

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

CRM-M-3196-2017

Date of Reserve:19.09.2023

Date of Decision:19.12.2023

Rajesh

...Petitioner

Vs.

State of Haryana and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. R.K Chaudhary, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Vikram Singh, Advocate
for the respondents No.2 and 3.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to set aside the order dated 01.10.2016 passed by the Court of Additional Sessions Judge, Karnal (Annexure P-5), whereby the revisional Court had partly set aside the summoning order against respondents No.2 and 3/accused and it was held that the respondents No.2 and 3 were wrongly summoned for the offences punishable under Sections 195 and 196 IPC.

2. The brief facts of the case are that the petitioner/complainant had filed a complaint against respondents No.2 and 3 under Sections 193,195,196,219,499,500,503 and 120-B of IPC by alleging that on 20.05.2012, Murari Lal, Sohan Lal and others had caused injuries to his nephew, Vinod and Vinod was admitted in Virk Hospital, Karnal. After that, Murari Lal and Sohan Lal, inflicted injuries to themselves and got one FIR No.292 under Sections 323,324,325/34 of IPC had been registered against the petitioner/complainant

and his nephew Vijay. On 24.05.2012, Vinod Kumar regained his consciousness and on the basis of his statement, a cross case was registered against Murari Lal and Sohan Lal etc. under Sections 148,149,323,324 and 307 of IPC. The petitioner along with Vijay had moved anticipatory bail application, which was dismissed on 18.06.2012 on the ground that the offence was only under Sections 323,324,325/34 of IPC and all the sections were bailable. On 19.06.2012, the petitioner and Vijay filed their regular bail applications and both of them wanted to join the investigation. On 31.07.2012, the petitioner and his nephew went to join the investigation and without any basis, offence under Section 307 IPC was added. Even there is no opinion from the doctor that any injury was dangerous to life and the offence under Section 307 IPC was added by the accused, just to ensure the arrest of the petitioner. Due to this, petitioner/complainant and his nephew had to remain in judicial custody for 15 days and they had suffered great mental pain, agony and harassment. They were finally granted the concession of bail on 16.08.2012. Thereafter, the petitioner filed a complaint against respondents No.1 and 2 and the Trial Court summoned both the respondents under Sections 195/196/500,503 and 120-B of IPC. Against the summoning order, respondents No.2 and 3 filed the revision petition before the Sessions Court and vide the impugned order, dated 01.10.2016, the Court of Additional Sessions Judge, Karnal held that the respondents No.2 and 3 were wrongly summoned under Sections 195 and 196 of IPC as there was no complaint from the concerned Court for summoning the accused under those sections. Consequently, the revision was partly allowed by the Revisional Court and the matter was remanded back to the Trial Court for prosecuting the accused under the remaining sections.

3. Learned counsel for the petitioner contended that the Revisional Court failed to appreciate that at the time, when the petitioner was granted the concession of bail by the Court of Additional Sessions Judge, Karnal, he sent a complaint to Superintendent of Police, Karnal for taking action against respondents No.2 and 3. Thus, it is apparent that the false evidence had been created by the respondents no.2 and 3 against the petitioner, in order to get him convicted for the offence punishable under Section 307 IPC. Apart from that, all the proceedings of adding the offence under Section 307 IPC against the petitioner was conducted, while sitting in the police station and no opinion from the doctor regarding the nature of injury had been taken by the respondents No.2 and 3.

4. On the other hand learned counsel appearing on behalf of respondents No.2 and 3 submitted that the impugned order was well reasoned and was liable to be upheld by this Court. The Revisional Court had rightly held that the respondents No.2 and 3 were wrongly summoned under Sections 195 and 196 IPC, in view of the bar contained in Section 195 Cr. P.C.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, the arguments made by learned counsel for both the parties are centered around the interpretation of Section 195 Cr.P.C. which has been reproduced 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) (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, 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 subsection (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;

(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."

(emphasis supplied)

7. From the above, it is apparent that the Sub-Section (1) (b) of Section 195 of the Cr.P.C deals with two separate sets of offences which are as follows:-

(i) of any offence punishable under Sections 193 to 196 (both inclusive), 199,200,205 to 211 (both inclusive) and 228 of IPC, when such offence is alleged to have been committed in, or in, relation to, any proceeding in any Court;[Section 195 (1)(b) (i)]

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or section 476 of IPC, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceedings in any Court.[Section 195 (1)(b) (ii)]

8. Still further, the Hon'ble Supreme Court has held in the matter of **Narendera Kumar Srivastava Vs. State of Bihar, 2019 (5) RCR (Criminal) 501 as follows:-**

14. Section 195 of the Cr.P.C. lays down a rule to be followed by the court which is to take cognizance of an offence specified therein but contains no direction for the guidance of the court which desires to initiate prosecution in respect of an offence alleged to have been committed in or in relation to a proceeding in the latter court. For that purpose, one must turn to Section 340 which requires the court desiring to put the law in motion to prefer a complaint either suo motu or an application made to it in that behalf.

15. Section 340 of the Cr.P.C. reads as follows:

"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."

16. Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

*17. This Court in **Chajoo Ram v. Radhey Shyam, (1971) 1 SCC 774 at page 779**, held that the prosecution under Section 195 could be initiated*

only by the sanction of the court and only if the same appears to be deliberate and conscious. It emphatically held as under:

"7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge..... "

*18. In **Santokh Singh v. Izhar Hussain and Anr.**, (1973) 2 SCC 406, this Court has held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution.*

19. This Court in M.S. Ahlawat (supra) has clearly held that private complaints are absolutely barred in relation to an offence said to have been committed under Section 193 I.P.C. and that the procedure prescribed under Section 195 of the Cr.P.C. are mandatory. It was held that:

"5. Chapter XI IPC deals with "false evidence and offences against public justice" and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 I.P.C. etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

6. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. While under Section 195 CrPC it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 CrPC prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 CrPC are mandatory and no court can take cognizance of offences referred to therein (sic). It is in respect of such offences the court has jurisdiction to proceed under Section 340 CrPC and a complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction."

(emphasis supplied)

9. In light of the abovesaid provisions and the law laid down by the

Hon’ble Supreme Court, it can be safely concluded that findings recorded by the Revisional Court are liable to be upheld by this Court. The case in hand squarely falls within the category of cases falling under Section 195 Cr.P.C as the offence was punishable under Sections 196 IPC. The Trial Court had committed a grave error in taking cognizance of the offence and on the basis of private complaint and the Revisional Court had rightly set aside the order passed by the Trial Court to that extent. Apart from that, Trial Court was also permitted to prosecute the respondents No.2 and 3 under the remaining sections.

10. Having regard to the facts and circumstances of the case, this Court is of the considered opinion that there is no merit in the present case and the same is liable to be dismissed.

19.12.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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