

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-5599-2022 (O&M)

Reserved on:- **April 25, 2023**

Date of Pronouncement:- **May 12, 2023**

Manish Jhamb & Another

...Petitioners

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sankalp, Advocate,
for the petitioners.

Mr. Sumit Jain, Addl. A.G., Haryana

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made to quash FIR no. 208 dated 12.05.2021 registered at PS Sector-5 Panchkula, U/S 177, 182, 191, 192, 196, 199, 205, 379, 415, 416, 418, 419, 463, 468 IPC. 1860 and all consequential proceedings arising therefrom.

2. Brief facts of the case are that on a complaint filed by one Smt. Inderwati before learned Special Judge CBI, it came to light that surety bonds were furnished on 10.09.2020 by one Ram Prasad son of Mannu on behalf of accused Pooja Jhamb (Petitioner No 2), wherein petitioner No 1 was identifier, whereas Ram Prasad has already expired on 13.07.2017. In pursuance to the notice issued on 05.03.2021, a report was prepared by the summoning staff and it was

found that some fabricated documents were furnished as surety bonds

in this case and same required thorough probe by law enforcement agency. On this account, Reader of the Court was directed to send copy of application/complaint of Inderwati widow of Ram Prasad and Raj kali wife of Om Parkash, through the jurisdictional Police Station immediately, with a direction to take prompt and strict action as per law. On the basis of this complaint and in pursuance of the directions issued by the Learned Special Judge CBI, an FIR no. 208 dated 12.05.2021 was registered at Police Station Sector-5 Panchkula.

3. By way of present petition, prayer has been made to quash FIR No. 208 dated 12.05.2021 and all consequential proceedings arising therefrom.

4. Learned counsel for the petitioners submits that FIR casted upon the present petitioners envisages Sections 177, 182, 198, 199, 205 & 463 IPC which are directly hit by Section 195 of Cr.PC whereas, all the left over Sections impugned, constitute to be a part of the same transaction i.e., illegal surety furnished to attain the concession of bail and had a direct impact upon the proceedings before a court of justice manifesting a close nexus with the proceedings of the court. He further submits that document of surety bond is 'cutodia legis' and the alleged offence was only completed in the process of administration of justice and in that circumstance, applicability of Section 195 of the Code cannot be avoided and proceedings cannot be initiated except on a complaint in writing made by the concerned Court. He also submits that Id. Court intended to proceed with the complaint received as a Private Complaint and directed the "Reader" to send the copy of the "complaint/application" to the "jurisdictional Police Station immediately", meaning thereby the Id. Court proceeded with the same

as a case that may be filed upon a police report, which is expressly and absolutely barred procedurally and vitiates the trial. In support of his submissions, he places reliance upon:-

- i. **RAJINDER KUMAR VS STATE OF HARYANA** in case bearing no CRM-M-2790-2012 decided on 30.08.2013 in Punjab & Haryana High Court.
- ii. **M/S BANDEKAR BROTHERS PVT. LTD. & ANR vs. PRASAD VASSUDEV KENI** (CRIMINAL APPEAL NOS. 546-550 OF 2017 in Supreme Court)
- iii. **BHIMA RAZU PRASAD VS. STATE REP. BY DEPUTY SUPERINTENDENT OF POLICE, CBI/SPE/ACU-II** (SLP (CRIMINAL) NO. 5102 OF 2020 in Supreme Court)

5. On the other hand, learned State counsel submits that the bar as stipulated under Section 195 of CrPC has no applicability in the present case as it would come into operation only when the cognizance is required to be taken by the Court, while present matter is still under investigation and further proceedings were stayed by this Court vide order dated 14.02.2022. Learned State counsel further submits that even procedure as stipulated in Sections 340 and 195 of CrPC has been substantially complied with. In support of his submissions, he places reliance upon:-

- i. **State of Punjab v. Raj Singh, (SC)** : Law Finder Doc Id # 39897 reported as 1998(2) SCC 391
- ii. **M. Narayandas v. State of Karnataka, (SC)** : Law Finder Doc Id # 91031 reported as 2003(11) SCC 251.

6. I have heard learned counsel for the parties and gone through the paper book of the case as well as law cited at the bar and I do not find much substance in the arguments raised by the learned counsel for the petitioners. There are two reasons for disagreeing with the submissions made on behalf of learned counsel for the petitioners.

7. Firstly, as argued by the learned State counsel, the case is still at investigation stage and the bar as stipulated under Section 195 CrPC does not come into the picture. It is only when the investigation in the present case is complete and the case is submitted before the Magistrate and the cognizance is required to be taken, restriction of Section 195 could come into picture. It was held by Hon'ble Apex Court in Raj Singh's case (supra) that nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation. Relevant observations are reproduced below:

"2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under sections 419, 420, 467 and 468 Indian Penal Code by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) Criminal Procedure Code prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Criminal Procedure Code, 1973 it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Criminal Procedure Code, 1973; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognisable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Criminal Procedure Code, 1973 It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of section 195(1)(b) Criminal Procedure Code, 1973 but

nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filled by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 Criminal Procedure Code, 1973 The judgment of this Court in Gopal Krishna Menon and Anr. v. D. Raja Reddy, 1983(1) RCR (Criminal) 354 : AIR 1983 Supreme Court 1053, on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the Civil Court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Criminal Procedure Code, 1973."

8. It is pertinent to mention here that judgment in **Raj Singh's** case (supra) was subsequently followed by Hon'ble Apex Court in **Narayan Das's** case (supra) as well. Learned counsel for the petitioners has placed reliance on **Rajender Singh's** case (supra) but the cases cited by learned State counsel were not considered by the bench in that case. Additionally, in that case, cognizance has been taken by the Court and further, though, proceeding was quashed but liberty was granted to the respondents to proceed afresh in accordance with law.

9. Secondly, in my considered opinion, there has been substantial compliance of Sections 195 & 340 of CrPC as well. In that context, it would be appropriate to look at the definition of relevant part of these sections which are reproduced as below:

"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) ***

(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."

"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 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."

10. A perusal of the FIR reveals that after notice on

05.03.2021, a detailed report was prepared by the summoning staff

regarding the complaint of Smt Inderwati and statements of not only the accused persons/ petitioners were recorded but report was also sought from the concerned revenue authority i.e. Tehsildar. Tehsildar duly came present with all the relevant records and after comparing the documents on the file of the Court and the original documents/ registers of the office of Sub Registrar, Palwal, even the fabrication of records in the present case was found. Subsequently on 12.03.2021, on the basis of this report, learned Special Judge CBI directed the Reader of the court to send copy of application/complaint of Inderwati widow of Ram Prasad and Raj kali wife of Om Parkash, to the jurisdictional Police Station immediately, with a direction to take prompt and strict action as per law and make a report to the court within three months from receipt of copy of application/complain.

11. In view of these facts, not only the preliminary enquiry was conducted by the court but after finding out the incriminating material on record, direction was issued to the Reader to file the complaint. Merely because it was ordered that copy of complaint of Smt. Inderwati be sent along with the complaint would not be fatal. When the court was satisfied that alleged actions of the petitioners have otherwise affected the administration of Justice, it would be irrelevant whether the concerned Court files the complaint on its own or ask the police authorities to take cognizance of the complaint filed by the complainant. In **"Iqbal Singh Marwah v. Meenakshi Marwah"**, reported as (2005) 4 SCC 370, a large bench of Hon'ble Supreme Court, while discussing the scope of 195 and 340 CrPC, observed that penal provisions should be construed in a manner which will

suppress the mischief and advance the object which the legislature had in view. As observed in **Iqbal Singh's** case (supra), Section 195 Criminal Procedure Code is a sort of exception to the general provision under Section 190 and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein and the purpose behind it 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. Therefore, in the present case, when learned Special Court found that the actions of the petitioners have interfered with the administration of Justice and substantially complied with the procedures as stipulated in Sections 340 and 195 CrPC, and finally directed for the registration of the complaint, mere technical lacunas cannot come to the rescue of the petitioners.

12. Thirdly, in the facts and circumstances of the present case, if allegations are believed to be true, it cannot be convincingly said that private complaint was not at all maintainable as in addition to the interference in the administration of justice, there has been forgery / fabrication of records which could substantially affect the rights of complainant as property belonging to them have been kept as surety without their knowledge by forging the records. Even in "**Sachida Nand v. State of Bihar**" reported as 1998(1) RCR (Criminal) 823 (SC) : 1998(2) SCC 493 it was held by Hon'ble Apex Court 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. Therefore, learned Trial Court would be at liberty to determine its own course after considering the

entire material which is brought on record including determining whether the offence in essence relates to the “custodia legis” in the present case or not.

13. In view of the discussion held above, this petition is dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

May 12,2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No