



Crl.O.P.No.9081 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.9081 of 2025
and Crl.M.P.Nos.6016 & 6017 of 2025

1. Dr.Victoria Manonmani Regina
2. Dr.V.Ganesan

... Petitioners

Vs.

S.Kanniappan

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the C.C.No.76 of 2024 on the file of the learned Judicial Magistrate No.I, Arakkonam and quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.M.Mohamed Riyaz

For Respondent : Mr. M.Samuel Raja

ORDER

This petition has been filed to quash the proceedings in C.C.No.76 of 2024, pending on the file of the learned Judicial Magistrate No.I, Arakkonam, thereby taken cognizance for offences under Sections 167, 197 r/w. 193 of IPC, as against the petitioners.

2. The case of the respondent is that the first accused, none other



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than his own brother viz., Venkatesan fraudulently transferred their late mother

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Raniammal's property using a forged power of attorney and illegal sale deeds, in collusion with a concubine, Medical Officers and Sub Registrars. He claims that the life certificates were forged to register the documents after Raniammal's death and that the first accused withheld property documents to block partitions. On receipt the said complaint, the trial Court has taken cognizance in C.C.No.76 of 2024 for the offences punishable under Sections 167, 197 r/w 193 of IPC.

3. The learned counsel appearing for the petitioners submitted that the petitioners are arrayed as A8 & A9 in the complaint lodged by the respondent. They are public servants, working as Doctors in the government hospital. According to the respondent, the other accused persons are the family members of the respondent and they had fabricated the life certificate as if issued by the petitioners. The specific case of the respondent is that after obtaining the life certificates, they removed the photograph and fixed the deceased person's photograph and proceeded with the sale on the strength of the power of attorney. He further submitted that ingredients for the offences under Sections 167, 197 r/w. 193 of IPC are not at all made out as against the petitioners. The trial Court ought not to have taken cognizance for the offence



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under Section 193 of IPC on the private complaint lodged by the respondent.

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However, the trial Court had taken cognizance straight away without any prior sanction to prosecute the petitioner for the offences punishable under Sections 137, 197 r/w. 193 of IPC. In support of his contention he also relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2019) 3 SCC 318** in the case of **Narendra Kumar Srivastava Vs. State of Bihar and ors**, which held that, the private complaints are absolutely barred in relation to an offence said to have been committed under Section 193 of IPC and that the procedures prescribed under Section 195 of Cr.P.C., are mandatory.

4. Per contra, the respondent filed counter and the learned counsel appearing for the respondent submitted that the respondent filed a private complaint as against the family members as well as the public officials. In fact, the complaint was returned with an endorsement requiring prior sanction under Section 197 Cr.P.C., to proceed against the public servants. As per the directions, the respondent submitted representation along with supporting documents to the competent authority viz., the Joint Director of Health Services. The said authority had conducted detailed enquiry and concluded that the petitioners had issued certificates without verifying the original documents and however refused to sanction prosecute. The District Registrar failed to act



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upon the representation submitted by the respondent. Therefore, it was also challenged before this Court in W.P.1221 of 2023 and it is pending for adjudication.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. There are totally 12 accused in which the petitioners are arrayed as A8 and A9. They are working as Doctors in the Government Hospital, Arakkonam, Ranipet District, as Civil Surgeon and Assistant Medical Officer respectively. The respondent lodged complaint and the specific allegation as against the petitioners is that, one Raniammal died intestate on 04.04.2016 and one Venkatesan was maintaining her property. In order to grab the entire property, the said Venkatesan had executed settlement deed in favour of his counter party through the Power of Attorney dated 04.12.2013 vide document No.9509 of 2013, even after the death of the said Raniammal. Further the said Venkatesan also executed sale deed in respect of the other properties without the consent of other legal heirs of the said Raniammal. He obtained life certificates from the petitioners for execution of settlement deeds as well as the sale deeds. The petitioners without even verifying the death of the person,



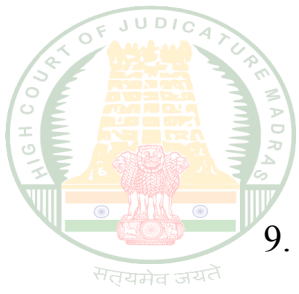
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issued the life certificate. On the strength of the said life certificate, the said

VENKATESAN executed the settlement deed as well as the sale deeds.

7. On perusal of the complaint lodged by the respondent, it is revealed that the life certificate of the Raniammal has been issued by the eighth accused in which, the photo of the second accused in the life certificate was replaced by the first and second accused after being attested by the eighth accused. Likewise the life certificate of the deceased Raniammal has been issued by the ninth accused in which, the photo of the second respondent in the life certificate was replaced by the first and second accused after being attested by the ninth accused.

8. Even according to the respondent, the photo fixed in the life certificate was replaced after issuance of the life certificate. Therefore, the petitioners are being the Doctors, after verifying the life of the second accused, they issued life certificate. Further it is seen that the first accused impersonated the deceased Raniammal by the second accused and obtained the life certificates from the petitioners. Therefore, the petitioners never fabricated or forged any document to attract the offences.



9. It is relevant to extract the provisions under Section 167 of IPC.

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“167 - Public servant framing an incorrect document with intent to cause injury

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Thus, it is clear that to attract the offence under Section 167 of IPC, the accused must prepare or alter any incorrect document which may cause injury to any person. However, it requires knowledge and intention.

10. In the case on hand, there is absolutely no evidence to prove the intention of the petitioners or witnesses that the documents are fabricated by the petitioners herein. Even according to the respondent, after obtaining life certificates from the petitioners, A1 & A2 removed the second accused photograph and fixed the deceased Raniammal photo in order to execute settlement deed as well as the sale deed. The family members had used the life certificates to manipulate property documents. There is absolutely no evidence that the petitioners acted or colluded beyond their official duties. Therefore, the



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offence under Section 167 of IPC is not at all attracted as against the petitioners.

11. Further the offence under Section 167 of IPC can be invoked only as against the public servant. Therefore, in order to invoke the provision under Section 167 of IPC as against the public servant, it is mandatory to obtain sanction to prosecute the public servant. Admittedly, no sanction has been obtained by the respondent to prosecute the petitioners. Even according to the respondent, initially the complaint was returned for want of sanction. Therefore, the respondent submitted representation along with documents before the Joint Director of Health Services for sanction to prosecute the petitioners. After conducting full fledged enquiry, the Joint Director of Health Services had rejected the request made by the respondent for seeking sanction to prosecute the petitioners. That apart, the request made by the respondent was also rejected by the District Registrar. Though it was challenged in W.P.No.1221 of 2023, it is pending before this Court and no sanction has been occurred to prosecute the petitioners.

12. Insofar as the offence under Section 197 of IPC is concerned, it is relevant to extract the provisions under Section 197 of IPC as follows :-



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“197. Issuing or signing false certificate ;-

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.”

There is no specific allegations as against the petitioners as if they falsely issued the certificate. Even according to the respondent, the life certificate was forged or misused by the other accused persons by changing the photograph, manipulating seal, signature. There is no act of falsification of records by the petitioners. Therefore, the ingredients under Section 197 of IPC are missing in this case.

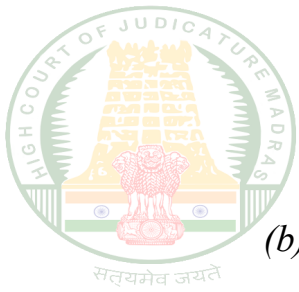
13. That apart in order to prosecute the public servant under Section 197 of IPC, there is a bar under Section 195(1)(b)(i) of Cr.P.C. It is relevant to extract the Section 195(1)(b)(i) of Cr.P.C., as follows:-

“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 -

.....



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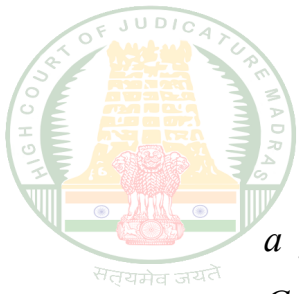
(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or ”

Thus it is clear that a Magistrate cannot take cognizance of offence under Section 193 of IPC on the basis of a private complaint. Cognizance is barred unless there is a written complaint from the Court before which the alleged false evidence was given.

14. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **(2019) 3 SCC 318** in the case of ***Narendra Kumar Srivastava Vs. State of Bihar and ors*** which reads as follows :-

20. 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 IPC and that the procedure prescribed under Section 195 of the Cr.P.C. are mandatory. It was held that:

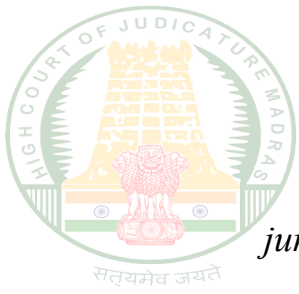
"5. Chapter XI IPC deals with "false evidence and offences against public justice" and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in



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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 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



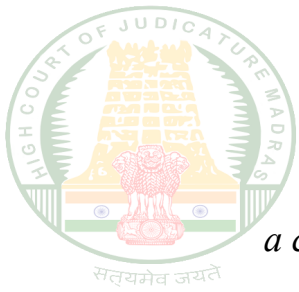
jurisdiction." (emphasis supplied)

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21. As already mentioned, clauses under Section 195(1)(b) of the Cr.P.C. i.e. subsection 195(1)(b)(i) and subsection 195(1)(b)(ii) cater to separate offences. Though Section 340 of the Cr.P.C. is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) of the Cr.P.C.

22. In Sachida Nand Singh (*supra*) relied on by the learned counsel for the appellant, this Court was considering the question as to whether the bar contained in Section 195(1)(b)(ii) of the Cr.P.C. is applicable to a case where forgery of the document was committed before the document was produced in a court. It was held:

"6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. If so, will its production in



a court make all the difference?

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23. *The sequitur of the above discussion is that the bar contained in Section 195(1)(b) (ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal.”*

23. *In Sachida Nand Singh (supra), this Court had dealt with Section 195(1)(b)(ii) of the Cr.P.C unlike the present case which is covered by the preceding clause of the Section. The category of offences which fall under Section 195(1)(b)(i) of the Cr.P.C. refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) of Cr.P.C, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.”*

The above case is squarely applicable to the case on hand and it falls under Section 195(1)(b)(i) of Cr.P.C., as offence is punishable under Section 193 of IPC. Therefore, the trial Court ought not have taken cognizance on the complaint lodged by the respondent.

15. Even on the factual ground, the complaint cannot be sustainable as against the petitioners since, the respondent alleged that after obtaining life



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certificate from the petitioners, the accused 1 & 2 fixed the photograph of the deceased and produced before the registering authority to register the documents. Therefore, the petitioners had nothing to do with the life certificates produced by the first and second accused before the registering authority.

16. In view of the above discussions, the present proceedings cannot be sustained and is liable to be dismissed. Accordingly, the proceedings in C.C.No.76 of 2024, pending on the file of the learned Judicial Magistrate No.I, Arakkonam, is hereby quashed as against the petitioners alone. The trial Court is directed to proceed with the trial as against other accused persons in accordance with law.

17. In result, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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1. The Judicial Magistrate No.I,
Arakkonam.



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G.K.ILANTHIRAIYAN, J.

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