**SUPREME COURT OF INDIA**

Rugmini Ammal (dead) by Lrs.

Vs.

V. Narayana Reddiar

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

13.12.2007

**JUDGMENT:**

**Dr. ARIJIT PASAYAT, J.**

1. Challenge in this appeal is to the judgment of a Division Bench of the Kerala High Court by which the judgment of the learned Single judge was set aside and the writ appeal was allowed.

2. Background facts in a nutshell are as follows:

Respondent No.4 in CMP No.35930 of 1998 in O.P. No.12701 of 1998 was the 4th respondent in writ petition also. According to the respondent No.1 he was the tenant of a building called Jaya building Main Road, Kollam. The tenancy was given by one Durairaja Reddiar by executing an agreement of lease dated 6.1.1994. This lease deed enabled him to make alterations in the building. Accordingly he effected some alterations in the building. When it was found that the alterations were effected he received from the Kollam Municipality an order directing him to demolish the structure which according to the Municipality was unauthorized. Against the order of the Municipality respondent No.1 approached the Government. The Government issued an order dated 22.6.1998 which was annexed as Ext.P5 to the writ petition, directing the respondent No.1 to submit an application to the local authority seeking regularization of the additional structure made by him. Rugmini Ammal, the first respondent in the Writ Appeal filed a writ petition. The contention raised by her was that there was no lease agreement and that the construction was unauthorized. It was stated that the construction cannot be legalized on other grounds.

3. Respondent No.1 filed a counter-affidavit. Along with counter-affidavit photocopy of the agreement of lease dated 6.1.1994 was annexed. Thereafter Rugmini Ammal filed CMP No.35930 of 1998. The contentions taken in the CMP was that the purported agreement of lease is a forged document. It was further stated that she sought the opinion of Professor B.B. Kashyap, a renowned handwriting and finger print expert. The signatures in the purported lease agreement, Exh. R4(a) was compared with the admitted signatures of Durairaj Reddiar in Ext. P7. The expert gave his opinion, the copy of which was produced as Exh.P18. According to it the signatures in Exh.R4(a) did not tally with the admitted signatures. Hence the handwriting expert was of the opinion that the five disputed signatures were not written by the writer of the admitted signatures.

4. A counter-affidavit was filed in CMP No.35930 of 1998. In the counter-affidavit, it was stated that Exh. R4(a) was produced before the Government and Exh. P5 order itself goes to show that this was produced before the Government. The fabrication of Exh.R4(a) was denied. A reply affidavit

was filed in which Rugmini Ammal denied the execution of certain documents signed by Reddiar and produced by the appellant in the writ appeal. The prayer in CMP No.35930 of 1998 was to conduct enquiry into the production of Exh.R4(a) forged document and made a complaint thereof and forward it to the Magistrate of the First Class having jurisdiction.

5. Learned Single Judge relied on the opinion given by the handwriting expert and prima facie came to the conclusion that Exts.R4(a), R4(e), R4(i) and R4(j) were fabricated and hence there is a reasonable likelihood to establish the offences punishable under Sections 463, 471, 475 and 476 of the Indian Penal Code, 1860 (in short the IPC). The learned Single Judge directed the Registrar of the Court to make a complaint for the purpose in writing and send it to the Magistrate of the First Class having jurisdiction. Against that order the writ appeal was filed.

6. Stand of the appellant before the High Court was that proceedings under Section 340 of the Code of Criminal Procedure, 1973 (in short the Cr.P.C.) cannot be initiated because there was no allegation that the fabrication was made after the document was produced. Certain other stands were also taken with which we are not very much concerned.

7. Stand of the respondents in the writ appeal was that the writ appeal was not maintainable and Section 341 of Cr.P.C. does not provide for an order passed by the High Court. It was submitted that Section 340 Cr.P.C. has been rightly initiated. The High Court was of the view that though Section 341 Cr.P.C. does not provide for an appeal from an order passed under Section 340 Cr.P.C. it does not mean that there was no other provision by which appeal cannot be filed. In fact it was held that Section 5 of the Kerala High Court Act provides for such an appeal. Reference in this context was made to a Five Judge Bench decision of the High Court in K.S. Dass v. State of Kerala [1992 (2) KLT 358]. Reference was also made to some other full Bench judgments.

8. Coming to the question about the applicability of Section 340 to the facts of the case it was held that stage for initiation of the proceeding, if any, under Section 340 Cr.P.C. had not come. Reference was made to a decision of this Court in Schida Nand Singh and Anr. v. State of Bihar and Anr. [AIR 1998 SC 1121]. Therefore, it was held that initiation of the proceeding under Section 340 Cr.P.C. was without jurisdiction. The writ appeal was accordingly allowed.

9. Learned counsel for the appellant submitted that there is a conflict in view between the decision in Sachida Nands case (supra) and Surjit Singh and Ors. v. Balbir Singh (1996 (3) SCC 533).

10. Learned counsel for the respondents on the other hand supported the order of the High Court.

11. At this juncture it is to be noted that in view of the conflict of language between two decisions of this Court each rendered by a Bench of three learned Judges in Sachida Nands case (supra) and Surjit Singhs case (supra) regarding interpretation of Section 195(1)(b)(ii) Cr.P.C. the matter was placed before a five-judge Bench in Iqbal Singh Marwah v. Meenakshi Marwah [2005 4) SCC 370]. After referring to the provisions contained in Sections 190, 195(1)(b)(ii) and 340 Cr.P.C. it was held that the decision in Sachida Nands case (supra) correctly decided and the view taken is the correct view. It was, inter alia, observed as follows: 19. As mentioned earlier, the words by a party to any proceeding in any court occurring in Section 195(1)( c ) of the old Code have been omitted in Section 195(1)( b )( ii ) CrPC. Why these words were deleted in the corresponding provision of the Code of Criminal Procedure, 1973 will be apparent from the 41st Report of the Law Commission which said as under in para 15.39: 15.39. The purpose of the section is to bar private prosecutions

where the course of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige. On principle there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of Section 195.

20. Since the object of deletion of the words by a party to any proceeding in any court occurring in Section 195(1)(c) of the old Code is to afford protection to witnesses also, the interpretation placed on the said provision in the earlier decisions would still hold good.

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 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 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.

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 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)(i), 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.
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 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 2 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.

26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong.

In view of the discussion made above, we are of the opinion that Sachida Nand Singh 2 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.

12. The above position was highlighted in Iqbal Singh Marwah v. Meenakshi Marwah (supra).

13. The High Court was, therefore, right in placing reliance on Sachida Nands case (supra).

14. The appeal is, therefore, without merit and is, therefore, dismissed. There will be no order as to costs.