

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

CRM-M-12515 of 2016

Date of Decision: February 09, 2023

Harinder Kumar

...Petitioner

Versus

Rohit Yadav and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi and Mr. Kanishk Sarup, Advocates
for the petitioner.

Mr. Manish Soni, Advocate for respondent No.1.

Mr. Randhir Singh, Addl. A.G., Haryana
for respondent No.2.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is to quash the order dated 25.01.2016 (Annexure P-1) passed by learned Additional Sessions Judge, Gurgaon, dismissing the revision of the petitioner against summoning order dated 23.01.2013 (Annexure P-2), whereby petitioner was summoned to face trial for commission of offences under Sections 193, 203, 204 and 120-B IPC in a criminal complaint case No.234 of 2012 titled as ***“Rohit Yadav v. Amar Singh and others”*** (Annexure P-3), under Sections 191, 195, 201, 219 and 120-B IPC.

2. As emerges from the paper book, Pooja Yadav D/o Amar Singh was married to Ravi Shankar on 18.11.2011. She died unnatural death on 06.07.2012. On the complaint of Amar Singh (father of the deceased), FIR No.210, dated 06.07.2012 under Section 498-A and 304-B/34 IPC was registered against her husband Ravi Shankar, brother-in-law Rohit Yadav (*respondent herein*), mother-in-law Smt. Manju and father-in-law Prem Shankar Yadav. Admittedly, after trial, all the said

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accused were acquitted vide judgment dated 21.04.2014 (Annexure P-4), against which criminal appeal bearing CRA-D-1151-DB-2014 filed by the State as well as Amar Singh is stated to be pending before this High Court.

3. (i) Rohit Yadav, (respondent No.1 herein), brother-in-law of deceased lodged a complaint on 22.11.2012 against Amar Singh (father of deceased), Inspector Harinder Kumar, Supervising Officer of the investigation (petitioner herein), ASI Rajender Singh (Investigating Officer of the case) and Ashok Bakshi, ACP, Gurgaon (Monitoring Officer of the case). It was alleged in the complaint that deceased Pooja was under depression for various reasons and used to attend Art of Living classes. Under counseling, she used to write personal diaries mentioning therein her personal feelings. On getting information about the suicide of Pooja Yadav, her husband Ravi Shankar, an Advocate by profession along with Prashant Yadav, Advocate under whom he was working, came to the spot and shifted Pooja Yadav to Aryan Hospital, where she was declared brought dead. The police as well as relatives of the deceased also reached the hospital. On that day itself, petitioner Harinder Kumar took the complaint i.e. Rohit Yadav to the house and seized the same with a lock and brought him back to the hospital.

(ii) On 08.07.2012, Prashant Yadav, Advocate was called to the Police Station by ASI Rajender Singh and informed that they had inspected the place of occurrence, captured photographs and had lifted few diaries and the *chhuni* (ligature material). Said fact was confirmed by Smt. Jyoti Yadav, the landlady of the house, where deceased along with

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her matrimonial family used to reside to the effect that police had lifted a few diaries from the room of deceased Pooja Yadav. On 09.07.2012, ASI Rajender Singh showed four diaries lifted from the spot to Prashant Yadav in the police station, which contained the inner feelings of the deceased as to how she was depressed and that she was ending her life at her own. The contents of the diaries also revealed some recipes of cooking and the notes regarding course of Art of Living etc. Prashant Yadav read over the diaries to Inspector Harinder Kumar loudly. A seizure memo regarding those four diaries and the ligature material i.e *chuuni* was prepared by ASI Rajender Singh on the direction of Inspector Harinder Kumar (petitioner herein) and the same was duly signed by Prashant Yadav and Constable Ashwani.

(iii) As police was not investigating the matter in the light of contents of the diaries containing the suicide note, Prashant Yadav along with Vinod Rao visited the office of ACP Ashok Bakshi, where they saw the four diaries in question lying on his table. Pleading pressure of higher authorities, ACP Ashok Bakshi asked them for surrendering of Ravi Shankar i.e husband of the deceased, assuring that diaries will be taken on record. Application for seeking anticipatory bail was filed by husband and mother-in-law of deceased and during hearing of those proceedings, Inspector Harinder Kumar refused the possession of any diary. He refused to make any statement to that effect. ASI Rajender Singh, Investigating Officer of the case was called, who made statement to the Court denying possession of diaries, after telephonically discussing the matter with ACP Ashok Bakshi. During subsequent hearing of the bail application on

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21.07.2012, Inspector Harinder Kumar again refused possession of diaries. Ravi Shanker surrendered on 07.08.2012 and prayed for production of the diaries but no action was taken.

(iv) It was further alleged in the complaint that fortunately for accused of the FIR, Amar Singh (complainant of the FIR) i.e father of the deceased had admitted in a discussion with Pardeep Yadav, Chief Editor A to Z News Channel that the police had lifted the diaries from the spot, which were in possession of ACP Ashok Bakshi at that time. The compact disk of the CCTV footage containing the conversation of Amar Singh and Pardeep Yadav, Chief Editor was produced in defence during the trial.

(v) It was alleged by the complainant further that in the final report under Section 173 Cr.P.C., though Prashant Yadav was shown as witness of spot inspection but seizure memo of diaries duly signed by said Prashant Yadav and Constable Ashwani was not produced and rather, a fabricated seizure memo was produced containing the recovery of only the *chhuni* i.e. ligature material, without signature of Prashant Yadav.

(vi) With these allegations, prosecution of the four accused, i.e. father of the deceased, I.O., the Supervising Officer (petitioner) and the Monitoring Officer of the investigation was sought under Section 191, 195, 201, 219 and 120-B IPC.

4. After recording preliminary evidence, learned Judicial Magistrate 1st Class, Gurgaon, vide his order dated 23.01.2013 (Annexure P-2) found sufficient material, *prima facie* showing the commission of offences under Sections 193, 203, 204 and 120-B IPC and directed the summoning of all the accused accordingly. Revision filed against this

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order by Inspector Harinder Kumar (petitioner herein) was dismissed by way of the impugned order dated 25.01.2016 (Annexure P-1) by learned Additional Sessions Judge, Gurgaon, which has been assailed by way of this petition.

5. Although impugned order has been assailed on various grounds but the only point urged before this Court by learned counsel for the petitioner is that in view of the bar under Section 195(1)(b)(i) of the Code of Criminal Procedure, the Court could not take cognizance of the offence under Section 193 IPC and once this bar was applicable for offence under Section 193 IPC, the same was also applicable for the other offences under Sections 203, 204 and 120-B IPC as well. It has also been urged that learned Additional Sessions Judge, Gurgaon, has wrongly placed reliance upon ***“Kailash Mangal v. Ramesh Chand”*** 2015(15) SCC 729.

6. Respondent No.1-complainant defended the impugned order and placed reliance upon ***“Bandekar Brothers Private Limited v Prasad Vassudev Keni and others”***, (2020) 20 SCC 1, ***“Bhima Razu Prasad v. State”*** 2021(2) R.C.R.(Criminal) 504 and ***“Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.”*** 2005(2) R.C.R. (Criminal) 178.

7. I have considered the submissions of both the sides and have perused the record carefully.

8. Section 195(1) Cr.P.C. reads as under:-

“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.”

9. As observed by the Hon'ble Supreme Court of India in **Bhima Razu Prasad's case (*supra*)**, it is well settled that Section 195(1)(b) creates a bar against taking cognizance of offences against the administration of justice for the purpose of guarding against baseless or vindictive prosecutions by the private purpose. The provisions of this Section imply that the Court is the only appropriate authority, which is entitled to raise grievance in relation to perjury, forgery of documents produced before the Court and other offences, which interfere with the effective description of justice by the Court. Hence it is for the Court to

exercise discretion considering the suitability of making a complaint for such offences.

10. In ***Bhima Razu Prasad's case (supra)***, the allegations against accused Nos.2 and 3 were that they colluded with appellant/accused No.1 to create a false sale deed and gave false explanation of escrow arrangement amongst the three parties, to justify how the seized currency came to be in the appellant's possession. This was done to exonerate the appellant/accused No.1 and recover the seized currency at the stage of investigation itself, which is deemed to be “a stage of a judicial proceeding” under explanation 2 of Section 193 IPC. In case the genuineness of the sale deed was accepted, respondent-State would have erroneously opined that seized currency belonged to appellant No.2 and would have abandoned the proceedings under Section 13(1)(e) of the Prevention of Corruption Act against appellant and so, Section 193 IPC was held to be squarely applicable to the allegations in the case at hand.

11. In above fact situation, the Hon'ble Supreme Court considered the following questions:

“6. Hence, the primary question of law that arises for our consideration in these appeals is whether Section 195(1)(b)(i), Cr.P.C. bars lodging of case by the investigating agency under Section 193, IPC, in respect of offence of giving false evidence which is committed at the stage of investigation, prior to production of such evidence before the Trial Court? This in turn, requires us to resolve the following sub-questions:

6.1 Whether an offence under Section 193, IPC committed at the stage of investigation, prior to production of the false evidence before the Trial Court by a person who is not yet party to

proceedings before the Trial Court, is an offence “in relation to” a proceeding in any court under Section 195(1)(b)(i), Cr.P.C?

6.2 Whether the words “stage of a judicial proceeding” under Explanation 2 to Section 193, IPC can be equated with “proceeding in any court” under Section 195(1)(b)(i), Cr.P.C?

12. Hon'ble Supreme Court referred to ***Sachida Nand v. State of Bihar***” (1998) 2 SCC 493, wherein reference had been made to ***“Patel Lajibhai Sombhai v. State of Gujrat”*** AIR 1971 Supreme Court 1935 and it had been held that the provision of Section 195(1)(b) Cr.P.C. is intended to bar the right to initiate prosecution only where the offence committed has a reasonably close nexus with the Court proceedings, such that Court can independently determine need for inquiry into offence with reference to its own records and therefore the offence must be such that directly impacts administration of justice by the Court. It was further held in Sachida Nand's case (*supra*) that this would certainly be case if the document was in custody of the Court at the time of commission of offence. However the bar under Section 195(1)(b)(ii) cannot be read as operating even in cases where offence against administration of justice was committed in respect of a document (i) outside of the Court; (ii) by a person, who was yet party to the Court proceedings; and (iii) at the time long before the production of the document before the Court. The same would not have a reasonable close nexus with the Court proceedings.

13. The Hon'ble Supreme Court further observed in ***Bhima Razu Prasad's case (supra)*** that though the aforesaid observations in Sachida Nand's case (*supra*) were made in the context of Section 195(1)(b)(ii) Cr.P.C. but these have useful application in interpreting Section 195(1)(b)(i) as well because the prohibition contained in

195(1)(b)(i) should not be extended to provide protection to a person, who has been accused of tendering false evidence during the investigative stage prior to becoming a party to the Court proceedings and producing such evidence before the Court.

14. It was observed further that the view taken in **Sachida Nand's case (supra)** ran contrary to an earlier three Bench decision of Hon'ble Supreme Court in case of “**Surjit Singh v. Balbir Singh**”, (1996) 3 SCC 533, in which it was held that bar against taking cognizance under Section 195(1)(b)(ii) would apply even if the offences stipulated therein were committed prior to the production of the document before the Court, if such document was subsequently produced before the Court.

15. A Constitutional Bench of the Hon'ble Supreme Court in **Iqbal Singh Marwah's case (supra)** considered the above said conflicting views; affirmed the view taken in Sachida Nand's case (supra) and clarified the position of law as follows:-

“10...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 Cr.P.C.”

16. Hon'ble Supreme Court in ***Bhima Razu Prasad's case (supra)*** after taking into account the pronouncement of the Constitutional Bench in Iqbal Singh Marwaha's case (*supra*) observed that though the facts of Iqbal Singh Marwaha's case (*supra*) also required a determination as to the applicability of Section 195(1)(b)(ii) but no specific finding was expressed on this point. However, it can nevertheless be seen that the Constitutional Bench did not interpret Section 195(1)(b)(ii) in isolation but linked its construction with over all scheme under Section 195(1)(b) and Section 340 Cr.P.C. and reiterated the test laid down in Sachida Nand's case (*supra*) that the offence in respect of which only the Court can make a complaint must be one, which has a direct co-relation or a direct impact on the proceedings of a Court of justice.

17. Hon'ble Supreme Court in ***Bhima Razu Prasad's case (supra)*** also referred to ***Kailash Mangal's case (supra)***, wherein it had been alleged that appellant of the case had filed a false affidavit for getting a civil suit decreed in her favour. Respondent had filed a private complaint under Section 340 Cr.P.C. alleging commission of offence under Section 193 and 419 of the IPC. It was held that since the document was filed during the course of proceedings, which are already pending before the Court, so the offence could be said to have been committed in relation to such proceedings for the purpose of Section 195(1)(b)(i) Cr.P.C. and thus the requirement of reasonable nexus between the offence and the proceedings before the Court was satisfied.

18. Hon'ble Supreme Court then referred to ***Bandekar***

Brothers' case (supra) to say that Section 195(1)(b)(i) Cr.P.C. may be attracted to the offence of fabricating false evidence prior to its production before the Court, provided that such evidence is led by a person, who is party to the Court proceedings for the purpose of leading the Court to form certain opinion itself on such evidence. Bar against taking of cognizance under Section 195(1)(b)(i) may also apply where a person, who is initially not a party to the Court proceedings fabricates certain evidence and (1) subsequently becomes a party and produces it before the Court; or (2) falsely deposes as a witness before the Court on the strength of such evidence, for the purpose of causing the Court to fall in erroneous opinion on a point material to the result of the proceedings. However, where a person fabricates evidence for the purpose of misleading the Investigating Officer, this may not have any direct nexus with the subsequent Court proceedings.

19. After referring to the aforesaid cases, Hon'ble Supreme Court in **Bhima Razu Prasad's case (supra)** held as under:-

“14. The construction of the words “in relation to” must be controlled by the overarching principle applicable to Section 195(1)(b), Cr.P.C. as stated in Patel Laljibhai Somabhai (supra) and Sachida Nand Singh (supra), which was affirmed by the Constitution Bench in Iqbal Singh Marwah (supra). That is, even if the offence is committed prior to giving of the fabricated evidence in court, it must have a direct or reasonably close nexus with the court proceedings.”

20. The Hon'ble Supreme Court then concluded as under:-

“20.2 The object and purpose of Section 195(1)(b), Cr.P.C. must be borne in mind whilst determining whether the fabrication of false evidence during a stage of a judicial proceeding amounts to having made such fabrication in relation to a proceeding before

the Court. At the cost of repetition, it must be emphasized that Section 195(1)(b) is meant to restrict the right to make complaint in respect of certain offences to public servants, or to the relevant Court, as they are considered to be the only party who is directly aggrieved or impacted by those offences. Furthermore, for the purpose of 195(1)(b)(i), Cr.P.C., there must be an intention on part of the alleged offender to directly mislead the Court into forming a certain opinion by commission of offence under 193, IPC. Though a criminal investigation is certainly a stage of a judicial proceeding insofar as it may culminate in issue of process and trial against the accused, it would not be a proceeding in relation to a certain Court under Section 195(1)(b) (i), Cr.P.C. before the Court has even taken judicial notice of such investigation. The difference between a “stage” of a judicial proceeding and the judicial proceeding itself must be emphasized in this regard.

24. The questions of law formulated in paragraph 6 (supra) are answered as follows:

Section 195(1)(b)(i), Cr.P.C. will not bar prosecution by the investigating agency for offence punishable under 193, IPC, which is committed during the stage of investigation. This is provided that the investigating agency has lodged complaint or registered the case under Section 193, IPC prior to commencement of proceedings and production of such evidence before the trial court. In such circumstance, the same would not be considered an offence committed in, or in relation to, any proceeding in any Court for the purpose of Section 195(1)(b)(i), Cr.P.C.”

21. Coming to the factual matrix of this case and applying the same to the legal position as discussed above, the allegations, in short, in this case are that a seizure memo of four diaries and ligature material i.e. *chuuni* was prepared by ASI Rajender Singh at the behest of Supervising Officer i.e. Inspector Harinder Kumar (petitioner) and the said seizure memo was witnessed by Prashant Yadav, Advocate and Constable

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Ashwani but the said seizure memo was withheld from the Court in order to affect the defence of the accused in the trial (which included complainant-respondent No.1 Rohit Yadav). Further allegations are that false seizure memo was prepared showing the recovery of ligature material only, which was produced in the Court; and further statement was made by ASI Rajender Singh during the hearing of the bail application, denying the existence of diaries of the deceased Pooja Yadav.

22. As far as making statement by ASI Rejender Singh at the behest of Supervising Officer, Inspector Harinder Kumar (petitioner) and after consultation with ACP Ashok Bakshi before the Court, denying the existence of the diaries is concerned, said act is *prima facie* covered under Section 193 of IPC besides Section 203 IPC as despite the fact of knowing that offence had been committed, false information was given before the Court. False seizure memo showing recovery of *chuuni* only, prepared during investigation and produced in the Court also *prima facie* attract Section 193 IPC. These two acts may be stated to be connected with each other in relation to the proceedings and not possible to split them up. However, the act of withholding the seizure memo with respect to the four diaries and *chuuni* prepared by the accused of the complaint case and which they had been witnessed by Prashant Yadav, Advocate and Constable Ashwani, *prima facie* attracts Section 204 of the IPC. Though, bar of Section 195(1)(b)(i) is applicable for offence under Section 193 IPC but not for the offence under Sections 203 and 204 of the IPC.

23. The contention of learned counsel for the petitioner based on

Kailash Mangal's case (supra) that bar of Section 195(1)(b)(i) will be applicable to Sections 203 and 204 of the IPC also once the same is found to be applicable under Section 193 IPC, has no merit to the facts and circumstances of the present case. As observed earlier, in ***Kailash Mangal's case (supra)***, a false affidavit was produced before the Civil Court for getting the civil suit decreed in his favour by the appellant and private complaint was filed by the respondents alleging offences under Sections 193 and 419 IPC. As it was not possible to split up two offences, so bar of Section 195(1)(b)(ii) Cr.P.C. was held to be applicable.

24. In the present case, as the act of the accused in withholding the seizure memo pertaining to four diaries and *chuuni* from the Court can be clearly split up from the remaining act, so it is held that bar of Section 195(1)(b)(i) will not be applicable. It has been held by the Hon'ble Supreme Court in ***Bandekar Brother's case (supra)*** that if in the course of same transaction, two separate offences are made out, for one of which Section 195 Cr.P.C. is not attracted and it is not possible to split them up, only then proceedings under Section 195 (1)(b)(i) must be followed for all the offences in question. It clearly means that when it is possible to split the separate offences, then bar of Section 195(1)(b) (i) will not be applicable.

25. On account of entire discussion as above, the present petition is held to be devoid of any merit and so, same is hereby dismissed.

February 09, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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