



2024:DHC:4777



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

Date of Decision: 3rd May, 2024

+ **CRL.M.C. 3038/2019**

UMESH SHARMA

..... Petitioner

Through: Mr. Kamlesh Kumar, Adv.
through V.C.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Pradeep Gahalot, APP
for the State along with
Adv. Kunal Singh & Adv.
Rishi Grover.
SI Awadhesh, PS Rajender
Nagar.
Adv. Ajay Malviya with
Adv. Bhagwan Singh for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) challenging the order dated 15.03.2019, passed by Special Judge (POCSO Act), Additional Sessions Judge (ASJ)-05 (Central), Tis Hazari Courts, Delhi in Crl. Rev. No.847/2018 (hereafter '**the impugned order**').

2. The learned ASJ by impugned order allowed the petition filed by the Respondent No. 2 under Section 397 of the CrPC and
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set aside the order dated 16.01.2018 passed by the learned Trial Court, whereby Respondent No. 2 was summoned for offence under Section 193/209 of the Indian Penal Code, 1860 (**IPC**).

3. The learned ASJ held that a private complaint in relation to offence under Section 193 of the IPC necessarily has to be filed by following the procedure as prescribed under Section 195 of the CrPC and held that the complaint could have been filed only by the competent Court or by such officer of the Court as that Court may authorize in writing in that behalf before whom the false evidence is filed by the accused persons.

4. A complaint under Section 200 CrPC was filed by the petitioner against the Respondent No. 2 under Section 195/196/197/198/203/209/211/120B/406/504/506/34 IPC. It was stated that the Respondent No. 2/accused was married to the daughter of the complainant. It is alleged that the accused got blank papers signed from the complainant's daughter.

5. It was further alleged that on 18.11.2004, the accused represented that he is not keeping well and is unable to go to bank and asked the complainant to get a land purchased at Bihar adjacent to the complainant's house. The accused gave a cheque for the purpose of encashment from the bank and to pay the said amount for the purpose of purchase of the said land. It was alleged that the cheque could not be encashed and the complainant came back and handed over the said cheque to the accused which was encashed by the accused himself on a later occasion.

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6. The complainant alleged that the accused filed a false complaint against him alleging that the complainant has encashed the cheque.

7. It transpires that the Respondent No. 2 had filed a suit for recovery of certain amount against the complainant wherein he had alleged that the cheque for a sum of ₹29,900/- was allegedly encashed by the complainant. The said suit was dismissed by the Civil Court. The complainant relies upon the observations made by the Civil Court that the plaintiff (Respondent No. 2 herein) has not been able to prove that any cheque was given to the complainant. He further relied upon the statement of the bank official who stated that the cheque was encashed and the Respondent No. 2 had put his signatures on the back side of the cheque.

8. The learned Trial Court by order dated 16.01.2018, noted that the cheque belongs to the accused and bears his signatures on the back side and thus, *prima facie*, the suit was filed on the basis of false allegations that the complainant had encashed the cheque. The learned Trial Court, thus, held that the *prima facie* ingredients of Section 193 of the IPC for giving false evidence on oath and Section 209 of the IPC for making false claims in the Court are made out. The Respondent No. 2 was, thus, summoned for offence under Section 193/209 of the IPC.

9. The order was challenged by Respondent No. 2 before the Court of District and Sessions Judge by filing a criminal revision petition under Section 397/399 of CrPC. The petition was *CRL.M.C. 3038/2019*

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allowed by the impugned order which led to filing of the present petition.

10. The learned counsel for the petitioner submits that the learned Sessions Court has failed to appreciate that as per the complaint and the pre-summoning evidence, the ingredients of offence under Sections 193 and 209 of the IPC are attracted.

11. He submits that the learned Sessions Court has failed to appreciate the fact that the Respondent No. 2 had intentionally given false evidence during the judicial proceedings in the civil suit and has, therefore, committed a serious offence under the Indian Penal Code.

12. He submits that the Sessions Court did not appreciate the fact that the Respondent No. 2 had filed a false claim on the basis of cheque of ₹29,900/-, the amount of which was withdrawn by him and for which he had filed a recovery suit against the petitioner.

13. The learned Trial Court during the course of present proceedings had summoned the record of civil suit no. 567/2007 titled as '*Raj Kumar vs Umesh Sharma & Ors.*', and by order dated 16.01.2018, held that it is *prima facie* clear from the record that false allegations were made by the plaintiff/respondent in the civil suit. The learned Trial Court thereafter had ordered for issuance of summons to the Respondent No. 2 for the offence under Section 193/209 of the IPC.

14. He also submits that the complaint was also in relation to the offence of forgery.

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15. The learned counsel for Respondent No.2 submits that after the dismissal of the civil suit bearing no. 567/2007, the petitioner herein had filed a complaint case against the Respondent No. 2 at the concerned Court in Bihar which was dismissed on 23.12.2008 and the said order was also assailed in a Revision Petition bearing no. 12/2009 which was also dismissed by the learned Sessions Judge, at Hajipur, Bihar.

16. He submits that the order dated 16.01.2018 was rightly set aside by way of the impugned order dated 15.03.2019 in the revision petition bearing no. 847/2018.

17. He submits that the petitioner herein is forum hunting and the same is nor permissible in law and has relied upon the judgments of *Kamini Jaiswal v. Union of India* passed by the Hon'ble Apex Court in **Writ Petition (Crl.) No. 176/2017** and the judgment *Tanzeem Khursheed Zargar v. J&K Special Tribunal & Ors.* bearing **W.P.C No. 1197/2022** passed by the High Court of Jammu & Kashmir, Ladakh, to contend that the right to choose Forum for Redressal of Grievance does not permit the petitioner the choice of multiple forums seeking same relief.

18. The learned ASJ relied upon the judgment passed by the Hon'ble Apex Court in the case of *M.S. Ahlawat v. State of Haryana and Anr.:* (2000) 1 SCC 278 and held that the Magistrate has erred in taking cognizance of the offence under Section 193/209 of the IPC on the basis of a private complaint. Sections 193 and 209 of the IPC reads as under:

“193. Punishment for false evidence. — Whoever

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intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation 1.— A trial before a Court-martial ¹[***] is a judicial proceeding.*

Explanation 2.— An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.— An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.”

“209. Dishonestly making false claim in Court.—

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to



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fine.”

19. The procedure for prosecution of any offence punishable under Section 193 and 209 of the IPC is prescribed in Section 195 of the CrPC and the same 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),

¹[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



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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."

20. It is clear from the bare perusal of the Section 195 (b)(i) of the CrPC that no Court can take cognizance of any offence under Section 193 and Section 209 of the IPC when such offence is alleged to have been committed or in relation to any proceedings in any Court except on a complaint in writing of that Court or by such officer of that Court as that Court may authorize in writing on its behalf or of some other Court to which that Court is



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subordinate. Section 340 of the CrPC provides procedure in regard to cases mentioned in Section 195 of the CrPC. Section 340 of the CrPC reads as under:

“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 152 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.



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(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;

¹[(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.”

21. The perusal of Section 340 of the CrPC makes it clear that prosecution can be initiated only by the sanction of the Court under whose proceedings, offences as referred to in Section 195 of the CrPC are alleged to have been committed. The Court is not only to consider the *prima facie* case but also to see whether it is in the public interest to allow the criminal proceedings to be initiated. The law in this regard is well settled. The Hon’ble Apex Court in ***M.S. Ahlawat v. State of Haryana and Anr*** (*supra*) while interpreting the scope of Section 193 of the IPC and Section 195 of the CrPC had categorically held that private complaints are absolutely barred. It was held as under:

“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 IPC, etc. or to an offence



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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)

22. The learned counsel for the petitioner contends that the complaint was also made in regard to the forgery. He submits that the bar contained in Section 195(1)(b)(ii) of the CrPC is not applicable when the forgery is alleged to have been committed, before the document was produced in the Court.

23. It is significant to note that the learned Trial Court in the present case has summoned the respondent only in regard to the offence under Section 193/209 of the IPC. The order has



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admittedly not been challenged by the petitioner.

24. It is not the case of the petitioner that the learned Trial Court erroneously failed to take cognizance in regard to the allegations of forgery. The order was challenged by the Respondent herein on the ground that the Magistrate ought not to have taken cognizance for offence under Section 193 and 209 of the IPC due to the bar provided in Section 195 of the CrPC.

25. In view of the above, this Court finds no infirmity in the impugned order. The learned Revisional Court has rightly relied upon the law laid down by the Hon'ble Apex Court to hold that no cognizance could have been taken by the learned Magistrate / Trial Court on a private complaint in relation to offence under Section 193 and Section 209 of the IPC.

26. I, therefore, find no merit in the present petition and the same is, accordingly, dismissed.

AMIT MAHAJAN, J

MAY 3, 2024

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