

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy

Judgment on: 22.02.2010
C.R.R. No. 59 of 2010
With
CRAN No. 538 of 2010
Sri Biswanath Bhakta & Ors.
versus
The State of West Bengal & Anr.

Point:

Cognizance: Whether court can take cognizance on the basis of charge sheet filed by the police under section 191/192/196/198/ 199/209/210/468/471 without any reference by the Court- Code of Criminal Procedure,1973-S.195

Fact:

The evidentiary materials collected by the police during investigation relating to the case at hand which was instituted on the basis of a First Information Report lodged by the Senior Divisional Manager, National Insurance Corporation reflects that accused persons maintained their false claim before the motor accident claim tribunal by production of forged, false and fictitious documents, viz., the injury reports, disability certificates and by lodging a false FIR and those were manufactured before the same were produced and given in evidence in connection with a proceeding before the motor accident claim tribunal as well as the First Information Report was falsely lodged before the institution of the said claim case and such forgery was committed of course outside the Court. : A charge-sheet on the said investigation submitted by the police under Sections 191/192/196/198/ 199/209/210/468/471 of the Indian Penal Code and the order of taking cognizance of such offences on a police report is under challenge in this criminal revision on the ground of prohibition contained in Section 195 (1)(b)(ii) of the Code of Criminal Procedure.

Held:

The restriction prescribed under Section 195 of the Code of Criminal Procedure comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190 of the Code and the statutory power of the police to investigate into a FIR which discloses a cognizable offence as well as non-cognizable offence is not trammled by the said provisions, even if the offence is alleged to have been committed in or in relation to, any proceeding in Court. The statutory power of police to investigate under the Code is no way restricted by the provisions of Section 195 of the Code. (Paragraph – 4)

In this case the prohibition contained in Section 195 (1)(b)(ii) of the Code of Criminal Procedure will not operate as a bar for a court to take cognizance of offences punishable under Sections 196/198/199/468/471 of the Indian Penal Code upon a charge-sheet filed by the police. Thus, both the charge-sheet as well as the order of taking cognizance by the Court below in respect of the aforesaid offences cannot be said to be without jurisdiction and illegal and accordingly the same stands sustained. Para 6

The offences punishable under Sections 209 and 210 of the Indian Penal Code, viz., dishonestly making false claim in Court and fraudulently obtained decree for sum not due are the offences have a direct connection with a proceeding in a court of law and in this case before the motor accident claim tribunal, a civil court for the purposes of Section 195 of the Code of Criminal Procedure as provided under the provisions of Section 169 (2) of the Motor Vehicles Act and as such for the said offences no cognizance can be taken except on a complaint of the Court concerned. Accordingly, the impugned order of taking cognizance of the said two offences are set aside. Para 7

Cases cited: State of Punjab Vs. Raj Singh & Anr., reported in 1998 SCC (Cri) 642

Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. reported in 2005 SCC (Cri) 1101

For Petitioners : Mr. Joy Sengupta
Mr. Rohan Ghosh
For State : Mr. Swapan Kumar Mullick

The Court:

1. A charge-sheet under Sections 191/192/196/198/199/209/210/468/471 of the Indian Penal Code and the order of taking cognizance of such offences on a police report is under challenge in this criminal revision on the ground of prohibition contained in Section 195 (1)(b)(ii) of the Code of Criminal Procedure.

2. Heard the Learned Counsels appearing on behalf of the parties.

Considered their respective submissions as well as the materials on record.

3. This is a case where charge-sheet has been submitted under Sections 191/192/196/198/199/209/210/468/471 of the Indian Penal Code. Out of which Sections 191 and 192 of the Indian Penal Code are not penal sections and the same only define the offences of giving false evidence and fabricating false evidence. The same are read as follows;

Giving false evidence.

S. 191. Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or

believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1 : A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2 : A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Fabricating false evidence.

S. 192. Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator,

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and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence”.

Whereas, Section 196 of the Indian Penal Code prescribe the punishment for using or attempting to use as true or genuine evidence, any evidence which is knowing to be false and fabricated and Section 198 of the Indian Penal Code prescribes punishment for using or attempting to use any certificate as a true certificate knowing to be false. For both the said offences punishment prescribed are same as in case of giving false evidence in any stage of judicial proceeding or for fabricating false evidence for the purpose of being used in any stage of judicial proceeding under Section 193 of the Indian Penal Code. Similarly, Section 209 of the Indian Penal Code prescribe the punishment for making any false claim in a Court fraudulently or dishonestly with intend to injure or annoy any person and Section 210 of the Indian Penal Code prescribe punishment for fraudulently obtaining decree for sum not due.

The Section 468 of the Indian Penal Code prescribe punishment for forgery and for using forged document for the purpose of cheating and Section 471 of the Indian Penal Code prescribe punishment for using as genuine a forged document. So far as Section 471 of the Indian Penal Code is concerned any person guilty of such offence shall be punished in the same manner as if he had forged such document, i.e., punishment prescribed under Section 465 of the Indian Penal Code for forgery.

While the offences punishable under Section 468/471 of the Indian

Penal Code are cognizable offences, the rests are non-cognizable offences.

4. The restriction prescribed under Section 195 of the Code of Criminal Procedure comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190 of the Code and the statutory power of the police to investigate into a FIR which discloses a cognizable offence as well as non-cognizable offence is not trammled by the said provisions, even if the offence is alleged to have been committed in or in relation to, any proceeding in Court. The statutory power of police to investigate under the Code is no way restricted by the provisions of Section 195 of the Code. In the case of State of Punjab Vs. Raj Singh & Anr., reported in 1998 SCC (Cri) 642, the Apex Court held although the statutory power of the police to investigate under the Code is not in any way control or circumscribe by Section 195 Cr.P.C., it is of course true that upon charge-sheet (Challan), if any, filed on completion of investigation into such offence, the Court would not be competent to take cognizance thereof in view of embargo of Section 195 (1)(b) Cr.P.C., but nothing therein deters Court from filing a complaint for the offence on the basis of FIR (filed by the aggrieved party) and the materials collected during investigation provided it forms the requisite opinion and follows the procedure laid down in Section 340 of the Code of Criminal Procedure.

5. Now, having considered the evidentiary materials collected by the police during investigation relating to the case at hand which was instituted on the basis of a First Information Report lodged by the Senior Divisional Manager, National Insurance Corporation, I find it is the case of the prosecution that on 29th May, 2003 at Shyampore Police Station a FIR was lodged by the accused Biswanath Bhakta as regards to an alleged road accident and further alleging in the said accident the other accused persons were injured and suffered permanent partial disability. Subsequently, the accused persons filed motor accident claim cases before the tribunal at Calcutta and 24-Parganas. In connection with the said motor accident claim cases it was claimed by the accused persons that they were treated at Uluberia S.D. Hospital and the accused Asish Chandra, the petitioner no. 3, Kalpana Mondal, the petitioner no. 2 and Alok Pal, the petitioner no. 4 herein submitted partial disability certificates. However, during the investigation by the National Insurance Company Limited it came into light that the said FIR relating to the road accident was lodged one month after the case and only the accused Asish Chandra was treated at Uluberia S.D. Hospital and not the others. The disability certificate produced by the accused persons before the tribunal are all forged and fake and was never issued by the Superintendent, District Hospital, Howrah. It was also found the accused persons in their application before the tribunal gave false address. All the medical documents, viz., injury reports and discharge certificates produced before the tribunal by the accused persons were forged and fake. The accused persons dishonestly made false claim before the tribunal and fraudulently obtained decree for sum not due. Thus, this is a case where the accused persons

maintained their false claim before the motor accident claim tribunal by production of forged, false and fictitious documents, viz., the injury reports, disability certificates and by lodging a false FIR. This is a case where the aforesaid false and forged medical documents and the disability certificates, were manufactured before the same were produced and given in evidence in connection with a proceeding before the motor accident claim tribunal as well as the First Information Report was falsely lodged before the institution of the said claim case. Therefore, the fact remains the accused persons first fabricated false evidence by creating false documents for the purpose of using the same in a judicial proceeding and then used the same. They also manufactured false certificates beforehand for using such certificates as true certificates in a judicial proceeding and made false declaration and statement in their applications filed before the motor accident claim tribunal. Therefore, the aforesaid false documents were manufactured and forgery in respect thereof was committed long before the same were filed and produced before the Court, here the motor accident claim tribunal and such forgery was committed of course outside the Court. In the case of Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr., reported in 2005 SCC (Cri) 1101, a Constitutional Bench of the Hon'ble Apex Court held as follows;

“The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of 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 Section 172 to 188 IPC which occur 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 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 authorized 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)(ii) 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. (Para 10)

Section 195 (1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is – “Provisions as to Offences Affecting the Administration of Justice”. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (see Craies on Statute Law, 7th Edn., pp. 207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. Which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration

of justice. (Para 11)

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 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 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. (Para 25)

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. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference." (Para 34)

6. Therefore, in this case the prohibition contained in Section 195 (1)(b)(ii) of the Code of Criminal Procedure will not operate as a bar for a court to take cognizance of offences punishable under Sections 196/198/199/468/471 of the Indian Penal Code upon a charge-sheet filed by the police. Thus, both the charge-sheet as well as the order of taking cognizance by the Court below in respect of the aforesaid offences cannot be said to be without jurisdiction and illegal and accordingly the same stands sustained.

7. The offences punishable under Sections 209 and 210 of the Indian Penal Code, viz., dishonestly making false claim in Court and fraudulently obtained decree for sum not due are the offences have a direct connection with a proceeding in a court of law and in this case before the motor accident claim tribunal, a civil court for the purposes of Section 195 of the Code of Criminal Procedure as provided under the provisions of Section 169 (2) of the Motor Vehicles Act and as such for the said offences no cognizance can be taken except on a complaint of the Court concerned. Accordingly, the impugned order of

taking cognizance of the said two offences are set aside. However, this order will not deter the concerned Court, i.e., the motor accident claim tribunal from filing a complaint for the said offences on the basis of the FIR and the materials collected during investigation following the procedure laid down in Section 340 of the Code of Criminal Procedure. This application accordingly stands disposed of. The office is directed to communicate this order to the Senior Divisional Manager, National Insurance Company Limited, Howrah Divisional Office, the complainant of Shyampore Police Station Case No. 123/2008 as well as the Motor Accident Claim Tribunal, Kolkata and the Motor Accident Claim Tribunal, 24-Parganas for their information and necessary action. This order shall also be communicated to the Court below at once.

In view of the disposal of main criminal revisional application, an application for extension of interim orders being CRAN No. 538 of 2010 accordingly stands disposed of.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)