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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	***01.03.2023***
Delivered on	***27.04.2023***

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl. O.P. No.1807 of 2021
and Crl.M.P. Nos.1058 & 1059 of 2021

1. R.Santhosh
2. R.Vimala …Petitioners /Accused 2 & 3

Versus

1. State rep. by
The Inspector of Police,
Central Crime Branch,
Coimbatore City, Tamil Nadu. … First respondent

2. Vikram R Naidu ... Second Respondent/Defacto complainant

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the case in C.C. No.1399 of 2019 on the file of Judicial Magistrate VII, Coimbatore and quash the same by allowing the Criminal Original Petition.

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For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.R.Karthikeyan

For Respondent 1 : Mr. E.Raj Thilak
Additional Public Prosecutor

2 : Mr.Nithyaesh Nataraj

ORDER

This Criminal Original Petition has been filed to call for the records relating to the case in C.C.No.1399/2019 on the file of the Judicial Magistrate VII, Coimbatore and quash the same.

2. The first petitioner is the son of second petitioner and they are accused 2 and 3 respectively in C.C. No.1399 of 2019 pending on the file of the VII Judicial Magistrate, Coimbatore (previously in C.C. No.232 of 2014 before the VI Judicial Magistrate, Coimbatore).

3. **The case of the prosecution in brief**:-

The first accused in this case is V.Radhakrishnan. The first petitioner / second accused is the son of V.Radhakrishnan born through the third accused R.Vimala, who is the second petitioner. The second respondent / *de*

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facto complainant is the son of one V.Radhakrishnan who was born in the year 1968 through one Savithiri R.Naidu. During the year 2004 the first accused V.Radhakrishnan settled certain properties situated at Sowripalayam, Peelamedu, Race Course and C.Punjai Puliampatty, Nallur in favour of the *de facto* complaint vide Doc.No.70, 161, 101/2004. Subsequently the *de facto* complainant settled the said properties in favour of his mother Savithri R.Naidu vide document Nos.229, 352 and 220/2004. The revenue records have also been mutated in favour of Savithri R.Naidu.

3.1 On 21.06.2006 the first accused executed a memorandum of family arrangement among the accused 2 and 3 and for which the fourth and fifth accused stood as witnesses. During the year 2007 due to some misunderstanding the first accused abandoned the *de facto* complainant and his mother Savithiri R.Naidu and cancelled the previous settlement deeds executed in favour of the second respondent and his mother and settled the same in favour of the second accused. Thereafter, the second accused filed a suit in O.S. No.2360 of 2007 before the District Munsif, Coimbatore for bare injunction. The said suit was withdrawn subsequently with a liberty to file a fresh one.

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3.2 The first accused was in good terms and his relationship with the second respondent and his mother was cordial till 27.10.2007 and thereafter he abandoned them. Taking advantage of the same the accused 1 to 5 entered into a criminal conspiracy to create a forged and fabricated documents for the purpose of invalidating the settlement deed in favour of the *de facto* complainant and to cancel the previous Memorandum of Understanding dated 21.06.2006. The accused tampered the stamp papers and created two Memorandum of Understanding dated 23.02.1993 and 29.06.2006. They used the same in O.S. No.24 of 2008 before the I Additional District Judge, Coimbatore as genuine documents. The forged documents are shown as genuine documents before the Court and hence charge sheet has been filed against the accused.

4. The learned counsel for the petitioners submitted that the marriage between the second petitioner / third accused and the deceased first accused took place on 10.12.1964 and out of their wedlock the first petitioner / second accused was born on 24.02.1968; the father of the first accused namely Venkatasamy Naidu was a famous industrialist and the business was expanded by the first accused also; one Narendran was working as the

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Manager in the first accused company Kamala Sugar Mills Ltd., Udumalpet and married the *de facto* complainant's mother Savithiri on 29.06.1964 and two sons born to them; one of them is the *de facto* complainant; from the year 1964 to 1974, the said Savithiri and Narendran were living together and thereafter they got separated; subsequently Savithiri became closer to the first accused and developed an affair with him; Savithiri filed a divorce petition against her husband in the year 1982 vide O.P. No.144 of 1982 before the City Civil Court, Chennai and the same was ordered on 30.11.1983; in the said proceedings it has been stated by Savithiri that both her children were born to Narendran and in all the school records of the *de facto* complainant his father's name is shown as Narendran; the mother of the *de facto* complainant had filed income tax returns till the year 2003 by stating that she is the wife of Narendran.

4.1 In the year 1993 the first petitioner wanted to marry a girl by name Archana who was from a different caste and that was objected by the first accused; since the first petitioner was stubborn to marry Archana, the first petitioner's father who is the first accused herein had put a condition that within six months of their marriage all the properties of his grandfather

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which was partitioned in his favour should be allotted to the share of the first accused; accordingly a partition was taken place and the properties allotted to the share of the first petitioner / second accused was sold in favour of the first accused without any consideration vide sale deeds dated 29.03.1993, 30.03.1993, 14.06.1993, 20.08.1993 & 27.08.1993; a memorandum of understanding has been arrived at between the first and second accused on 23.02.1993 and thereafter the sale deeds dated 29.03.1993, 30.03.1993, 14.06.1993, 20.08.1993 & 27.08.1993 have been created in favour of the first accused; the first petitioner / second accused agreed to execute all those documents with the sole intention of seeing the first accused attend his marriage.

4.2 On 12.03.1993 the marriage between the first petitioner and Archana was solemnized in the presence of his father the first accused; after marriage, the first petitioner along with his wife went to Mumbai and settled there for a few days and thereafter the couple were not allowed to enter into his house.

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4.3 The suit in O.S.No.39 of 1996 was filed by the second respondent and his mother to declare the first accused as the father of the *de facto* complainant and it was filed with some *malafide* intention; in the said suit the first accused was shown as the second defendant and Narendran was shown as the first defendant; the suit was dismissed that no notice was sent to the first defendant; thereafter a review petition was filed and the suit was restored; the said Narendran entered into appearance and filed a written statement and the suit was decreed on 29.09.1999 on the basis of the written statement filed by Narendran.

4.4 The mother of the second respondent had stated contradictory statements in her divorce petition filed in O.P. No.144 of 1982 and the suit filed in O.S. No.39 of 1996; in the divorce petition she had stated that herself and Narendran were living together for ten years (i.e.) from the year 1964 to 1974; but in O.S. No.39 of 1996 she had stated that they lived together only for two years i.e. from 1964 to 1966.

4.5 In the year 2004 the first accused executed three settlement deeds dated 13.01.2004, 20.01.2004 and 03.02.2004 in favour of the second

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respondent; immediately thereafter the *de facto* complainant executed a settlement deed in favour of his mother Savithri and they are dated 30.01.2004, 03.02.2004 and 17.02.2004; for some time the first petitioner / second accused came to Coimbatore and he entered into a Memorandum of Understanding with the second respondent and his mother on 21.06.2006 and 29.06.2006 and by virtue of the said Memorandum of Understanding it was agreed that the properties of the first accused should go to the first petitioner / second accused as per the wishes of the mother of the first accused; from June 2006 the first petitioner was living with the petitioners and only during that time the first accused wanted to settle all the properties in favour of the second accused and hence he executed cancellation deeds dated 01.11.2007 and 12.11.2007 for cancelling the settlements and subsequently settled the properties in favour of the first petitioner through a registered settlement deed dated 05.11.2007 and 12.11.2007.

4.6 The first accused had informed about the decree passed in O.S.No.39 of 1996 and hence the petitioners filed a suit in O.S. No.8011 of 2007 before the City Civil Court, Chennai to set aside the collusive decree obtained in O.S. No.39 of 1996 and the same was allowed; the second

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respondent's mother challenged the same by way of preferring an appeal in A.S. No.97 of 2014 and the same was also dismissed on 20.09.2017 and thereafter the second respondent preferred a second appeal in S.A. No.893 of 2017 and the same is pending before this Court; so there is no order of the Court confirming the status of *de facto* complainant that he is the son of the first accused; the first petitioner / second accused had filed a suit in O.S. No.24 of 2008 before the District Court, Coimbatore seeking for declaration that the settlement deeds executed in his favour are valid and the settlement deed executed in favour of the second respondent is illegal and void along with the prayer for permanent injunction restraining the second respondent and his mother from alienating the property or interfering with the enjoyment of the first petitioner; during the said proceedings the memorandum of understanding dated 23.02.1993 and 29.06.2006 were marked as Exs.P16 and P17; the interim orders as prayed was granted in favour of the first petitioner / second accused and the said orders have been challenged by the second respondent in C.M.A. No.3920 of 2008 and C.M.A. No.612 of 2009; by virtue of a common order dated 21.12.2016 the earlier interim orders granted in favour of the first petitioner /second accused were confirmed; having got aggrieved the second respondent filed a complaint by stating that

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the Memorandum of Understanding were created out of fraud and they have been used for the Court proceedings; only based on the above complaint, FIR has been registered.

4.7 The first petitioner had preferred a Criminal Original Petition in Crl.O.P. No.12280 of 2014 to quash the FIR but the said petition was dismissed on 07.11.2014; even prior to the said order the first respondent filed a charge sheet in the case and the same was taken on file in C.C. No.232 of 2014 by the learned Judicial Magistrate VI, Coimbatore; as against the said order, the petitioners preferred an appeal before the Hon'ble Supreme Court in SLP No.1006 of 2016 and in which the Hon'ble Supreme Court has passed the following order:

> "*The petitioner will be at liberty to seek exemption from personal appearance before the trial Court. If any such application is filed, the exemption from personal appearance be granted to the petitioner subject to such conditions as may be laid down by the trial Court.*
>
> *Any observation made in impugned order will not prejudice the contentions of the petitioner at the stage of final order. We make it clear that we have not expressed any opinion on merits.*"

4.8 The only charge laid by the first respondent is that the accused have created a memorandum of understanding by creating forgery with an intention to cheat the rights of second respondent in his mother's property; it

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is alleged by the second respondent that the dates in the stamp paper has been changed and the registration number in the stamp paper does not tally with the original record and there is a change in the serial number of the document and the witness by name Perumal has mentioned his address as Erode in memorandum of understanding dated 23.02.1993, but the Erode District itself was formed only in the year 1996 and it was previously known as Periyar District.

4.9 The entire case of the prosecution is civil in nature and the proceedings is abuse of process of law; the charge sheet of the first respondent did not mention Section 463 and 464 IPC and without the above charges the charge under Section 468 IPC will not lie; anti-dating of a document will not be an offence of forgery; the offences under Section 463 and 464 IPC is not made out and the petitioners could not be charge sheeted for cheating.

4.10 In ***Mir Nagvi Askari Vs. CBI*** reported in ***(2009) 15 SCC 643*** it is held that vouchers that were made dishonestly by the employees of the bank for the profit of the co-accused were held to be false documents within the

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meaning of Section 464 IPC, as they were not made with an intention of causing it to be believed that the vouchers were made by or under the authority of somebody else; in the present case the property has already been settled in favour of the first petitioner by his father, the first accused, in the year 2007 and hence there cannot be forgery or cheating of his own property and hence the charges will not lie.

4.11 The main allegation of the prosecution is that those documents have been forged and they have been used in the course of law for the purpose of cheating the second respondent; in that case the Judicial Magistrate will not have the jurisdiction to take cognizance and the rightful action can only be before the concerned civil Court under Section 340 Cr.P.C.

4.12 In the recent Apex Court judgment in ***M/s.Bhandekar Brothers Pvt. Ltd. Vs. Prasad Vasudev Keni*** in ***Crl.A.No.546 – 550 of 2017,*** it is held that even if a forged document is relied in the Court of law, the forgery committed well before the document changes the nature of *custodia legis* and hence the complaint has to be filed only under Section 340 Cr.P.C. and

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not under Section 190 Cr.P.C; it is the first accused who purchased the alleged forged documents in his name and prepared the Memorandum of Understanding dated 23.02.1993 and 29.06.2006 and the petitioners are mere signatories and hence no charge can be made against the petitioners.

4.13 The first accused was in the habit of preparing settlement deeds and other conveyance documents by himself; so the settlement deeds in favour of the second respondent and the first petitioner have been prepared by him and hence the charges against these petitioners should be quashed.

4.14 For initiating action against the production of false documents the petitioners ought to have been prosecuted for the offence under Section 191, 192 & 193 IPC and for which the procedure under Section 195 (1)(b)(i) Cr.P.C. and Section 340 Cr.P.C. are applicable; the date and the serial number in the stamp paper was manipulated by the stamp vendor and the said fact was stated in his statement; for the mistake of the stamp vendor, the petitioners cannot be punished; in view of the above stated reasons, the proceedings should be quashed as against the petitioners.

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4.15 In support of his above contention, the learned Senior Counsel for the petitioners cited the following the judgment of the Hon'ble Supreme Court rendered in ***M/s.Bandekar Brothers Pvt. Ltd. & Another Vs. Prasad Vassudev Keni & others*** reported in ***(2020) 20 SCC 1.***

5. Mr.A.Gopinath, the learned Government Advocate (Crl.side) appearing for the first respondent submitted that the petition has been filed just to protract the proceedings; the first petitioner / second accused have already filed a petition in Crl.O.P. No.12280 of 2014 to quash the FIR on the very same grounds and that has been dismissed by virtue of the order of this Court dated 07.11.2014; during the said proceedings also the very same point of *custodia legis* was raised and it has been dealt; even while the said proceedings were pending the investigation has been completed and the charge sheet has been filed and the same was observed in the order dated 07.11.2014; since the first petitioner had raised some legal grounds, the Court proceeds to deal with the same and held that the dispute raised in that case is not purely civil in nature but the act of the accused makes out an offence of forgery and other allied offences and hence it requires a trial; it has been further observed that in order to decide the question of forgery the

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prosecution need not wait until the completion of the proceedings before the Civil Court where the documents were used.

5.1 The family arrangement is dated 21.06.2006, but the stamp paper on which it has been written itself was sold only on 09.01.2008; the above fact has also been observed by this Court in its order dated 07.11.2014 and held that there are *prima facie* materials available to make out creation of false documents with a view to defraud the *de facto* complainant and his mother; the Court has also observed that the second petitioner / third accused and another accused one Palanisamy have filed petitions in Crl.O.P. No.9770 & 19971 of 2010 respectively seeking to quash the very same FIR in Cr. No.90 of 2009 and they were dismissed as withdrawn on 19.04.2012; the fourth accused had also filed a similar petition in Crl.O.P. No.32022 of 2012 for quashing the FIR; even though the earlier Criminal Original Petition filed by the other accused were dismissed again a Criminal Original Petition in Crl.O.P. No.32022 of 2012 was dismissed as not pressed on 24.02.2014; the petitioners were in the habit of filing one petition or another just in order to see the proceedings does not proceed further.

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5.2 Having known well that the points that is sought to be raised now by the petitioners have already been raised and the question of law on the point of *custodia legis* has already been dealt in the earlier petitions, this petition has been filed once again without any valid reasons; after the charge sheet has been filed the fourth accused had filed a petition before the Judicial Magistrate in C.M.P. No.6358 of 2018 for discharge and the same was allowed; the second respondent / *de facto* complainant challenged the same by way of preferring a Criminal Revision in Crl.R.C. No.731 of 2018 and the same was allowed by virtue of the order of this Court dated 11.01.2019; while passing the said order it has been directed that the trial should be completed within a period of six months but that has been frustrated by the petitioners by way of filing this petition; in fact the SLP filed by the fourth accused challenging the order dated 11.01.2019 passed in Crl.R.C. No.731 of 2018 itself has been dismissed; despite the same, repeated petitions have been filed just to prevent the proceedings in some way or other; hence the petition should be dismissed.

6. Mr.Nithyaesh Nataraj, the learned counsel for the second respondent submitted that the Criminal Original Petitions have been filed by the

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petitioners in continuation of their earlier returns to stall the proceedings; there are clear materials to show that the petitioners have tampered and forged certain documents for the purpose of producing the same as evidence before the Court; the report of the Forensic Science Department would also confirm about the fact that the accused had committed forgery; in the order of this Court dated 07.11.2014 in Crl.O.P. No.8522 of 2013 and 12280 of 2014, it has been made in detail about the manner in which the petitioners continued to drag the proceedings; even during the said proceedings the petitioners have taken the very same submission that the Court has to take action for producing false evidence and the second respondent has got no *locus standi* to file the complaint; however the Court had adverted the said point and held that the second respondent would come under the purview of the aggrieved person since he had suffered a legal grievance.

6.1 Reference was made to the judgment of the Supreme Court held in ***Shoba Suresh Jumani Vs. Appellate Tribunal Forfeited Property and another*** reported in ***(2001) 5 SCC 755***; further it has been observed that the offence of forgery was not committed during the pendencey of the proceedings before the Civil Court; the offence of forgery was continuing

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even before the suit was filed and they have been filed before the Court knowing well that it is a forged document; since forging of document and producing the same as evidence before the Court makes out two different and distinct offences and for the offences of forgery one need not wait till the civil proceedings are completed; the *prima facie* clearance about the offence of forgery has been recorded in the order of this Court and hence it does not require any further reconsideration.

6.2 In fact the petitions filed by the third and fifth accused in Crl.O.P.No.9770 & 19971 of 2010 were filed only to be withdrawn as not pressed; the fourth accused have filed yet another petition in Crl.O.P. No.32022 of 2012 for seeking the very same prayer of quashing the proceedings and the said petition was also withdrawn subsequently; the petitioners were in the habit of filing repeated petitions with a view to get stay for one reason or another and stumble the proceedings; the direction given by this Court in its order dated 11.01.2019 made in Crl.R.C. No.731 of 2018 to complete the trial within a prescribed time limit was also flouted by filing this petition and keeping it pending; so far as the legal point on *custodia legis* is concerned the second respondent also relies on the very

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same decision relied by the petitioner in ***Bandekar's case (cited supra),*** wherein it has been made clear that the principle of *custodia legis* will not applicable to the offence of forgery which have been committed even prior to the document was produced before the Court.

6.3 It is not the contention of the second respondent that the documents were tampered after they were produced before the Court; but the consistent statement of the second respondent is that the forged document has been produced before the Court in order to defraud the second respondent and to enjoy the unlawful bargain through dishonest means; hence the petitioners have not made out any ground for quashing the charge sheet and hence the petition should be dismissed and the proceedings before the trial Court should be allowed to be proceeded.

7. This is a yet another petition from the accused involved in this case. The learned counsel for the petitioners did not deny the fact about the earlier petitions filed by the first petitioner and others for quashing the FIR and the same was dismissed. In such case it cannot be denied that in the order of this Court dated 07.11.2014 in Crl.O.P. No.8522 of 2013 and 12280 of 2014

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itself , the legal implication of the principle of *custodia legis* has been dealt. In the earlier order itself the Court has held if the forged documents have been produced even before the production of documents as evidence before the Court and for a distinct offence of forgery, one need not wait until the completion of the civil proceedings.

8. However, it was the argument of the learned Senior Counsel for the petitioners that the offences for which the accused should be charged in this case should fall under Section 195 (1)(b)(i) Cr.P.C. and hence the complaint in writing ought to have been made by the Court where the civil case is pending and the second respondent cannot file a criminal complaint. The judgment of the Supreme Court held in ***Bandekar's case (cited supra)*** has dealt the above legal aspect directly. An analysis has been made in the above case by the Hon'ble Supreme Court by referring various judgment of the Supreme Court and clarity has been given on the subject of *custodia legis*. In this regard a distinction has been made between three categories of offences listed out under Section 195 Cr.P.C. by referring the Judgment of ***Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another*** reported in ***(2005) 4 SCC 370.***

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9. During that course, the difficulty of an aggrieved person to wait until the proceedings are over in order to get remedy for production of forged document as evidence before the Court was not omitted to be looked into by the Hon'ble Supreme Court. It is held that if the documents produced before the Court have been forged even before it was produced before the Court, the person aggrieved need not wait indefinitely for the proceedings to get completed and such an interpretation would be detrimental to the interest of the society at large. The relevant part in ***Iqbal Singh Marwa's case (cited supra,)*** reads as under:

> " *"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 SachidaNand Singh 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."*

10. In ***Bandekar's case (cited supra)*** the Hon'ble Supreme Court has held as under:

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"*32. The Court then held that where it is possible, interpretatively speaking, an impracticable result should be avoided (see paras 26 and 27). The Court, which was dealing with a forged will that had been introduced in court proceedings after it was forged, therefore concluded: (Iqbal Singh Marwah case, SCC pp. 390-91, paras 33-34)*

> "*33. In view of the discussion made above, we are of the opinion that SachidaNand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.*
>
> *34. In the present case, the will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) CrPC would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference."*

33. Thus, Iqbal Singh Marwah is clear authority for the proposition that in cases which fall under Section 195(1)(b)(ii) CrPC, the document that is said to have been forged should be custodialegis after which the forgery takes place."

11. In ***Bandekar's case (cited supra)*** the Hon'ble Supreme Court has made out a distinction between Section 195 (1)(b)(i) Cr.P.C. and Section 195 (1)(b)(ii) Cr.P.C. only in order to hold that the ratio laid down in ***Iqbal Singh Marwah's case (cited supra)*** is in the context of offences mentioned

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under Section 195 (1)(b)(ii) Cr.P.C. The relevant portions of ***Bandekar's case (cited supra)*** is extracted hereunder:

> "26. *Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation to", making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodialegis, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the appellant's case, namely, this Court's judgment in Iqbal Singh Marwah[1].*
>
> *27. In Iqbal Singh Marwah[1], a five-Judge Bench was constituted in view of a conflict between decisions of this Court as follows: (SCC p. 376, para 2)*
>
> > "*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 and SachidaNand Singh v. State of Bihar14 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.*'""

12. So in the above judgment it is made clear that one need not wait until the proceedings before any Court where the forged documents is produced is completed in order to take action for the offence of forgery. No doubt the allegations and the charges involved in this case with regard to

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forgery would fall under Section 195(1)(b)(ii) Cr.P.C. According to the ratio laid down in ***Iqbal Singh Marwah's case (cited supra),*** if the document is forged before it was produced before the Court nothing will prevent the complainant from initiating action for the offence of forgery.

13. However the learned Senior Counsel for the petitioners submitted that the facts of the present case will not attract the offence of forgery at all. The attention of the Court was attracted to the contents of Section 464 IPC which has been amended vide Information Technology Act 2000 (No.21 of 2000). The learned Senior Counsel for the petitioner submitted that subsequent to the said amendment, anti-dating of document is no more an offence and hence the petitioners cannot be held liable for the offence of forgery also.

14. In the case on hand, the charge sheet narrates a case where a document has been created for the purpose of causing damage to the *de facto* complainant. It is the case of the prosecution that the entire document has been created and it is not a simple case where the genuine document has been tampered by putting anti-dates. The date of execution of the document

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and the date of the sale of the stamp paper serve as relevant facts to the allegation that the document has been created. The sale of the stamp paper was on a later date but the date of execution is much prior to the sale of the stamp paper. It shows that some stamp papers have been used for creating a document by not being aware of the fact that the stamp paper itself was sold at a subsequent date than the date on which the document was seen to have been executed. Anything contrary to the above facts brought out during investigation can serve as the defence of the accused and such opportunity can be taken only during the course of trial.

15. So the petitioners cannot seek shelter by stating that what is involved in this case is an act of anti-dating and not an offence of forgery or creation of a false document. A document is created without the actual participation of the party to it and the forensic analysis also supports the said fact. So it cannot be said that there are no sufficient materials available to subject the accused under the process of trial. Even if the investigation authority might omit to lay the charge sheet under relevant provisions of law, that will not preclude the Court from framing the charges appropriately, if the materials available on record makes out the same. Hence it is for the

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Court to frame appropriate charges basing upon the materials produced.

16. It does not lie at the convenience of the petitioners to get rid of the proceedings on grounds which are not acceptable. In fact the main ground on which this petition is filed, has already been covered in the earlier judgment of this Court and especially the question of law with regard to *custodia legis* has also been settled in the very same judgment of the Supreme court referred by the petitioners and the respondents as discussed above.

17. In view of the above stated reasons, this Criminal Original Petition is dismissed. Connected miscellaneous petitions are closed.

27.04.2023

Index: Yes
Speaking order
Netural Citation : Yes
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To:

1. The Judicial Magistrate VII, Coimbatore.

2.The Inspector of Police,
Central Crime Branch,
Coimbatore City, Tamil Nadu.

3. The Public Prosecutor,
High Court of Madras.

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R.N.MANJULA, J.,

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Pre-delivery order made in
Crl. O.P. No.1807/2021

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