



2024:DHC:9859



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th DECEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 2011/2022 & CRL.M.As. 8541/2022, 13816/2024**

SURINDER MOHAN & ORS.

.....Petitioners

Through: Mr. Shrey Sharawat, Mr. Nitish Ojha,
Mr. Archit Singh, Ms. Ishita Misra,
Mr. Himanshu Sihag & Mr. Shubham
Dular, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Ms. Parul Dureja, Mr. Rajan Chutani
and Mr. Ashish Agarwal, Advocates
for R-2.
Mr. Manik Dogra (Amicus Curiae)
with Mr. Dhruv Pande, Mr. Imon
Bhattacharya, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The challenge in this petition is to the Order dated 28.05.2016 passed by the Ld. Additional Principal Judge, Family Courts (West), Tis Hazari Courts, Delhi by which the Ld. Principal Judge has directed that a complaint under Section 195 Cr.P.C be sent to the Ld. CMM. The challenge is also to the Order dated 06.08.2016 passed by the Ld. CMM (West), Tis Hazari Court, Delhi by which summons have been issued to the Petitioners for offences punishable under Sections 173/176/177/181/187/191 IPC.
2. The facts, in brief, leading to the filing of the present petition are that vide Order dated 23.06.2011 the Ld. MM (Mahila Court), West District, Tis



2024:DHC:9859



Hazari Courts, Delhi in Maintenance Petition No.932/2001, has awarded a sum of Rs. 35,000/- per month to Respondent No.2 herein/Mrs. Ritu Mahey as maintenance from her husband/Mr. Dinesh Kumar Mahey. It is stated that since the amount was not being paid. The Respondent No.2 filed an Execution Petition No.125/11/2012 in Court of Ld. M.M., seeking execution of the Order dated 23.06.2011. It is stated that since the whereabouts of the husband/Mr. Dinesh Kumar Mahey was not known, the Ld. M.M. vide Order dated 08.05.2013 had directed the Ministry of External Affairs (MEA) to find the whereabouts of the husband/Mr. Dinesh Kumar Mahey. Material on record shows that another Execution Petition 283/2014 (subsequently numbered: 59275/2016) was filed before the Ld. Additional Principal Judge, Family Courts, West District, Tis Hazari Courts, Delhi again seeking execution of the of the Order dated 23.06.2011.

3. The Respondent No.2 filed an application in the Execution Petition No. 59275/2016 by which the family members of the husband/Mr. Dinesh Kumar Mahey were sought to be impleaded. The family members of the husband/Mr. Dinesh Kumar Mahey are the Petitioners in the present petition. The Ld. Family Court dismissed the said application vide Order dated 31.03.2014. However, by the very same Order, the Ld. Family Court had directed the Respondent No.2 to file a Complaint under Section 156(3) Cr.P.C read with Section 200 Cr.P.C. It is pertinent to mention that the said Order dated 31.03.2014 is not on record.

4. Material on record further indicates that Respondent No.2, thereafter, filed an application under Section 179 CPC read with Section 10 of the Family Courts Act, 1984, before the Ld. Family Court alleging that the Petitioners herein have knowingly furnished false information and have



2024:DHC:9859



withheld information about the whereabouts of her husband/Mr. Dinesh Kumar Mahey from MEA officials. It is pertinent to mention that though the said application is not on record, however, an annexure to the counter affidavit filed by Respondent No.2 in the present petition contains the reply filed by the Petitioners herein opposing the said application denying that they have not furnished any false information nor have they withheld any information about the whereabouts of the husband of Respondent No.2 from MEA officials. The Ld. Family Court on 28.05.2016 heard the application and held that the Family Court does not have the jurisdiction to proceed against the family members of the Judgment Debtor (husband/Mr. Dinesh Kumar Mahey) and directed that a complaint under Section 195 Cr.P.C be sent to the Ld. C.M.M along with a copy of the relevant documents. By the said Order dated 28.05.2016, the Ld. Family Court has also directed that Ministry of External Affairs to file a current status report regarding the whereabouts of the husband of Respondent No.2. Material on record indicates that in compliance of the said Order dated 28.05.2016, the Ld. Family Court has simply forwarded the copy of the Order dated 28.05.2016 along with a copy of the application.

5. By Order dated 06.08.2016, the Ld. CMM only on the basis of Order dated 28.05.2016 proceeded as if it is a complaint under Section 195(1)(b) Cr.P.C and the Ld. CMM and he has taken cognizance of the offences punishable under Sections 173/176/177/181/187/191 IPC.

6. These two Orders dated 28.05.2016 and 06.08.2016 are under challenge in the present petitions on the ground that the Ld. Family Court has not applied its mind as to why proceedings under Section 195 Cr.P.C has to be initiated i.e., as to how the offences punishable under Sections



2024:DHC:9859



173/176/177/181/187/191 IPC have been committed by the Petitioners and also on the ground that there is no discussion as to why cognizance has been taken without rigors of Section 195(1) Cr.P.C being satisfied.

7. This Court on 09.01.2024 had appointed Mr. Manik Dogra, Advocate as the Amicus Curiae to assist this Court in the present matter. The Ld. Amicus Curiae submits that the principal issue in the present proceedings essentially involves satisfaction of the rigors of Section 195(1) Cr.P.C. He submits that since Section 195(1) Cr.P.C is an exception to the general rule of Section 190 Cr.P.C, therefore, it imposes an embargo on the cognizance by any court of any offence, except in terms of the procedure provided in clauses (a) and (b) respectively. He further submits that Section 195(1) Cr.P.C envisages offences which have a direct bearing or affect the functioning or discharge of lawful duties of public servant or have a direct correlation with the proceedings in a court of justice. It deals with three categories of offences, (a) contempt of lawful authority of public servants; (b)(i) offences against public justice; and (b)(ii) offences relating to documents given in evidence.

8. Ld. Amicus Curiae further submits that Section 195 Cr.P.C is in two parts, however, Court cannot take cognizance of offences, except on a complaint in writing by 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. He states that there is no complaint in this case which has been given by the Ld. Family Court for the Court to take cognizance of and in the absence of a complaint, the proceedings cannot commence. He states that Courts cannot assume cognizance of the offence without a complaint under Section 195 Cr.P.C and in the absence of a



2024:DHC:9859



complaint, the trial would be void-ab-initio. He further submits that even for Section 195(1)(b) cognizance can only be taken on a complaint in writing by 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 and without such a complaint under Section 195(1)(b) cognizance cannot be taken. He further states that to commence proceedings under Section 340 Cr.P.C, the material produced before the Court must make a prima facie case for a complaint for the purpose of inquiry into an offence which may either fall under Section 195(1)(b)(i) Cr.P.C or it is expedient in the interest of justice. He submits that in the present case the Complaint dated 28.05.2016 appears to have been filed under Section 195(1)(6) and, consequently, the Ld. Family Court in accordance with Section 340 Cr.P.C was required to, i) set-out the offences; (ii) express a *prima facie* finding and/or, (iii) give its opinion necessitating the filing of the Complaint before the Ld. CMM. He states that it is not evident from the Order dated 06.08.2016, as well as the complaint dated 28.05.2016 that the Ld. Family Court followed the mandate of Section 340 Cr.P.C. He states that Ld. CMM vide Order dated 06.08.2016 took cognizance of offences committed under Section 173, 176, 177, 181, 187 and 191 of the IPC. The Order reads as under:

"considering the averments made in the criminal complaint, filed under Section 195(1)(b) Cr.P.C and the material filed therewith. I take cognizance in the matter".

9. He submits that cognizance of offences punishable under Sections 172 to 188 (both inclusive), in terms of Section 195 (1) (a) can only be taken



2024:DHC:9859



when there is written complaint by the concerned public servant and in the absence thereof vitiates all proceedings. He states that admittedly no complaint has been filed by a concerned public servant as prescribed under Section 195(1)(a). It is the Ld. Family Court that had filed the complaint dated 28.05.2016 under Section 195(1) Cr.P.C (without specifying any sub-section)]. He states that the Ld. CMM ought not to have taken cognizance of offences under Sections 173, 176, 177, 181 & 187 IPC, as the same was not based on a complaint filed by a concerned public servant. He states that the Ld. Family Court could have exercised a greater degree of application while sending the complaint dated 28.05.2026 to the Ld. CMM. He states that the Ld. Family Court was not statutorily authorised to make/sent/forward a complaint for offences covered by Section 195(1)(a) Cr.P.C. He states that in so far as cognizance of offence under Section 191 IPC, punishable under Section 193 IPC is concerned, the Ld. CMM visibly has not provided any reasons as to how a *prima facie* case has been made out or referred to any document on record to suggest that an offence under Section 191 IPC *prima-facie* has been committed. He, therefore, submits that the Order dated 06.08.2016 perhaps is not in absolute conformity with the statutory mandate.

10. *Per contra*, learned Counsel appearing for Respondent No.2 contends that the Ld. Family Judge is also a public servant within the Third Clause of definition of Public Servant under Section 21 of IPC. It is further contended that the process of the Court has been abused and, therefore, the Ld. Family Court being the Successor Court and being a Public Servant has the jurisdiction to file a complaint. It is contended that despite knowing the whereabouts of husband/Mr. Dinesh Kumar Mahey of Respondent No.2, the Petitioners have wilfully not provided the whereabouts.



2024:DHC:9859



11. Heard learned Counsel appearing for the Parties and perused the material on record.

12. In the present case the Ld. Family Court has just forwarded the copy of the Order dated 28.05.2016 along with the index and the paperbook to the Ld. CMM and no complaint appears to have been filed by the Ld. Family Court. Section 195 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



2024:DHC:9859



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:



2024:DHC:9859



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.

[195A. Procedure for witnesses in case of threatening, etc.—A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code (45 of 1860).]"

13. A perusal of the Section 195 Cr.P.C makes it clear that for taking cognizance under Section 195 Cr.P.C there has to be a complaint in writing and without such a complaint, cognizance cannot be taken. The Apex Court in Daulat Ram v. State of Punjab, AIR 1962 SC 1206 has emphasised on a complaint in writing for initiation of proceedings under Section 195 Cr.P.C. Paragraph No.4 of the said Judgment reads as under:

"4. Now the offence under Section 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tahsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tahsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the



2024:DHC:9859



complaint in writing should be made by the Tahsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tahsildar was not filed at all, but a charge-sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that Section 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tahsildar and he asked for "a calendar". This paper was filed along with the charge-sheet and it is stated that this satisfies the requirements of Section 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained."

14. Similarly, the Apex Court in Narendra Kumar Srivastava v. State of Bihar, (2019) 3 SCC 318, after extracting sub-section (1)(b) of Section 195 Cr.P.C, has observed as under:

"13. It is clear from sub-section (1)(b) of Section 195 CrPC that the section deals with two separate set of offences:

(i) of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 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)]



2024:DHC:9859



(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476 IPC, 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. [Section 195(1)(b)(ii)].

14. On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.

15. Section 195 CrPC 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. The Five Judge Bench of the Apex Court in Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370, while dealing with as to how to proceed under Section 340 Cr.P.C which is a procedure to be followed in cases mentioned under Section 195 Cr.P.C, has observed as under:

"21. Section 190 CrPC provides that a Magistrate 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, and (c) upon



2024:DHC:9859



information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 CrPC is a sort of exception to this general provision and creates an embargo upon the power of the court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the court as contemplated by Section 195(1) CrPC is given in Section 340 CrPC and sub-sections (1) and (2) thereof are being reproduced below:

“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



2024:DHC:9859



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.”

22. Section 341 CrPC provides for an appeal to the court to which such former court is subordinate within the meaning of sub-section (4) of Section 195, against the order refusing to make a complaint or against an order directing filing of a complaint and in such appeal the superior court may direct withdrawal of the complaint or making of the complaint. Sub-section (2) of Section 343 lays down that when it is brought to the notice of a Magistrate to whom a complaint has been made under Section 340 or 341 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.

23. In view of the language used in Section 340 CrPC 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 interests 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(1)(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



2024:DHC:9859



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. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of



2024:DHC:9859



the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

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 Sachida Nand Singh [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] 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."

16. The Ld. Amicus Curiae is, therefore, correct in submitting that the Ld. CMM has taken cognizance for offences punishable under Sections 173/176/177/181/187/191 IPC vide Order dated 06.08.2016 without there being any written complaint. The Ld. Amicus Curiae is correct in stating that no complaint has been filed and, therefore, the Ld. CMM ought not to



2024:DHC:9859



have taken cognizance of the offences.

17. In the facts of the present case, this Court is inclined to set aside the Orders dated 28.05.2016 and 06.08.2016 and remand the matter back to the Ld. Family Court to once again consider as to whether the present case is a fit case or not for initiating proceedings under Section 195 Cr.P.C and if the Ld. Family Court feels that there is enough material to proceed then the Ld. Family Court must follow the procedure given under Section 195 Cr.P.C and after being satisfied that a *prima facie* case for the purpose of inquiry is made out and it is expedient in the interest of justice, the inquiry should be made into the alleged offence.

18. The Orders dated 28.05.2016 and 06.08.2016 are set aside and the matter is remanded back to the Ld. Family Court.

19. The petition is disposed of, along with pending application(s), if any.

20. This Court expresses its deep gratitude to Ld. Amicus Curiae for the efforts made by him in assisting this Court admirably.

SUBRAMONIUM PRASAD, J

DECEMBER 17, 2024

S. Zakir