



2024:DHC:9601



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 03rd December, 2024

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CRL.M.C. 4459/2022, CRL.M.A. 18191/2022 & CRL.M.A. 4675/2023**SH. VIJAY DEV DABAS**

.....Petitioner

Through: Mr. Anil Kaushik, Sr.
Adv. with Mr. Ved Pal
Rana, Adv.

versus

**THE STATE OF NCT OF
DELHI & ANR.**

.....Respondents

Through: Mr. Manoj Pant, APP for
the State with SI Krishan
Kumar, PS – Bawana.
R2 in person**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed, *inter alia*, praying as under:

“a) Quash the FIR No.605/2021 dated 06.08.2021 under Section 193/199 of the Indian Penal Code, 1860 (IPC) Police Station Bawana, District North, Delhi and final report dated 03.10.2021 under Section 173 of Cr.P.C. submitted by the police of the said FIR and;
b) Quash the summoning order dated 28.06.2022 and proceedings in Criminal Case No.8969/2021 pending before MM-05, North District Rohini Courts Delhi; and/or
c) Pass such other or further order or direction this Hon'ble Court in view of the facts and circumstances of the present case and in the interest of justice deems fit and proper.”

2. The present case arises out of a familial dispute concerning the mutation of properties owned by the petitioner's late father, Mr. Jai Dev Dabas, who passed away on 25.09.2010. After his demise, the petitioner, being the only male descendant, filed an

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application dated 20.10.2010 before the Tehsildar seeking mutation of the property in his favour. Along with this application, the petitioner submitted an affidavit declaring that he was the sole legal heir and that his father had not executed any will.

3. Subsequently, the petitioner's mother disclosed the existence of a registered will dated 27.12.2004, wherein the petitioner was named as the beneficiary of 90% of the property, with the remaining 10% designated for Respondent No. 2, one of the petitioner's sisters. This will was submitted to the Revenue Court during the mutation proceedings.

4. Respondent No. 2 objected to the mutation, alleging that the petitioner's earlier affidavit was false and intended to deny the daughters their lawful inheritance. She filed an application dated 10.06.2016 before the Revenue Assistant, alleging perjury and requesting legal action against the petitioner for submitting a false affidavit.

5. On 16.06.2016, the Sub-Divisional Magistrate (SDM), Narela, passed an order directing the registration of an FIR against the petitioner under Sections 193/199 of the Indian Penal Code, 1860 ('**IPC**'), and a communication to this effect was sent to the SHO, Police Station Bawana. However, the SHO declined to register an FIR, stating that the offences were non-cognizable.

6. Respondent No. 2 then filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 ('**CrPC**') before the learned Metropolitan Magistrate ('**MM**'), Rohini Courts, Delhi alleging that the petitioner had filed false affidavit before the





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Revenue Assistant and had committed offences punishable under Sections 193/199 of the IPC. The learned MM, by order dated 31.07.2021 directed the police to register an FIR and sought for compliance report. Based on this direction, FIR No. 605/2021 was registered on 06.08.2021.

7. The investigation was concluded, and a final report under Section 173 of the CrPC was filed, following which the learned MM took cognizance of the alleged offences and issued summons to the petitioner. Aggrieved by the registration of the FIR and subsequent proceedings, the petitioner filed a revision petition before the learned Sessions Court, which was dismissed by order dated 31.05.2023 holding that direction to register an FIR on a private complaint by the Magistrate is contrary to the procedure laid down under Section 340 of the CrPC. However, the learned Sessions Court declined to set aside the order dated 31.07.2021 on the ground that FIR has already been registered and cognizance has been taken which is the subject matter before the High Court.

8. The petitioner approached this Court under Section 482 of the CrPC, contending that the registration of the FIR and the subsequent proceedings are contrary to law, as they violate the mandatory provisions of Sections 195(1)(b) and 340 of the CrPC, which bar cognizance of such offences except on a written complaint by the court where the alleged offence was committed. The petitioner further contends that the learned MM erred in directing the police to investigate non-cognizable offences without adhering to the procedural safeguards.



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9. The parties were referred to mediation by this Court to explore the possibility of an amicable settlement. However, the mediation efforts were unsuccessful.

10. The learned senior counsel for the petitioner contends that the registration of FIR No. 605/2021 and the proceedings emanating therefrom are barred under Section 195(1)(b) of the CrPC. He submits that the offences alleged under Sections 193/199 of the IPC pertain to filing of a false affidavit before the Revenue Court, and cognizance of such offences could only be taken on a written complaint by the court where the alleged offence occurred. The absence of such a complaint by the Revenue Court renders the registration of the FIR illegal and unsustainable in law.

11. He submits that both Sections 193 and 199 of the IPC are non-cognizable offences, as classified under the First Schedule of the CrPC. As per Section 155(2) of the CrPC, the police are prohibited from investigating non-cognizable offences without prior approval from the Magistrate. The learned counsel emphasized that in this case, the Magistrate erred in directing the police to register an FIR and investigate these non-cognizable offences without following the prescribed procedure.

12. He submits that the mandatory procedure under Section 340 of the CrPC was not followed by the learned MM. The learned MM neither formed an opinion nor recorded reasons to conclude that it was expedient in the interests of justice to prosecute the petitioner. This omission of procedural safeguards vitiates the entire proceedings.



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13. He placed reliance on the judgment of the Hon'ble Apex Court in ***M.S. Ahlawat v. State of Haryana & Ors. : AIR 2000 SC 168***, wherein it was held that proceedings for offences under Sections 193 and 199 of the IPC must strictly comply with Section 195 of the CrPC, and any deviation renders the proceedings *void ab initio*.

14. He asserted that the police, acting on the Magistrate's directions, conducted an investigation without obtaining judicial sanction, in contravention of Section 155(2) of the CrPC. The counsel contended that the Magistrate's direction to the police to register and investigate the case was itself beyond jurisdiction, as no cognizable offence was disclosed in the complaint.

15. He submits that even otherwise, no case is made out under Section 340 of the CrPC since the complaint under Section 200 of the CrPC was filed on the premise that the petitioner filed false application with affidavit dated 20.10.2010 wherein he failed to disclose the names of female heirs of late Sh. Jai Dev Dabas. This omission/mistake was corrected by the petitioner on 18.11.2020 when by moving second application where the names of female legal heirs of Late Dev Dabas were also disclosed.

16. He submits that the complaint under Section 200 of the CrPC was filed after six years i.e., on 11.05.2016 alleging that false affidavit with application was filed before the revenue authorities and the same has not caused any prejudice to Respondent No.2.

17. *Per Contra*, the learned counsel for Respondent No.2 opposes the present petition and submits that the petitioner has





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failed to demonstrate any grounds for quashing the FIR under Section 482 of the CrPC. The allegations are grave, involving the filing of a false affidavit in mutation proceedings, which constitutes an offence under Sections 193 and 199 of the IPC. The petitioner's actions have caused harm, and it would not be in the interest of justice to halt the trial at this stage.

18. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 482 of the CrPC as a substitute for initiating a second revisional challenge which is clearly barred under Section 397(3) of the CrPC which reads as follows:

“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them.”

19. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

20. The Hon'ble Apex Court, in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241**, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of



justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.

(emphasis supplied)

21. The procedure for prosecution of any offence punishable under Sections 193/199 of the IPC is prescribed under Section 195 of the CrPC, which reads as follows:

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





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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 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:

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).]

“340. Procedure in cases mentioned in Section 195.—(1)

(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.

22. 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: (2000) 1 SCC 278***, while interpreting the scope of Section 195 of the Code of Criminal Procedure, 1973 (‘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 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





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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)

23. The Hon'ble Apex Court in the ***Pritish v. State Of Maharashtra & Ors: AIR 2002 SC 236***, has discussed the scheme of Section 340 of the CrPC and held as under:

“Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

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Inquiry is defined in Section 2(g) of the Code as every inquiry, other than a trial, conducted under this Code by a magistrate or court. It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of warrant case [as defined in Sec.2 (x)] of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

Section 238 of the Code says that the magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the magistrate has to proceed to conduct the trial. Until then the inquiry continues before the magistrate.

(emphasis supplied)

24. Under Section 340 of the CrPC, the court before which the proceedings were held is the only court empowered to see whether the offence appears to have been committed or not. The court is required to first hold a preliminary enquiry to determine



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whether the alleged offence needs to be inquired into. Once the court is satisfied that an inquiry must be made into the offence, then a complaint must be made in writing to the concerned magistrate. Thereafter, the magistrate must examine the documents corresponding to the alleged offence and determine if there are any grounds for framing the charge.

25. In the present case, the proceedings in which the alleged offence is said to have occurred arise from FIR No. 605/2021, dated 06.08.2021, registered under Sections 193/199 of the IPC. The FIR was registered following an order passed by the learned MM directing the registration of the FIR, despite the fact that the alleged offences were non-cognizable in nature. This order, however, was issued without adhering to the procedural safeguards laid down under Section 195 of the CrPC, which governs the taking of cognizance for offences punishable under Sections 193/199 of the IPC.

26. Section 195(1) of the CrPC specifically bars the taking of cognizance of offences under Sections 193/199 of the IPC, except upon a complaint made by the court before which the offence is alleged to have been committed, or by any officer of the court authorized to do so. In the present case, the learned MM failed to follow the procedural requirements set out in the CrPC and proceeded to issue an order for the registration of the FIR. This is in clear contravention of the legal principles laid down in the case of *State of Haryana v. Bhajan Lal : (1992) 1 SCC Supp. 535*, where the Hon'ble Apex Court held that non-compliance with statutory provisions is a valid ground for



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quashing proceedings under Section 482 of the CrPC.

27. The Hon'ble Apex Court in *M.S. Ahlawat v. State of Haryana & Ors.* (*supra*), dealt with the issue of a false affidavit filed in a case. The Hon'ble Apex Court iterated that the inherent powers under Article 142 of the Constitution of India could not override the statutory mandate under Section 195 of the CrPC. The same principle applies in this case: the statutory provisions under Section 195 of the CrPC cannot be bypassed by the learned Magistrate or any other court, even in the interest of expediency.

28. In *Narendra Kumar Srivastava v. State of Bihar* : AIR 2019 SC 2675, the Hon'ble Apex Court upheld the decision of the High Court in quashing the cognizance taken by the Magistrate under Section 193 of the IPC, highlighting that cognizance cannot be taken in the absence of a complaint made by the court in accordance with Section 195 of the CrPC. This judgment further underscores the importance of following the proper legal procedure and ensures that the Magistrate's powers are exercised within the boundaries set by law.

29. In this case, the order passed by the learned MM on 31.07.2021, directing the SHO, P.S. Bawana, to register the FIR, and the subsequent investigation undertaken by the police, violates the clear mandate of Section 195 of the CrPC. The learned MM failed to follow the procedure prescribed for offences under Section 193/199 of the IPC, as these offences are non-cognizable and require a court's written complaint for initiating any proceedings. The registration of the FIR, the subsequent charge sheet filed by the police, and the taking of





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cognizance by the Magistrate on 28.06.2022, without adherence to the necessary legal procedure, are all legally flawed.

30. Furthermore, the procedure set out under Section 340 of the CrPC has not been followed. This section mandates that before any investigation is ordered in cases involving offences under Sections 193/199 of the IPC, the court must first form an opinion, after conducting an inquiry, that it is expedient in the interest of justice to proceed. This procedure has been entirely bypassed in the present case. The learned MM failed to follow this process and instead directly directed the registration of the FIR, thereby violating the provisions of the CrPC and setting in motion a legal process that was itself flawed.

31. Therefore, in view of the aforementioned legal precedents, it is clear that the registration of the FIR and the subsequent proceedings arising therefrom were initiated in contravention of the established legal principles. The actions of the learned MM and the police are not in accordance with the law, and the proceedings must be quashed to maintain the integrity of the criminal justice system.

32. In conclusion, the present petition is allowed, and FIR No. 605/2021, along with all proceedings arising therefrom, are hereby quashed.

AMIT MAHAJAN, J

DECEMBER 3, 2024

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