Dr. V.K. Bindal Vs. State

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Court : Delhi

Decided On : May-01-2008

Reported in : 2008(104)DRJ317

Judge : Vipin Sanghi, J.

Acts : Right to Information Act (RTI); Code of Criminal Procedure (CrPC) - Sections 156(1), 156(3), 173(2), 190(1), 195, 340, 341 and 482; Indian Penal Code (IPC) - Sections 120B, 195, 195(1), 201, 304A, 340, 420, 463, 468 and 471

Appeal No. : Crl. M.C. No. 2184/2007

Appellant : Dr. V.K. Bindal

Respondent : State

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : Shayamla Pappu, Sr. Adv. and Kanchan Singh, Adv

Disposition : Petition dismissed

Judgement :

Vipin Sanghi, J.

1. In these two petitions under Section 482 of the Criminal Procedure Code (the Code), the petitioners seek quashing and setting aside of the order dated

13.09.2006 passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi under Section 156(3) of the Code, directing the concerned SHO to lodge an FIR on the basis of the complaint made by the complainant.

2. The background facts may first be stated. The complainant Murari Lal Goel had filed a writ petition (Criminal) No. 680/1997 before this Court for registration of FIR as no FIR was registered despite lapse of considerable period on his complaint to police. The Division Bench of this Court issued directions which led to registration of FIR No. 635/1998 under Section 304A IPC against the petitioners. The police filed the chargesheet in November, 1999 before the Magistrate. One of the documents relied upon in the chargesheet was an enquiry report prepared by a committee headed by Dr. U.A. Kaul. This enquiry was ordered by the Govt. of NCT of Delhi on account of the demise of the son of the complainant allegedly under the care and supervision of the petitioners, who are both medical doctors. Photocopy of the said enquiry report was filed along with the chargesheet.

3. During the pendency of those proceedings the complainant also filed a claim before the National Consumer Disputes Redressal Commission (National Commission) being O.P. No. 29/2000. In those proceedings, the petitioners herein, who are the respondent before the National Commission, produced and filed on record, what is claimed to be, a copy of the aforesaid committee report of Dr. U.A. Kaul. The petitioners state that they obtained a copy of the report from the Government of NCT of Delhi by making an application under the Right to Information Act. Admittedly, the copy of the report as filed along with the chargesheet aforesaid, and the one filed by the petitioners before the National Commission are at material variance.

4. This led the complainant to make a complaint under Section 420, 468, 471, 201 read with Section 120B IPC against the petitioners herein. The complainant preferred an application under Section 156(3) of the Code before the learned Metropolitan Magistrate. By the impugned order, that application had been allowed.

5. The order passed by the learned Metropolitan Magistrate is assailed on the ground that the offence alleged against the petitioners is an offence of forgery

described in Section 463 IPC in respect of a document produced in the Court trying the offence under Section 304A IPC and, consequently, under Section 195(1)(b)(ii) of the Code, only when that Court (before whom the proceedings under Section 304A IPC were pending in FIR No. 635/1998 referred to as the 'concerned court'), makes a complaint by following the procedure prescribed in Section 340 of the Code, the Magistrate can take cognizance of the same. It is, thereforee, argued that an FIR cannot be registered at the instance of the complainant. Only the concerned Court, which was dealing with FIR No. 635/1998 was competent to make a complaint of the alleged offence of forgery. thereforee, the learned Metropolitan Magistrate had no jurisdiction to pass the order under Section 156(3) in the facts of this case. Learned counsel for the petitioners, in support of this submission, relies on the Constitution Bench decision of the Supreme Court in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. : 2005 CriLJ2161 .

6. On the other hand, submission of Ms. Shyamla Pappu learned Senior Advocate appearing for the complainant firstly is that Section 195 of the Code may not be attracted in this case, since what has been produced before the concerned Court trying the offence under Section 304A IPC, is merely a photocopy of the said enquiry report, and the original thereof has not been produced. She submits that for triggering the provision of Section 195 (1) (b) (ii) of the Code, it is essential that the original document (in respect of which the stated offence(s) is alleged to have been committed) should have been produced or given in evidence before the concerned Court. For this reason, she submits, that the jurisdiction of the Court to take cognizance of the offence of forgery alleged by the Complainant, even when the complainant is not the concerned Court, is not barred.

7. Secondly, she submits that, in any event, what is barred by Section 195 of the Code is the taking of cognizance by the Court except upon the making of a complaint by the Court before whom any of the offences enumerated in Section 195 of the Code is alleged to have been committed. All that has been directed by the impugned order of the Magistrate is the registration of the FIR, and conduct of investigation by the police. By the impugned order, the learned Magistrate has not taken cognizance. thereforee, there is no illegality committed by him while passing

the order under Section 156(3) of the Code. Even if the submissions of the petitioners were to be accepted, namely, that the Court could take cognizance only upon the complaint of the concerned Court, that by itself does not debar the lodging of the FIR and the conduct of the investigation by the police under Section 156(1) or curtail the power of the Magistrate to order investigation by the police under Section 156(3) of the Code.

8. Lastly, the submission of Ms. Pappu is that even on merits, it cannot be said that in the facts of the present case, Section 195 is applicable. She has also relied on various decision of the Supreme Court in support of her submissions, to which reference shall be made a little later.

9. Mr. Sharma, learned APP, also opposes the petition. He also relied on the decision of the Supreme Court in Iqbal Singh Marwah (supra) to submit that in Iqbal Singh Marwah (supra), the Supreme Court has affirmed its earlier decision in Sachida Nand Singh v. State of Bihar : 1998 CriLJ1565 . The Supreme Court in Sachida Nand Singh (supra) had held that it is not that every case involving an offence of forgery of a document, even when committed outside the precincts of the Court and long before its production in the Court, could be treated as one affecting the administration of justice, merely because that document later reached the Court records. He submits that upon the petitioners filing a copy of the Dr. U.A. Kaul Committee Report claimed to have been obtained under the Right to Information Act from the Government of NCT of Delhi before the National Commission, the complainant filed the aforesaid complaint alleging forgery, inter alia, by the petitioners.

10. Having considered the rival submissions and the decisions of the Supreme Court cited before me, I am of the view that there is no merit in these petitions and the same deserve to be dismissed, for more than one reasons.

11. No doubt under Section 195 of the Code, it is only upon the complaint of the concerned Court that the Court can take cognizance of the offence(s) mentioned in Section 195 of the Code. The Supreme Court in Iqbal Singh Marwah (supra) while interpreting Section 195 Cr.P.C. has held as follows:

9 ...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 a 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 Cr.P.C. 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.

12. The Supreme Court, referred to its earlier decision in Sachida Nand Singh (supra) wherein it had been held that Section 195 Cr.P.C. is invoked where the offences affected the administration of justice. It is for that reason, that only the concerned Court can take cognizance, and the procedure under Section 340 Cr.P.C. also empowers the same Court before whom the offence is committed in respect of documents produced or given in evidence before that Court. The reason why the jurisdiction to take cognizance of such an offence is restricted to the concerned Court is also noted by the Supreme Court and the same is culled out from the earlier decision of the Supreme Court in Patel Lalji Bhai Samabhai v. The State of Gujarat : 1971 CriLJ1437 . The purpose underlying Section 195(1)(b) seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous, vexations or unsufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process or the administration of public justice which is the direct and immediate object or the victim of these offences. As the purity of the proceedings of the court is directly sullied by the crime, the court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party who might ultimately suffer can persuade the Civil

Court to file the complaint.

13. Supreme Court also takes note of the 41st Report of the Law Commission and in particular para 15.39 dealing with Section 195(1)(b)(ii) Cr.P.C., wherein the Law Commission observed as follows:

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.

14. At first blush the submission of the petitioners appears to be attractive since it is claimed that the Dr. U.A. Kaul committee report was produced along with the chargesheet before the learned Magistrate trying the offence under Section 304A IPC and forgery has allegedly taken place in respect of the said document. However, on consideration of the submissions made by the respondent/complainant one realises that the submission of the petitioner is misplaced and does not advance the petitioners' case.

15. In Iqbal Singh Marwah (supra), the Supreme Court takes note of the legal position that in view of the language used in Section 340 of the Code, the Court is not bound to make a complaint regarding commission of an offence referred to Section 195(1)(b), as the Section is conditioned by the words 'court is of opinion that it is expedient in the interest of justice....' The concerned Court would file a complaint only if the interest of justice so requires and not in every case. Even before making the complaint, the Court would hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to Section 195(1)(b). This expediency would be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged documents, but having regard to the effect or impact that such commission of offence as upon administration of justice. It is possible that such forged documents or forgery may cause very serious or substantial injury to a person, inasmuch as, it may deprive him of very valuable property or status or the like. If it is held that in a case it would be the concerned Court alone, which would be entitled to lodge the complaint, it would render the victim of such forgery or forged documents remedy-less. The

Supreme Court held that any interpretation which leads to such a situation where a victim of a crime is rendered remedy-less has to be discarded. The Supreme Court also took a note of the fact that the holding of a preliminary inquiry under Section 304 of the Code by the concerned Court would normally get unduly delayed. This important aspect also dissuaded the Supreme Court from accepting the broad interpretation sought to be placed on Section 195(1)(b)(ii) of the Code to the effect that Section 195 is a bar to private prosecution. The Supreme Court held that 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. After preparing a forged document or committing an act of forgery, a person may manage to get the proceeding instituted in any civil, criminal or revenue Court either by himself or someone set up by him, or simply file the document in the said proceeding. If the broad interpretation to Section 195(1)(b)(ii) is accepted, he would be protected from prosecution either at the instance of a private party or the police, until the concerned Court, where the document is filed, itself chooses to file a complaint. Such an interpretation would be highly detrimental to the interest of the society at large. The Supreme Court also took notice of the fact that the Courts are generally reluctant in directing filing a criminal complaint and such a course is rarely adopted. The Supreme Court held that it would not be fair and appropriate 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 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. Such a broad interpretation would also lead to impracticable results, which should be avoided.

16. In the present case, the petitioners are alleged to have filed a copy of the enquiry report as allegedly obtained by them under the Right to Information Act from the Government of NCT of Delhi. It is not the case of the petitioners that they have obtained a certified copy of the said document from the record of the concerned court and that the copy filed by them before the National Commission is a copy of the report as filed before the concerned court. What is alleged to be a forgery is a forgery of the enquiry report as is available in the records of the Government of NCT of Delhi. The comparison with the copy of the report filed on

the record of the concerned court is merely to prima facie show that there appears to be case of forgery.

17. In these facts, it is difficult to say that the alleged offence of forgery is an offence which concerns the administration of justice. The said alleged offence may, thereforee, not even persuade the concerned court to initiate action under Section 195 of the Code.

18. The submission of Ms. Pappu, that Section 195 Cr.P.C. does not come in the way of the registration of the FIR and the conduct of investigation by the police and also does not impinge of the power of the learned Magistrate under Section 156(3) Cr.P.C. also appears to be well founded and has judicial sanction. She has relied on various decisions of the Supreme Court to support her aforesaid submission. In State of Punjab v. Raj Singh : 1998 CriLJ1104 , the Supreme Court in a short decision stated the legal position in the following words:

2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. Lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) Cr. P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognisable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) Cr. P.C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and

follows the procedure laid down in Section 340 Cr.P.C.

19. A more elaborate discussion found in M. Narayandas v. State of Karnataka AIR 2004 SC 555, wherein the Supreme Court has held as follows:

8. ...The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh reported in : 1998 CriLJ1104 .

...

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected.

...

The law on the point is clear. At the stage of investigation Section 195 has no application. We are thereforee not concerned with the question whether Section 195 applies to documents forged/fabricated prior to their being produced in Court. That question only arises after the Court takes cognizance. At this stage the only question is whether the investigation should be permitted to proceed or not. As stated above there is no ground or reason on which the complaint/FIR can be quashed.

20. I may also referred to the decision of the Supreme Court in State of Karnataka v. Pastor P. Raju : 2006 CriLJ4045 , wherein the Supreme Court has held as under:

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.

21. To counter the aforesaid argument of Ms. Pappu learned counsel for the petitioners submits that a reading of Section 340 Cr.P.C. shows that the concerned Court is empowered, after conducting such preliminary enquiry, if any, as it may, think fit, to either; (a) record a finding that an offence appears to be committed as is referred to in Clause (b) of Sub-section (1) of Section 195; (b) make a complaint thereforee in writing, and; (c) send it to a Magistrate of the First Class having jurisdiction, and, also to require the furnishing of sufficient security and binding over any person to appear and give evidence in any complaint that may be filed. He submits that the investigation by the police by registering an FIR is, thereforee, meaningless, since it is for the concerned magistrate to conduct the enquiry and get the investigation done and record the finding.

22. I am not in agreement with this submission of the petitioners. Firstly, I may note that the decisions of the Constitution Bench of the Supreme Court in Iqbal Singh Marwah (supra) does not in any way expresses its disagreement with its view in Raj Singh (supra) and M. Narayandas (supra). On the contrary, a perusal of Iqbal Singh Marwah (supra) shows that Supreme Court has leaned in favor of giving an interpretation, which limits the scope of Section 195 of the Code. There is no contradiction in invocation of Section 156(3) by the learned magistrate, the registration of the FIR and the conduct of the investigation by the police, with Section 195 read with Section 340 Cr.P.C. As noticed by the Supreme Court in M. Narayandas (supra) once the investigation is completed, then the embargo under Section 195 would come into play and the Court would not be competent to take cognizance. However, the concerned Court could then file the complaint for the offence mentioned in Section 195(1)(b)(ii) on the basis of the FIR and the material collected during investigation and by following the procedure laid down in Section 340 Cr.P.C. By the impugned order, all that is directed to the police is to register

the FIR. The stage for taking cognizance by one or the other Court is yet to arrive. On this ground itself, these petitions deserve to be dismissed.

23. I also find merit in the first submission of learned counsel for the complainant, namely, that for invoking Section 195 Cr.P.C. the original document has to be placed on record or led in evidence before the concerned court. Admittedly, only a photocopy of the Dr. U.A. Kaul committee's report has been placed on record Along with the chargesheet in the FIR relating to the offence under Section 304A IPC. Learned counsel for the complainant submits that even in Iqbal Singh Marwah (supra) the Supreme Court has referred to the various decisions of the Privy Council as well as the earlier decision of the Supreme Court, wherein it has been held that the bar of Section 195 would not apply, if the original document had not been produced or given in evidence in Court.

24. In Sushil Kumar and Ors. v. State of Haryana and Ors. : 1988 CriLJ427 , it was alleged that a copy of the forged partnership deed was produced in the Court. The original document was not filed in the Court and a temporary injunction was obtained on the strength of its copy. The Supreme Court held, relying on the decision of the Privy Council in Sanmukhsingh v. The King (1949) LR 77 I A 7 AIR 1950 PC 31 for purpose of that Sub-section (1) (b) (ii) of Section 195 of Code the production of a copy of the alleged forged document is not sufficient and it is not the same as the production of the document itself. This view emerges from the plain grammatical meaning of the words and is also supported by the practical common sense. The aforesaid decision of the Privy Council had also been followed in Budhu Ram v. State of Rajasthan : [1963]3SCR376 . However, I do not consider it necessary to multiply the authorities and the proportion having been accepted by the Supreme Court in Sushil Kumar (supra), it is sufficient for my purpose to conclude that in the facts of this case, Section 195 of the Code has no application.

25. For the aforesaid reasons, I find no merit in these petitions and the same are, accordingly, dismissed leaving the parties to bear their respective costs.