*Re V.V.L. Narasimhamurthy* AIR 1955 Mad 237) and approved its ratio as follows:*

“7...In the third case, Somasundaram, J., has observed:

“The main point on which Mr Jayarama Aiyar appearing for the petitioner seeks to quash this

committal is that on the facts an offence under Section 193 IPC is disclosed for which the court cannot take cognizance without a complaint by the court as provided under Section 195(1)(b) of the Criminal Procedure Code. The first question which arises for consideration is whether on the facts mentioned in the complaint, an offence under Section 193, IPC is revealed. Section 193 reads as follows:

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

'Fabrication of false evidence' is defined in Section 192. The relevant portion of it is:

Whoever causes any circumstance to exist intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance may cause any person who in such proceeding is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding is said 'to fabricate false evidence'.

The effect of the allegations in the complaint preferred by the complainant is that the petitioner has caused this will to come into existence intending that such will may cause the judge before whom the suit is filed to form an opinion that the will is a genuine one and, therefore, his minor daughter is entitled to the property. The allegation, therefore, in the complaint will undoubtedly fall under Section 192 IPC. It will, therefore, amount to an offence under Section 193 IPC, i.e. fabricating false evidence for the purpose of being used in the judicial proceeding. There is no doubt that the facts disclosed will also amount to an offence under Sections 467 and 471, IPC. For prosecuting this petitioner for an offence under Sections 467 and 471, a complaint by the court may not be necessary as under Section 195(1)(b), Criminal PC a 47

complaint may be made only when it is committed by a party to any proceeding in any court.

Mr Jayarama Aiyar does not give up his contention that the petitioner, though he appears only a guardian of the minor girl, is still a party to the proceeding. But it is unnecessary to go into the question at the present moment and I reserve my opinion on the question whether the guardian can be a party to a proceeding or not, as this case can be disposed of on the other point viz. that when the allegations amount to an offence under Section 193 IPC, a complaint of court is necessary under Section 195(1)(a), of the Criminal PC and this cannot be evaded by prosecuting the accused for an offence for which a complaint of court is not necessary.”

8. *We agree with the view expressed by the learned Judge and hold that in cases 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.”*

53.*It now remains to deal with some of the other submissions of Shri Mishra. The submission of Shri Mishra challenging the finding of the High Court that the Appellants did not file any proceedings under Section 482 of the CrPC to make a grievance that the complaint discloses other offences also, and that the Magistrate ought to have issued process for the same, has no legs to stand on. Whether a High Court acts suo motu under Section 482 of the CrPC is for the High Court to decide, being a discretion vested in the High Court to be exercised on the facts of the case. As we have seen, the facts of this case clearly show that the two complaints dated 11.08.2009 correctly invoked Section 195 read with Section 340 of the CrPC, and were then sought to be converted into private complaints, thereby attempting to fit a square peg in a round hole. This has correctly been*

interdicted by the Sessions Court in revision, and by the High Court judgment under appeal.

Finally the Court directed that Once the Magistrate's order had been set aside, the learned Additional Sessions Judge ought to have relegated the parties to the position before the original complaints had been converted into private complaints. Since this has not been done, we find that Shri Mishra is right in stating that even though allegedly serious offences have been made out under Sections 191 and 192 of the IPC, yet the complaints themselves have now been quashed. We, therefore, reinstate the two complaints in their original form so that they may be proceeded with further, following the drill of Sections 195 and 340 of the Cr.P.C."

Thus keeping with the decisions of the Supreme Court and the relevant provision of law, it is clear that the Session Judge's findings are erroneous and not in accordance with law. The Session Judge failed to apply the relevant provision of law being Section 340 (2) of Cr.P.C.

The Session Judge should have exercised its power under Section 340 (2) of Cr.P.C. when the Learned Magistrate failed to make a Complaint under Sub Section (1) of Section 340 Cr.P.C. in respect of that offence or failed to reject the application for the making of such complaint.

Obviously it was the duty of the Magistrate to dispose of the application under Section 340 Cr.P.C. but when he failed it was within the power of the Learned Session Judge to decide the same

as per the provision of Section 340 (2) Cr.P.C. which the court failed by coming to erroneous findings.

Accordingly, the Judgment under appeal dated 29th June, 2019 being not in accordance with law is set aside. The Sessions court shall proceed to dispose of the said application following the drill of Sections 195 and 340 of the Cr.P.C. (As in the words of **Justice R. F. Nariman in M/s Bandekar Brothers Pvt. Ltd. & Anr. Vs Prasad Vassudev Keni Etc..Etc. (Supra)**).

The Session Judge while disposing of the application by exercising its power under Section 340 (2) of the Cr.P.C. shall also be guided by the judgment of the three Judge Bench of the Supreme Court in **Criminal Appeal 335/2020 (The State of Punjab Vs Jasbir Singh) (supra)**.

Criminal revision being **CRR 3128 of 2019 is allowed.**

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)