

Kishorebhai Gandubhai Pethani

v.

State of Gujarat & Another

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE S.A.
BOBDE

Criminal Appeal No. 1451 Of 2013 | 20-09-2013

Dr. B.S. Chauhan, J.

1. This criminal appeal has been preferred against the judgment and order dated 12.9.2011, passed by the High Court of Gujarat in Criminal Misc. Application No.3213 of 2011 dismissing the appellant's application for quashing the complaint lodged by the respondent No.2 being ICR No.180 of 2010 dated 5.7.2010 under Sections 463, 465, 468, 471 and 114 of the Indian Penal Code 1860 (hereinafter referred to as 'IPC').

2. Facts and circumstances giving rise to this appeal are that:

A. A complaint bearing ICR No.271 of 2003 was lodged by respondent no.2 before Madhavpura Police Station for the offences punishable under Sections 323, 324, 294A, 506(2) and 114 IPC read with Section 135(1) of the Bombay Police Act, 1951, naming the appellant and one other individual. Subsequently, considering the nature of injuries, Section 307 IPC was also added and the chargesheet was submitted after having investigated with respect to the said offences wherein the appellant as well as his wife had been arrayed as accused. After committal of the case to the learned Sessions Court, the Sessions Case No.175 of 2007 is being tried.

B. During the hearing of the Sessions Case No.175 of 2007, the prosecution examined one Dr. Ghanshyam Chunilal Patel (PW.3) on 12.5.2010, wherein he deposed that he had treated the complainant and also produced a copy of the injury certificate, Exh.105. It was alleged that some portion of the documents

produced by the said witness had been tampered with and as the appellant herein had been a beneficiary of the same, it was suggested that some manipulation had been done by the appellant. Thus, the complainant filed an application to enquire into the matter of tampering with the medical report.

C. An application for cancellation of bail was also filed alleging that the appellant had tampered with the documents produced before the Sessions Court for obtaining the bail.

D. Subsequent thereto, a complaint was lodged on 5.7.2010 being FIR No.180 of 2010 under Sections 463, 465, 468, 471 and 114 IPC in respect of tampering with the aforesaid medical report.

E. The appellant filed Criminal Misc. Application No.3213 of 2011 under Section 482 of Criminal Procedure Code 1973 (hereinafter referred to as 'Cr.P.C.') to quash the complaint lodged before Shahibaug Police Station being ICR No.180 of 2010. The High Court dismissed the said application rejecting the contention of the appellant that such a complaint was not maintainable unless it is made by the court itself under the provisions of Section 195 Cr.P.C.

Hence, this appeal.

3. Shri Sushil Kumar Jain, learned senior counsel for the appellant submitted that it is a settled legal proposition that in view of the provisions of Sections 195/340 Cr.P.C. where the forgery is alleged to have been made in the court, the complaint is not maintainable unless it is made by the court itself. In support of this proposition, he has placed a very heavy reliance upon the judgment of this Court in *M.S. Ahlawat v. State of Haryana & Anr.*, AIR 2000 SC 168. It has been submitted that the appeal deserves to be allowed and the complaint is liable to be quashed.

4. On the contrary, Shri Nirav C. Thakkar, learned counsel appearing for respondent no.2 and Ms. Hemantika Wahi, learned counsel for the State, have submitted that in case the documents have been forged outside the court before

being filed and relied upon in the court proceedings, the provisions of Section 195 Cr.P.C. are not attracted. To buttress their case, they have placed reliance on the judgment of this Court in *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.*, AIR 2005 SC 2119. It has been suggested by them that the appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. In *Mohan Singh v. Late Amar Singh (through LR's)*, AIR 1999 SC 482, while dealing with a case of perjury, this Court held as under:

".....Tampering with the record of judicial proceedings and filing of false affidavit, in a Court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity....."

7. Perjury is an obstruction of justice. Deliberately making false statements which are material to the case, and that too under oath, amounts to crime of perjury. Thus, perjury has always to be seen as a cause of concern for the judicial system. It strikes at the root of the system itself and disturbs the accuracy of the findings recorded by the court. Therefore, any person found guilty of causing perjury, has to be dealt with seriously as it is necessary for the working of the court as well as for the benefit of the public at large.

8. In the instant case, admittedly, the documents had been forged and fabricated. The manipulation, if any, had been made prior to filing of those documents in the court. Therefore, the question arises whether in such a fact-situation, provisions of Sections 195 and 340 Cr.P.C. are attracted.

9. In *M.S. Ahlawat (supra)*, this Court 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 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."

10. However, a Constitution Bench of this Court in *Iqbal Singh Marwah* (supra) after considering a large number of judgments on the issue held as under:

"23. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, the Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal Act in its wider sense includes every statute creating an

offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here.

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25. 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.

26. In the present case, the Will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) CrPC would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents....."

Emphasis added)

11. This Court in *Ram Dhan v. State of U.P. & Anr.*, AIR 2012 SC 2513 considered this very aspect of the matter and relying upon the earlier judgment of this Court in *Sachida Nand Singh & Anr. v. State of Bihar & Anr.*, (1998) 2 SCC 493 came to the conclusion that if the fabrication of false evidence takes place or the document is tampered with before filing in court, the provisions of Section 195 Cr.P.C. would not be attracted. It is only when the document is tampered with after filing in court then the bar provided in Section 195 Cr.P.C. would be attracted.

12. A similar view has been reiterated on the issue by this Court in *P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu*, AIR 2008 SC 1884; *Mahesh Chand Sharma v. State of U. P. & Ors.*, AIR 2010 SC 812; *C. Muniappan & Ors. v. State of T. N.*, AIR 2010 SC 3718; *Institute of Chartered Accountants of India v. Vimal Kumar Surana & Anr.*, (2011) 1 SCC 534; and *C.P. Subhash v. Inspector of Police Chennai & Ors.*, JT (2013) 2 SC 270.

13. This Court while considering the issue in *Rugmini Ammal (Dead by L.Rs.) v. V. Narayana Reddiar & Ors.*, AIR 2008 SC 895 reiterated a similar view while placing reliance upon *Sachida Nand Singh (Supra)* explaining as under:

"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....."

14. In view of the above, we do not hesitate to hold that no fault can be found with the impugned judgment rendered by the High Court. The facts and

circumstances of the case do not warrant any interference. The appeal lacks merit and is accordingly dismissed.