VISHNU CHANDRU GAONKAR

v.

N.M. DESSAI

(Criminal Appeal No.359 of 2018)

MARCH 06, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Code of Criminal Procedure, 1973: s. 195(1)(b)(ii) – Prosecution under, for offence alleged to have been committed in respect of document produced or given in evidence in a proceeding in any court – On facts, application u/s. 195(1)(b)(ii) by appellant making allegations against respondent-counsel for the opposite party, that he committed offence in verifying and forging thumb impression of dead appellant – Order of District and Sessions Judge directing for filing a complaint u/s. 195(1)(b)(ii) – Set aside by the High Court – On appeal, held: Where offences has already been committed earlier and later on the document is produced or given in the evidence in Court, the same is neither covered under Clauses (a), (b)(i) or (b) (ii) – On facts, the High Court rightly held that instant case is not where any complaint could have been proceeded u/s. 195(1)(b)(ii).

Dismissing the appeal, the Court

HELD: 1.1 Appeal No. 91 of 2004 was filed by several appellants, out of which one of the appellants was SMV, who died on 02.03.2005. The application for withdrawal of the appeal was filed on 18.07.2006. One of the respondents before the High Court, took it upon herself to say that the thumb impression, which was put as of 'SMV' was put by her, since her husband 'SMV' also used to sign along with her, in good faith, she put her thumb impression. The respondent came with the case that he having been informed that talks of settlement amongst the Gaonkars is going on and they are intending to withdraw the execution application filed by them. He, as per instructions of his client, drafted and handed over the application for withdrawing the Appeal No. 91 of 2004 to one SK to obtain the signatures of the remaining respondents. He further came with the case that

A **he was not aware of death of SMV or alleged forged thumb impression of SMV on the application. The facts fairly indicate that the application when it was presented in the Court in Appeal No. 91 of 2004 for withdrawal of the appeal, signatures/thumb impressions of the appellants were already obtained on the said application, which was handed over to the respondent in this** B **appeal for filing in the Court. On the same date, i.e., 18.07.2006, the Court allowed the application permitting withdrawal of the appeal. A Criminal Misc. Application No. 95 of 2007 for initiating action under Section 195(1)(b)(ii) of Cr.P.C. was filed by the appellant after the said withdrawal of the appeal. The application** C **was allowed by the District Judge where the District Judge had directed for inquiry to be conducted in terms of Section 195(1)(b)(ii) of Cr.P.C. [Paras 7-9] [109-A-B, D]**

1.2 The submission raised by the appellant is rejected due to the reason that before the Session Court as well as before the D **High Court, the appellant has alleged an offence under Section 195(1)(b)(ii). In the Application No. 95 of 2007 prayer was for complaint to be made as per the provisions contemplated under Section 195(1)(b)(ii) of Cr.P.C. Even the order of District Judge, which was the basis in favour of the appellant on 31.07.2008 has** E **also directed for inquiry and initiating complaint in terms of Section 195(1)(b)(ii) of Cr.P.C. There being specific case of the appellant in his complaint as well as in order passed by the District Judge in his favour, it is not open for the appellant to turn round and claim that allegations are covered under Section 195(1)(b)(i). The Constitution Bench in *Iqbval Singh Marwah* elaborately noticing** F **the statutory scheme under Section 195 has held that where offences has already been committed earlier and later on the document is produced or given in the evidence in Court, the same is neither covered under Clauses (a), (b)(i) or (b) (ii). [Para 15] [112-B-E]**

G **1.3 The execution application, which was filed by the decree holder was also withdrawn. The appeal, which was filed by judgment debtor was withdrawn by judgment debtor, which in no manner had impaired the interest of the appellant, who was legal heir of decree holder. It is also on the record that legal heirs of**

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the decree holders have also withdrawn their execution application, which has attained finality. None of the appellants, who had filed Appeal No.91 of 2004 before the High Court has initiated any proceeding against the instant respondent who was their advocate. It is only the appellant, who was respondent in Appeal No.91 of 2004 has filed a complaint under Section 195. The High Court having taken into consideration entire facts and circumstances have rightly come to the conclusion that present is not a case where any complaint could have been proceeded under Section 195(1)(b)(ii) Cr. P.C. [Para 16] [113-F-H]

Iqbal Singh Marwah & Anr. v.. Meenakshi Marwah & Anr. **[2005] 2 SCR 708 : (2005) 4 SCC 370 –followed.**

Sachida Nand Singh & Anr. v.. State of Bihar & Anr. **[1998] 1 SCR 492 : (1998) 2 SCC 493 ;** *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.* **[2005] 2 SCR 708 : (2005) 4 SCC 370 ;** *Sachida Nand Singh & Anr. v.. State of Bihar & Anr.,* **[1998] 1 SCR 492 : (1998) 2 SCC 493 ;** *Surjit Singh & Ors. v.. Balbir Singh* **[1996] 3 SCR 70 : (1996) 3 SCC 533 – referred to.**

Case Law Reference

[1998] 1 SCR 492	**referred to**	**Para 3**
[2005] 2 SCR 708	**referred to**	**Para 3**
[1998] 1 SCR 492	**referred to**	**Para 11**
[1996] 3 SCR 70	**referred to**	**Para 13**
[2005] 2 SCR 708	**referred to**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 359 of 2018.

From the Judgment and Orders dated 06.08.2009 and 06.10.2009 of the High Court of Judicature, Bombay at Goa in WP No. 1380 of 2009 and Crl. A. No. 22 of 2009.

Ms. Prachi Bajpai, Adv for the Appellant.

A The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. This appeal has been filed questioning the judgment and order dated 06.10.2009 of the High Court of Bombay at Goa in Criminal Appeal No. 22 of 2009 by which judgment, the criminal appeal filed by the respondent Shri Narayan M. Dessai has B been allowed setting aside the order of District & Sessions Judge dated 31.07.2008 directing for filing a complaint under Section 195(1)(b)(ii) of Cr.P.C.

2. The facts which are necessary to be noted for deciding this appeal are:-

C A regular Civil Suit No. 4 of 1993 was filed by two plaintiffs namely Laximan Rama Gaonkar and Janu Narayan Gaonkar impleading two defendants namely Kusta Naga Gaonkar and Shri Suresh Kust Gaonkar. The appellant in this appeal is legal heir of original plaintiff No. 2, Janu Narayan Gaonkar. The Suit No. 4 of D 1993 was decreed by judgment and decree dated 07.12.2001. An application for execution of decree was filed by the legal heirs of the plaintiffs on 07.12.2003. Legal heirs of the original defendants filed a Civil Appeal No. 91 of 2004 questioning the judgment and decree dated 07.12.2001. One of the appellants in Civil Appeal No. 91 of 2004 namely Shaba Manju Velip (one of the legal heirs E of original defendants Kusta Naga Gaonkar) died on 02.03.2005. No application to bring his legal heirs on record was filed by the appellants. The application to withdraw execution case No. 1 of 2003 filed for execution of the decree in Civil Suit No. 4 of 1993 was filed by the plaintiff's advocate on 20.06.2006. The application F for withdrawal of Civil Appeal No. 91 of 2004 was filed on 18.07.2006, which was allowed on 18.07.2006 itself. The Execution Case No. 01 of 2003 was also allowed to be withdrawn on 21.07.2006. On 29.11.2007, the appellant filed an application under Section 195(1)(b)(ii) Cr.P.C. making allegations against the respondent, who was counsel for the appellants in Civil Appeal G No. 91 of 2004 that he committed offence in verifying and forging thumb impression of dead appellant namely Shaba Manju Velip. By order dated 31.07.2008, learned District & Sessions Judge found that it is a fit case for inquiry under Section 195(1)(b)(ii) and directed for inquiry and registering a complaint under Section

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195(1)(b)(ii). Respondent preferred an appeal before the High Court against the order of District & Sessions Judge dated 31.07.2008. The High Court vide its impugned judgment allowed the appeal and quashed the order of the District Judge dated 31.07.2008 as well as the complaint filed pursuant thereto. Aggrieved against the judgment of the High Court, the appellant has filed this appeal.

3. Learned counsel for the appellant submitted that the High Court relying on the Three Judge Bench judgment of this Court in ***Sachida Nand Singh & Anr. Vs. State of Bihar & Anr., (1998) 2 SCC 493***, which has been approved by the Constitution Bench of this Court in ***Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr., (2005) 4 SCC 370***, has allowed the appeal filed by the respondent whereas the above judgments of this Court, wherein reference was made to Section 195(1)(b)(ii) Cr.P.C., which were not applicable in the facts of the present case, since allegations made in the complaint filed by the appellant were referable to Section 195(1)(b)(i). It is submitted that the District & Session Judge has rightly considered all facts and circumstances and directed for filing of complaint against the respondents under Section 195(1)(b). No one has appeared on behalf of the respondent in spite of service.

4. We have considered the submissions of the learned counsel for the parties and perused the records.

5. It is useful to extract Section 195(1) of Cr.P.C., which is to the following effect:-

"**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;

A (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

B (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

C (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),

D [except on the complaint in writing of 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].

……"

E 6. From the facts which are on the record, there is no dispute that the Appeal No. 91 of 2004 was filed by several appellants, out of which one of the appellants was Shaba Manju Velip, who died on 02.03.2005. The application for withdrawal of the appeal was filed on 18.07.2006. It is further to be noted that one Vimal Shaba Velip, who was one of the respondents before the High Court, took it upon herself to say that the F thumb impression, which was put as of Shaba Manju Velip was put by her, since her husband Shaba Manju Velip also used to sign along with her, in good faith, she put her thumb impression. The respondent N.M. Dessai came with the case that he having been informed that talks of settlement amongst the Gaonkars is going on and they are intending to G withdraw the execution application filed by them. He, as per instructions of his client, drafted and handed over the application for withdrawing the Appeal No. 91 of 2004 to one Suresh K. Gaonkar to obtain the signatures of the remaining respondents. He further came with the case that he was not aware of death of Shaba Manju Velip or alleged forged thumb impression of Shaba Manju Velip on the application.

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7. The facts fairly indicate that the application when it was presented in the Court in Appeal No. 91 of 2004 for withdrawal of the appeal, signatures/thumb impressions of the appellants were already obtained on the said application, which was handed over to the respondent in this appeal for filing in the Court. On the same date, i.e., 18.07.2006, the Court allowed the application permitting withdrawal of the appeal.

8. A Criminal Misc. Application No. 95 of 2007 for initiating action under Section 195(1)(b)(ii) of Cr.P.C. was filed by the appellant after the said withdrawal of the appeal. Copy of the Application No. 95 of 2007 has been filed as Annexure P-4. It is useful to quote prayer in the application, which is to the following effect:-

> "The applicant therefore prays that in view of above an enquiry may be conducted and the written complaint be made as per the provision contemplated under Section 195(1)(b)(ii) of Criminal Procedure Code in order to prosecute and take further action against the respondents above as per the provision of law."

9. The application was allowed by the District Judge vide order dated 31.07.2008 where the District Judge had directed for inquiry to be conducted in terms of Section 195(1)(b)(ii) of Cr.P.C., it is useful to quote Paras 18 and 19 of the order of the District Judge, which is to the following effect:-

> "18. Though the respondent No.9 has canvassed that he was totally unconnected with any of such transaction, such a plea would not lie in his mouth when he was representing the said appellants and one of whom was Shaba, since deceased and instrumental in seeking the withdrawal of the appeal also at his instance as late as 18.7.2006 despite Shaba being dead on that day. Therefore, on the basis of the material on record, it is apparent that an offence of forgery under Section 463 I.P.C. has allegedly been committed to withdraw the appeal mis-representing the deceased as living and the execution of the Sale Deeds in respect of the very same property on the following day and a day thereafter. The application so filed in Court would be "a document" in the context of the Evidence Act and evidence.
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> 19. I am therefore satisfied that this is a fit case where inquiry is required to be conducted in terms of Section 195(1)(b)(ii) of Cr.P.C. and initiate complaint against the respondents for appropriate action as per law."

10. The two judgments of this Court, which has already been noticed by the High Court needs detailed reference.

11. A Three Judge Bench of this Court in ***Sachida Nand Singh & Anr. Vs. State of Bihar & Anr., (1998) 2 SCC 493*** had occasion to consider Section 195(1)(b)(ii) and Section 340(1) Cr.P.C. Interpreting Section 195(1)(b)(ii), following was laid down in Paras 8, 11 and 23:-

"**8.** That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgerer is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either instituted by himself or somebody else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of pendency of that litigation. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted. Quoting from Gill v. Donald Humberstone & Co. Ltd.5 Maxwell has stated in his treatise (Interpretation of Statutes, 12th Edn., p. 105) that "if the language is capable of more than one interpretation we ought to discard the more natural meaning if it leads to unreasonable result and adopt that interpretation which leads to a reasonably practicable result". The clause which we are now considering contains enough indication to show that the more natural meaning is that which leans in favour of a strict construction, and hence the aforesaid observation is eminently applicable here.

11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

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." A

12. It is also relevant to note that observations have been made by this Court that forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, the same cannot be treated as one affecting administration of justice. In Para 12, following has been held:- B

"12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records." C

13. A contrary earlier view having expressed by another Three Judge Bench in ***Surjit Singh & Ors. Vs. Balbir Singh, (1996) 3 SCC 533,*** being not in accord with the view expressed by this Court in ***Sachida Nand Singh & Anr. Vs. State of Bihar & Anr. (supra)***, the same was referred to a Constitution Bench for resolving the conflict. The Constitution Bench vide its judgment in ***Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr., (2005) 4 SCC 370*** has resolved conflict and approved three Judge Bench judgment in ***Sachida Nand Singh & Anr. Vs. State of Bihar & Anr. (supra).*** In Para 33, following was laid down:- D E

"33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis." F G

14. Learned counsel for the appellant before us has pressed only one submission, i.e., the judgment of Constitution Bench in ***Iqbal Singh Marwah (supra)*** was a case, which interpreted Section 195(1)(b)(ii), to which there cannot be any dispute but present was a case of offence H

A under Section 195(1)(b)(i). Hence the Constitution Bench judgment of this Court was not applicable and the High Court committed error in relying on the Constitution Bench Judgment in ***Iqbal Singh Marwah (supra).***

15. The submission which has been raised by learned counsel for
B the appellant before us has to be stated to be rejected due to the reason that before the Session Court as well as before the High Court, the appellant has alleged an offence under Section 195(1)(b)(ii). A copy of the Application No. 95 of 2007 has been annexed as Annexure P-4. The prayer made therein as extracted above clearly prays for complaint to be made as per the provisions contemplated under Section 195(1)(b)(ii)
C of Cr.P.C. Even the order of District Judge, which was the basis in favour of the appellant on 31.07.2008 has also directed for inquiry and initiating complaint in terms of Section 195(1)(b)(ii) of Cr.P.C., which has also been extracted above for ready reference. There being specific case of the appellant in his complaint as well as in order passed by the
D District Judge in his favour, it is not open for the appellant now to turn round and claim that allegations are covered under Section 195(1)(b)(ii). There is one more reason due to which the above submission cannot be accepted. The Constitution Bench elaborately noticing the statutory scheme under Section 195 has held that where offences has already been committed earlier and later on the document is produced or given
E in the evidence in Court, the same is neither covered under Clauses (a), (b)(i) or (b) (ii). In Para 10, Constitution Bench made following observations:-

> "10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of
F offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur
G in Chapter X IPC and the heading of the Chapter is — "Of Contempts of the Lawful Authority of Public Servants". These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as — "Of False Evidence and Offences Against Public Justice". The offences mentioned in this

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clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "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" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court."

16. It is further to be noted that the execution application, which was filed by the decree holder was also withdrawn. It is further relevant to notice that the appeal, which was filed by judgment debtor was withdrawn by judgment debtor, which in no manner had impaired the interest of the appellant, who was legal heir of decree holder. It is also on the record that legal heirs of the decree holders have also withdrawn their execution application, which has attained finality. None of the appellants, who had filed Appeal No.91 of 2004 before the High Court has initiated any proceeding against the present respondent N.M. Dessai, who was their advocate. It is only the appellant, who was respondent in Appeal No.91 of 2004 has filed a complaint under Section 195. The High Court having taken into consideration entire facts and circumstances have rightly come to the conclusion that present is not a case where any complaint could have been proceeded under Section 195(1)(b)(ii) Cr.P.C.

A 17. We thus fully endorse the view of the High Court that present is not a case where any complaint could have been proceeded with under Section 195(1)(b)(ii). We thus do not find any merit in this appeal and the same is dismissed.

Nidhi Jain Appeal dismissed.