

(2017) 04 GUJ CK 0048
In the Gujarat High Court
Case No : 24632 of 2015

GOVARDHANKUMAR THAKOREDAS ASRANI

APPELLANT

Vs

STATE OF GUJARAT & ANR.

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 468](#), [Section 473](#), [Section 195](#), [Section 195](#), [Section 196](#), [Section 2\(d\)](#), [Section 195\(1\)\(b\)](#) - Saving of inherent powers of High Court - Bar to taking cognizance after lapse of the period of limitation - Extension of period of limitation in certain cases - Prosecution for contempt of lawful authority of public servants, for offences against public Justice and for offences relating to documents given in evidence - Prosecution for contempt of lawful authority of public servants, for offences against public Justice and for offences relating to documents given in evidence - Prosecution for offences against the State and for criminal conspiracy to commit such offence - Definitions - Prosecution for contempt of lawful authority of public servants, for offences against public Justice and for offences relating to documents given in evidence
[Indian Penal Code, 1860](#), [Section 141](#), [Section 332](#), [Section 353](#), [Section 143](#), [Section 504](#), [Section 186](#), [Section 188](#), [Section 506\(2\)](#) - Unlawful assembly - Voluntarily causing hurt to deter public servant from his duty. - Assault or criminal force to deter public servant from discharge of his duty - Punishment - Intentional insult with intent to provoke breach of the peace - Obstructing public servant in discharge of public functions - Disobedience to order duly promulgated by public servant - Punishment for criminal intimidation
[Bombay Police Act, 1951](#), [Section 135](#) - Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, Section 3, Section 4

Citation : (2017) 04 GUJ CK 0048

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : BM MANGUKIYA, ?BELA A PRAJAPATI, ?YV SHAH, ?MITESH AMIN

Final Decision : Allowed

Judgement

1. Since a common question of law has been raised in all the captioned applications, those were heard analogously and are being disposed of by this common judgment and order.

2. By these applications under section 482 of the Code of Criminal Procedure, 1973, the applicants, arraigned as accused in the different criminal cases, seek to invoke the inherent powers of this Court praying for quashing of the proceedings of the criminal cases on the ground that the court concerned could not have taken cognizance of the offences on a police report in view of the bar of section 195 of the Code.

3. Let me look into the individual cases.

4. The Criminal Misc. Application No.24632 of 2015 has been filed by one Govardhankumar Thakoredas Asrani, praying for the following reliefs;

"(A) Be pleased to quash and set aside the FIR being C.R. No.II-3231 of 2012 lodged with Kodinar Police Station and consequential Criminal Case No.175 of 2013, pending in the Court of learned Judicial Magistrate, First Class, Kodinar.

(B) Pending admission, hearing and final disposal of this petition, be pleased to stay the further proceedings of Criminal Case No.175 of 2013, pending in the court of learned Judicial Magistrate, First Class, Kodinar.

(C) Be pleased to grant such other and further relief as the Hon"ble Court may deem fit."

5. In this case, the police filed the charge-sheet for the offence punishable under section 188 of the IPC.

6. The Special Criminal Application No.2544 of 2015 has been filed by, in all, eleven applicants with the following prayers;

"(A) This Hon"ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction and may be pleased to quash and set aside the impugned charge-sheet in respect of FIR being CR No.I-83 of 2014 lodged against the petitioners with Kapadwanj Town Police Station for the offence under sections 141, 143, 186, 332, 353, 504, 506(2) of I.P. Code.

(B) Pending hearing and final disposal of this petition, this Hon"ble Court may be pleased to stay the further proceedings of criminal case against the petitioners which is pending before the Court of learned Judicial Magistrate, First Class, Kapadwanj, pursuant to the charge-sheet filed by the police in connection with the FIR being CR No. 83 of 2014 registered by the police against the petitioners for the offences punishable under sections 141, 143, 186, 332, 353, 504, 506(2) of I.P. Code.

(C) Be pleased to pass such other and further order as may be deemed fit, proper in the facts of the case and in the interest of justice."

7. In this case, the charge-sheet came to be filed for the offence punishable under sections, 141, 143, 186, 332, 353, 504, 506(2) of the IPC .

8. The Criminal Misc. Application No.24379 of 2016 has been filed by, in all, five applicants with the following prayers;

"(A) Be pleased to quash the FIR being C.R. No.II-138 of 2016 lodged by respondent No.2 with Rajpipla Police Station;

(B) Pending admission, hearing and final disposal of this petition, be pleased to stay the further investigation of the FIR being C.R. No.II-138 of 2016 lodged by respondent No.2 with Rajpipla Police Station;

(C) Be pleased to pass such other and further relief as the nature and circumstances of the present case may require;

9. It appears that in this case, the charge-sheet has not been filed and the investigation is in progress. The first information report is for the offence punishable under section 186 read with section 114 of the IPC.

10. The Criminal Misc. Application No.20831 of 2015 has been filed by one Babubhai Mavjibhai Mangukiya with the following prayers;

"(A) Be pleased to quash the FIR being C.R. No.II-313 of 2015 lodged with Sarthana Police Station;

(B) Pending hearing and final disposal of this petition, this Hon"ble Court be pleased to stay the further investigation in respect of the FIR being C..R. No.II-313 of 2015 lodged with Sarthana Police Station;

(C) Be pleased to grant such other and further reliefs as the Hon"ble Court may deem fit."

11. It appears that this case is also at the stage of investigation and no charge-sheet has been filed. The first information report is for the offence punishable under section 188 of the IPC.

12. The Criminal Misc. Application No.21601 of 2016 has been filed by the two applicants praying for the following reliefs;

"(A) Your Lordship may be pleased to kindly quash and set aside the FIR being C.R. No.II-113 of 2016 registered with Deesa South Police Station, District: Banaskantha.

(B) Pending admission, hearing and final disposal of the present petition, Your Lordship may be further pleased to kindly stay the further proceedings arising out of the FIR being C.R. No.II-113 of 2016 registered with Deesa South Police Station, District: Banaskantha.

(C) Your Lordship may be further pleased to grant any such other relief that may be deemed just and proper in the matter and in the interest of justice."

13. This case also seems to be at the stage of investigation and the charge-sheet is yet to be filed. The first information

report has been filed for the offence punishable under sections 186 and 201 of the IPC.

14. The Criminal Misc. Application No.2267 of 2017 has been filed by the two applicants praying for the following reliefs;

"(A) This Hon"ble Court may kindly be pleased to admit and allow the present petition;

(B) This Hon"ble Court may kindly be pleased to quash the impugned FIR dated 15.09.2016 registered vide I-C.R. No.75/2016 with Khambholaj Police Station, District: Anand as well as Charge sheet and Criminal Case No.5210 of 2016 registered in pursuance thereto for the offences alleged to have been committed and punishable under sections 332, 323, 186, 504, 506(1) and 114 of IPC and all consequent proceedings arising there from against the petitioners in the interest of justice;

(C) Pending admission, hearing and final disposal of the present petition, this Hon"ble Court may kindly be pleased to stay the further proceedings of Criminal Case No.5210 of 2016 registered in pursuance to charge sheet filed in FIR dated 15.09.2016 registered vide I-C.R. No.75/2016 with Khambholaj Police Station, District: Anand for the offences alleged to have been committed and punishable under sections 332, 323, 186, 504, 506(1) and 114 of IPC pending in the court of learned 5th Judicial Magistrate, First Class, Anand against the petitioners in the interest of justice;

(D) Ad-interim relief in terms of para 8(C) may kindly be granted.

(E) Grant such other and further relief that may be deemed fit and proper in the facts and circumstances of the case;"

15. In this case, the charge-sheet has been filed for the offence punishable under sections 332, 323, 186, 504, 506(1) read with section 114 of the Indian Penal Code.

16. The Criminal Misc. Application No.7470 of 2017 has been filed by the three applicants praying for the following reliefs;

"(A) Your Lordship be pleased to admit this petition. (B) Your Lordship be pleased to quash and set aside the impugned first information report qua the present petitioner, the offence registered as C.R. No.II-369 of 2015 on dtd. 06.10.2015 with Mehsana "A" Division Police Station, Mehsana also quash and set aside the charge sheet which is converted into Criminal Case No.11281 of 2016 pending before the Chief Judicial Magistrate, Mehsana in the interest of justice.

(C) Your Lordship may be pleased to stay the further proceedings in connection

with offence registered at C.R. No.II-369 of 2015 on dtd. 06.10.2015 with Mehsana "A" Division Police Station, Mehsana also stay the charge sheet also stay the Criminal Case No.11281 of 2016 pending before the Chief Judicial Magistrate, Mehsana pending admission, hearing and final disposal of this petition in the interest of justice.

(D) Your Lordship be pleased to grant such other and further relief(s) as deem fit to grant in the interest of justice."

17. In this case also, the charge-sheet has been filed for the offence punishable under section 188 of the IPC and also section 135 of the Bombay Police Act.

18. The Criminal Misc. Application No.23399 of 2016 has been filed by one Babubhai Mavjibhai Mangukiya, praying for the following reliefs;

"(A) Be pleased to quash the FIR being C.R. No.II-590 of 2016 lodged with Amroli Police Station, Surat.

(B) Pending hearing and final disposal of this petition, this Hon"ble Court be pleased to stay the further investigation in respect of the FIR being C.R. No.II-590 of 2016 lodged with Amroli Police Station, Surat.

(C) Be pleased to grant such other and further relief as the Hon"ble Court may deem fit."

19. It appears that this case is also at the stage of investigation and the charge-sheet is yet to be filed. The first information report has been lodged for the offence punishable under section 188 read with section 114 of the Indian Penal Code.

20. The Criminal Misc. Application No.26688 of 2016 has been filed by one Babubhai Mavjibhai Mangukiya praying for the following reliefs;

"(A) Be pleased to quash the FIR being C.R. No.II-475 of 2016 lodged with Bortalav Police Station, Bhavnagar.

(B) Pending hearing and final disposal of this petition, this Hon"ble Court be pleased to stay the further investigation in respect of the FIR being C.R. No.II-475 of 2016 lodged with Bortalav Police Station, Bhavnagar.

(C) Be pleased to grant such other and further reliefs as the Hon"ble Court may deem fit."

21. This case also seems to be at the stage of investigation. The first information report has been lodged for the offence punishable under section 188 of the IPC.

22. The Criminal Misc. Application No.26917 of 2016 has been filed by one Manoj Prabhudas Sarapdadiya praying for the following reliefs;

"(A) Your Lordships may be pleased to admit this application;

(B) Your Lordships may further be pleased to quash and set aside the first information report No.II-36 of 2016 dated 07.09.2016 registered with Gir-Gadhada Police Station, District: Gir-Somnath for the offences punishable u/s. 186 and 504 of the Indian Penal Code, 1860 and the charge-sheet No.II 37 of 2016 dated 10.09.2016 filed by the Gir-Gadhada Police Station and consequently to quash and set aside the Criminal Case No.1337 of 2016 registered in the court of the learned Additional Chief Judicial Magistrate, Una, District: Gir Somnath;

(C) Pending admission, hearing and final disposal of this application, Your Lordships may be pleased to stay the trial of Criminal Case No.1337 of 2016 registered in the Court of learned Additional Chief Judicial Magistrate, Una, District: Gir-Somnath.

(D) Any other and further relief as thought fit may kindly be granted."

23. It appears that in this case, the charge-sheet has been filed for the offence punishable under sections 186 and 504 of the IPC.

24. The Criminal Misc. Application No.6225 of 2017 is filed by one Ramesh Kamabhai Parmar for quashing of the proceedings of the Criminal Case No.197 of 2016 pending in the court of the learned Chief Judicial Magistrate, Anand arising from the first information report being C.R.No.II-3018 of 2016 registered with the Anand Town Police Station, Anand for the offence punishable under sections 182 and 186 of the IPC.

25. The Criminal Misc. Application No.6545 of 2017 has been filed by one Shashikant N. Parmar praying for quashing of the proceedings of the Criminal Case No.1794 of 2017 pending in the court of the learned Chief Judicial Magistrate, Nadiad arising from the first information report being C.R. No.II-728 of 2016 registered with the Nadiad Town Police Station, Nadiad for the offence punishable under section 186 of the IPC.

26. The Special Criminal Application No.2382 of 2017 has been filed by one Karimbhai isubhai Nodiya and others praying for quashing of the proceedings of the Criminal Case No.988 of 2017 pending in the court of the learned JMFC, Palitana arising from the first information report being C.R.No.I-10 of 2017 registered at the Palitana Town Police Station, District: Bhavnagar for the offence punishable under sections 332, 186, 353 read with section 114 of the IPC.

27. Thus, from the above, it appears that in some of the matters, the charge-sheets have been filed, culminating in the criminal cases before the different courts, whereas some of the cases are at the stage of investigation.

28. The learned counsel appearing for the respective applicants submitted that in the cases where the charge- sheets came to be filed at the end of the investigation, culminating in the different criminal cases, the court concerned could not have taken cognizance of the offences relating to the contempt of lawful authority of the public servants and against the public justice in view of

the bar of section 195 of the Cr.P.C. To put it in other words, in most of the cases, the allegations are of the offence punishable under sections 186 and 188 of the I.P.C along with the other offences under the I.P.C . It is submitted that in view of the provisions of section 195 of the Cr.P.C., no court is empowered to take cognizance of any offence punishable under sections 172 to 188 (both inclusive) of the I.P.C except on the complaint in writing of the public servant concerned or of some other public servant, to whom he is administratively sub-ordinate. It is submitted that the term "complaint" in section 195 means a complaint as defined under section 2(d) of the Cr.P.C. It is further submitted that although the charge-sheets have been filed for the other offences also of the IPC not falling within the provisions of section 195 of the Cr.P.C., yet those offences, being the same or at least interwoven, the cognizance could not have been taken for the other offences also. To put it in other words, the argument is that if in truth and substance, an offence falls in the category of sections in section 195 of the Cr.P.C., it is not open to the court to take cognizance without complying with the provisions of that section. Since all the other offences, over and above the one covered under section 195 of the Cr.P.C., are alleged to have been committed in the course of the same transaction, they cannot be split up to avoid the provision of section 195 of the Cr.P.C.

29. The submission of the learned counsel appearing for the respective applicants in the cases, where the charge-sheet has not been filed and the investigation is still in progress, is that although the power of the police to investigate a cognizable offence is, in no manner, affected or circumscribed by the bar of section 195 of the Cr.P.C., yet, ultimately, even if the charge-sheet is filed, the court will not be able to take cognizance. To put it in other words, the submission is that although it is open for the police to carry out the necessary investigation and file a charge-sheet, yet the same will be an empty formality because, ultimately, the bar of section 195 would come into operation at the time when the court decides to take cognizance on the police report.

30. In such circumstances, it is prayed that the first information reports in question may be quashed.

31. On the other hand, all the applications have been vehemently opposed by Mr. Mitesh Amin, the learned Public Prosecutor appearing for the State. Mr. Amin submits that the provisions of section 195 of the Cr.P.C. are limited only to the prosecution of certain offences specified therein and not the other distinct offences although committed in the course of the same transaction. Mr. Amin submits that the provision of section 195 Cr.P.C. deal with the prosecution for contempt of lawful authority of the public servants, for the offences against the public justice and for the offences relating to the documents given in evidence. He submits that in such cases, no doubt, there is a bar against the court, taking cognizance of the offences, except on the written complaint of the public servant or the court, as the case may be. The provisions are exception to the

general rule that any person having knowledge of the commission of an offence may set the criminal law in motion, whether he is personally interested and affected or not. However, according to Mr. Amin, the provisions of section 195 Cr.P.C., are limited only to the prosecution of certain offences specified therein and not all offences. According to him, there is nothing in the section to suggest that the prosecution in respect of the other distinct offences based on the same facts could not be instituted except otherwise in compliance with the provisions of that section. He would submit, placing strong reliance on the decision of the Supreme Court in the case of Basir ul Haq vs. State of West Bengal, AIR 1953 SC 293 that it is the duty of the Court to construe the section according to the language used. It is not for the Court to speculate as to what the legislature should or might have said. Regard could only be made to what the legislature has said. According to Mr. Amin the legislature intended a particular form of complaint or the previous sanction for the prosecution of those of the certain specified offences only. According to Mr. Amin, whereupon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of sections 195 to 199 of the Code of Criminal Procedure which deal with the requisites for the prosecution of certain specified offences and the provisions of those sections must be limited to the prosecutions for the offences actually indicated.

32. Mr. Amin submitted that if it was the intention of the legislature to make sanctions or complaints in a certain form necessary for the prosecution of all offences disclosed by the facts which would give rise to any of the offences specifically indicated in these sections, the legislature could have said so but it did not. Mr. Amin, however, with his usual fairness, submitted that in Basir-Ul-Haq (supra), the Supreme Court cautioned that though section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such later offence is a minor offence of the same character, or by describing the offence as being one punishable under some other sections of the Indian penal Code,, though in truth and substance the offence falls in the category of sections mentioned in section 195 Cr.P.C.. Mr. Amin very fairly submitted that merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of section 195 Cr.P.C., the prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.

33. Thus, according to Mr. Amin, it was always open and lawful for the court concerned to take cognizance of the other distinct offences on a police report excluding the offences falling within the ambit of section 195 of the Cr.P.C.

34. Mr. Amin submits that so far as all those cases which are at the stage of investigation are concerned, the bar of section 195 would not apply in view of the decision of the Supreme Court in the case of M. Narayandas vs. State of Karnataka & Ors., AIR 2004 SC 555.

35. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the applicants are entitled to the reliefs prayed for in their respective applications.

36. Before adverting to the rival submissions canvassed on either side, I should look into few relevant provisions of law. Section 195 of the Cr.P.C., relevant for the purpose of deciding the issue at hand, reads as under;

"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;

37. Section 2(d) of the Cr.P.C. defines the term "complaint". The same reads as under;

"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

38. As a general rule, any person, having knowledge of commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. There are exceptions to this general rule, as evident from sections 195 and 196 of the Cr.P.C. Section 195 is one of the sections, which prohibits a court from taking cognizance of certain offences unless and until a complaint has been made by some particular

authority or person. The other sections, with similar prescriptions, are sections 196 to 199 of the Code. Section 195 of the Code has been enacted as a safeguard against the irresponsible and reckless prosecutions by the private individuals in respect of the offences, which relate to the administration of justice and contempt of lawful authority.

39. It is true that section 195 of the Code does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. Section 195 also does not provide further that if in the course of the commission of that offence, the other distinct offences are committed, the court concerned is debarred from taking cognizance in respect of those offences as well. However, if the perusal of the first information report and other papers of the charge-sheet makes it clear that the offence under sections 186 or 188 of the IPC, as the case may be, is closely interconnected with the other distinct offences and cannot be split up, then, in such circumstances, the bar of section 195 of the Cr.P.C. will apply to such other distinct offences also.

40. In the aforesaid context, I may refer to and rely upon the following decisions of the Supreme Court;

40.1 In the case of State of U.P. vs. Suresh Chandra Srivastava & Ors ., AIR 1984 SC 1108. A bench of three judges very succinctly explained the provisions of section 195, observing as under;

"6. In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under Sections 467, 471 and 120-B I.C. are committed, the complaint could proceed or not. The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in section 195, section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of sec. 195 of the Code .

40.2 In the case of State of Karnataka vs. Hemareddy & Anr ., AIR 1981 SC 1417, the Supreme Court held that in the cases where in the course of the same transaction, an offence, for which, no complaint by a court is necessary under section 195(1)(b) of the Cr.P.C., and an offence, for which, a complaint of a Court is necessary under that sub-section are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in section 195(1)(b), Cr.P.C ., should be upheld. I may quote the observations as contained in paras-8,9 and 13 as under;

"8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under s. 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in s. 195(1)(b) of the

Code of Criminal Procedure should be upheld.

9. However, it is not possible to agree with the learned Judges of the High Court that the complaint in this case given by the private individual Narsappa Eliger, P.W. 3 against Hemareddy alias Vemareddy for the offence under s. 467 read with s. 114 I.P.C. is not cognizable and 703 that s. 195(1)(b) of the Criminal Procedure Code is attracted so far as Hemareddy alias Vemareddy is concerned. The document forged by Pyatal Bhimakka, A- 2 is a sale deed dated 10-11-70. The suit for redemption of the mortgage was filed by the complainant Narsappa Eliger, P.W. 3 on 17-11- 70. He filed the complaint before the Police on 24-11-70 and before the court subsequently on 15-12-70. It is not disputed that the forged sale deed dated 10-11-70 was not produced in the suit filed by the complainant for redemption of the mortgage. Mr. P. Ram Reddy, learned counsel appearing for A-1, who assisted the court as Amicus Curiae for Pyatal Bhimakka, A-2, invited our attention to the decision in re. Vasudeo Ramchandra Joshi and submitted that the complaint should have been filed by the court in which the suit for redemption of the mortgage was filed by the complainant Narsappa Eliger in view of the provisions of s. 195(1)(b) of the Code of Criminal Procedure and that as the complaint was filed directly by the private individual, the prosecution of Hemareddy alias Vemareddy for offences under s. 467 read with s. 114 I.P.C. and s. 193 I.P.C. is bad. In that decision reference has been made to the decisions of the Bombay High Court in (1912) 14 Bombay Law Reporter 362 and 715. In that case there was a proceeding before the Magistrate at Bhusaval against one Vana Khusal in respect of the charge under s. 401 I.P.C. An application was made for bail on behalf of that person by Vasudeo Ramachandra Joshi, the petitioner before the High Court, but that application was refused on April 1, 1922. The statements of three witnesses were recorded under s. 164, Criminal Procedure Code on April 18, 1922 from which it appeared that on April 10, 1922 those three witnesses had an interview with the Pleader Vasudeo Ramachandra Joshi and he had instigated them to give false evidence. On April 15, 1922 another case against Vasudeo Ramachandra Joshi in respect of a dacoity was sent up to the Magistrate. The case of the prosecution was that in connection with that case of dacoity the alleged instigation by the Pleader to give false evidence was made. Those witnesses were examined before the Magistrate on June 2, 1922 in the dacoity case, and on June 7, 1922 a complaint was filed by the Police against Vasudeo Ramachandra Joshi, charging him with having abetted the giving of false evidence. The learned Judges of the Bombay High Court who heard the Civil Revision Case have observed : "On behalf of the Crown it is urged that no sanction is necessary because at the date of alleged abetment no proceeding in relation to which the offence is said to have been committed, was pending. It is contended that the offence 704 had no relation to the proceedings pending on April 10 and that the proceedings to which it related, were sent up to the Magistrate on April 19 and were not pending at the time.

It is quite clear, however, from the very nature of the offence alleged against the

present petitioner that if the offence was committed, it was committed in relation to the proceeding in which those three persons were to be examined as witnesses, and it is difficult to understand how it could be said that the present proceedings against the petitioner could go on without the sanction of the Court before which these proceedings are pending at present, and in relation to which the offence is said to have been committed. I assume, without deciding that the offence alleged against the petitioner related to the Budhgaon dacoity case and not to the case under s. 401, Indian Penal Code, then actually pending even then the offence related to proceedings which were clearly under contemplation then and which were sent up to the Magistrate on April 15. The expression used in s. 195(1) (b) is wide enough to cover such a proceeding and the decisions of this Court in *re Khanderao* (1912) 14 Bombay L.R. 362 and in *re Mahadev Yadneshwar* (1912) 14 Bombay L.W. 715, support that conclusion. I am unable to follow the reasoning adopted by the learned Magistrate in holding that no sanction is necessary. We, therefore, quash the present proceedings, without prejudice to

any proceeding that may be taken after obtaining the necessary sanction.

I may also point out that the prosecution of a pleader defending an accused person while that proceeding is pending, and before the evidence of the witnesses who are said to have been instigated to give false evidence has been appreciated by the Court, is inadvisable. If such a prosecution is to be started it ought to be started after the principal proceeding, in relation to which the offence is said to have been committed, has terminated."

13. We are bound by the view expressed in this decision that the Legislature could not have intended to extend the prohibition contained in s. 195(1) (c) Cr. P.C. to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party. In the decision in *Raghunath and Others v. State of U.P. and Others* it is observed :

"In this Court the main contention raised on behalf of the appellants by their learned counsel was that even prosecution for an offence under Section 465 I.P.C. requires complaint by the revenue court concerned as such an offence is covered by Section 195(1)(c), Cr.P.C . This contention is difficult to accept. This Court has recently in *Patel Laljibhai Somabhai v. The State of Gujarat* [1971] 2 SCC 376 after considering the conflict of judicial opinion on this point, approved the view taken in *Kushal Pal Singh* case (*supra*). According to that decision the words "to have been committed by a party to any proceeding in any court" in Section 195(1)(c) mean that the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is, after having become a party to the proceeding. The appellants' learned counsel tried to distinguish the decision of the Allahabad High Court in *Kushal Pal Singh* case (*supra*) by pointing out that in that case the offence of forgery was alleged to have been committed in 1898, more than 25 years before it was produced or given in evidence in court and it was for this reason that Section 195(1)(c),

Cr.P.C . was held to be inapplicable. In our view, the duration of time between the date of forgery and the production or giving in evidence of

the forged document in court is not a governing factor. The principle laid down in Sombabhai's case (supra) was not founded on any such consideration. Reference to such delay was made in that decision in another context. After taking notice of the fact that Section 195(1)(c), Cr. P.C. deprives a private aggrieved party of the general right recognized by Section 190 Cr.P.C. of directly initiating criminal proceedings this Court observed in the case:

"The offences about which the Court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to be more appropriate to adopt in strict construction of confining the prohibition contained in Section 195(1)(c) only to those cases in which the 710 offences specified therein were committed by a party to the proceeding in the character as such party."

40.3 In one of the recent pronouncements of the Supreme Court in the case of Saloni Arora vs. State of NCT of Delhi, Criminal Appeal No .64 of 2017, decided on 10.01.2017, the Supreme Court has explained the object of section 195 of the Code, observing as under;

"10) As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of Daulat Ram vs. State of Punjab, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.

11) It is apposite to reproduce the law laid down by this Court in the case of Daulat Ram (supra) which reads as under:

"There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C . except in the manner provided by S.195 CrI.P.C. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned.

The trial under S.182 without the Tehsildar's complaint in writing is, therefore, without jurisdiction ab initio." (Emphasis supplied)

12) It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of Daulat Ram (supra) quoted above."

41. Thus, what is discernible from the decisions referred to above of the Supreme Court is that if in truth and substance, an offence falls in the category of sections in section 195, it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences. This would depend on the facts of each case. It cannot be laid as a straitjacket formula that the Court cannot undertake the exercise of splitting up. It would depend upon the nature of the allegations and the materials on record.

42. Let me, at this stage, look into the decision of the Supreme Court in the case of Basir-ul-Haq (supra). In Basir-ul-Haq (supra), a contention was raised before the Supreme Court that the Magistrate had no jurisdiction to take cognizance of the complaint under section 500 and section 297 of the penal code as the facts disclosed constituted an offence under section 182, which offence could not have been tried except on a complaint by the public servant. The Supreme Court held as under;

"9. Section 195, Criminal Procedure Code, on which the question raised is grounded, provides, inter alia, that no court shall take cognizance of an offence punishable under sections 172 to 188, Indian Penal Code, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the magistrate is debarred from taking cognizance in respect of those offences as well. The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the cognizance by the magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made.

It was however argued that if on the same facts an 843 offence of which no cognizance can be taken under the provisions of section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of

the section and prosecution for that other offence is taken cognizance of without the requirements of section 195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code .

10. In our judgment, the contention raised by the learned counsel for the appellants is without any substance so far as the present case is concerned. The charge for the offence under section 297, Indian Penal Code, could in no circumstance, as pointed out by the High Court, be described as falling within the purview of section 195, Criminal Procedure Code . The act of trespass was alleged to have been committed subsequent to the making of the false report and all the ingredients of the offence that have been held to have been established on the evidence concern the conduct of the appellants during the post-report period. In these circumstances, no serious contention could be raised that the provisions of section 195 would stand defeated by the magistrate having taken cognizance of the offence under that section.

11. As regards the charge under section 500, Indian Penal Code, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provisions of section 195 from seeking redress for the offence committed against him. Section 499, Indian Penal Code, which mentions the ingredients of the offence of defamation gives within defined limits immunity to persons making depositions in court, but it is now well settled that immunity is a qualified one and is not absolute as it is in English law. Under section 198, Criminal Procedure Code, a complaint in respect of an offence under section 499, Indian Penal Code, can only be initiated at the instance of the person defamed, in like manner as

cognizance for an offence under section 182 cannot be taken except at the complaint of the public-servant concerned. In view of these provisions there does not seem in principle any warrant for the proposition that a complaint under section 499 in such a situation cannot be taken cognizance of unless two persons join in making it, i.e., it can only be considered if both the public servant and the person defamed join in making it, otherwise the person defamed is without any redress. The statute has prescribed distinct procedure for the making of the complaints under these two provisions of the Indian Penal Code and when the prescribed procedure has been followed, the court is bound to take cognizance of the offence complained of.

12. The decided cases fully support this view and our attention has not been drawn to any case which has taken a contrary view as regards offences under section 500, Indian Penal Code . In *Satish Chandra Chakravarti v. Ram Dayal*

De (1), five judges of the Calcutta High Court considered this question and held that where the maker of a single statement is guilty of two distinct offences, one under section 211, Indian Penal Code, which is an offence against public justice, and the other an offence under section 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the court under section 195 Criminal Procedure Code, while in the other, Cognizance can be taken of the offence on the complaint of the person defamed.

It could not be denied that the accused could be tried of charges under sections 182 and 500, Indian Penal Code, separately on the same facts provided the public servant as well as the person defamed made complaints. If that is so, there is no reason why one cannot be tried independently of the other so long as the requirements of each are satisfied. Harries C. J. while delivering the Full Bench decision in question examined all the earlier cases of the Calcutta High Court and observed that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of section-is 195 to 199 of the Code of Criminal Procedure. Sections 195 to 199 deal with the requisites for the prosecution of certain specified offences and the provisions of those sections must be limited to prosecutions for the offences actually indicated. If it was the intention of the legislature to make sanctions or complaints in a certain form necessary for the prosecution of all offences disclosed by facts which would give rise to any of the offences specifically indicated in these sections, the legislature could have said so but it did not.

13. Recently this matter was canvassed before a Full Bench of the Madras High Court and it was held that in such cases it was open to the party defamed to take proceedings under section 499, Indian Penal Code, without the court filing a complaint in accordance with the provisions laid down in section 195 . There the question was whether the alleged defamer who had given false evidence in a court could be prosecuted under section 499, Indian Penal Code, without a complaint by the court before whom he gave evidence and the question was answered in the affirmative after an exhaustive review of the decided cases of the different High Courts in India. It was said that if the offence of 846 giving false evidence in a judicial proceeding and defamation do not belong to the same genus but are distinct and separate in their characteristics and ingredients, it was difficult to perceive any serious inhibition by the Criminal

Procedure Code for initiation and trial of one of these offences independently of anterior resort to fulfilling the conditions necessary to commence a prosecution for the other. These observations have apt application to the present case. The ingredients of the offence under section 182 cannot be said to be the ingredients for the offence under

section 500 . Nor can it be said that the offence relating to giving false information relates to the same group of offences as that of defamation.

14. Though, in our judgment, section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code,, though in truth and substance the offence falls in the category of sections mentioned in section 195, Criminal Procedure Code . Merely by changing the garb or label of an offence which is essentially all offence covered by the provisions of section 195 prosecution for such an offence cannot be taken cognizance of by mis-describing it or by putting a wrong label on it.

15. Before concluding, reference may also be made to the decision of the Federal Court in *Hori Ram Singh v. Emperor*, AIR 1939 F.C. 43(B). The appellant in that case was charged with offences under sections 409 and 477-A, Indian Penal Code . The offence under section 477-A could not be taken cognizance of without the previous consent of the Governor under section 270(1) of the Constitution Act, while the consent of the Governor was not required for the institution of the proceedings under section 409, Indian Penal Code . The charge was that the accused dishonestly misappropriated or converted to his own certain medicines entrusted to him in his official capacity as a sub-assistant surgeon in the Punjab Provincial Subordinate Medical Service. He was further charged that being a public servant, he willfully and with intent to defraud omitted to record certain entries in a stock book of medicines belonging to the hospital where he was employed and in his possession. The proceedings under section 477-A were quashed by the Federal Court for want of jurisdiction, the consent of the Governor not having been obtained, but the case was sent back to the sessions judge for hearing on the merits as regards the charge under section 409, Indian Penal Code, and the order of acquittal passed by the sessions judge under that charge was set aside. Two distinct offences having been committed in the same transaction, one an offence of misappropriation

under section 409 and the other an offence under section 477-A which required the sanction of the Governor, the circumstance that cognizance could not be taken of the latter offence without such consent was not considered a bar to the trial of the appellant with respect to the offence under section 409 ."

43. Thus, according to the decision of the Supreme Court referred to above, the provision in section 195 of the code should not be evaded by resorting to devices and camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. If in truth and substance, the offence falls in the category of the sections mentioned in section 195 of the Code, the prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it or changing its garb. If the facts disclose an offence requiring special complaint under section 195 of the Code, the provision cannot be circumvented by filing a complaint, for which, no special complaint is required under the law, the nature of the offence being the same.

44. Again In *Re. Chinnayya Goundan* AIR 1948 Mad 474 : (1948-49 Cri LJ 737) Govinda Menon, J. after considering the case law stated:

"The principle deducible from these cases is that when a complaint is made to a Court the facts should be considered as a whole and there should be no splitting up of the facts.

Therefore, the Court is not entitled to disregard some of the facts and try an accused person for an offence which the remaining facts disclose. Considering the acts as a whole if they disclose an offence for which a special complaint is necessary under the provisions of Section 195, Cr. P.C., the Court cannot take cognizance of the case at all unless that special complaint has been filed."

45. In *State v. Kathi Unad* AIR 1955 Saurashtra 10 : (1955 Cri LJ 52), the learned Judge relying on the Supreme Court case of *Bashir-ul-Haq* AIR 1953 SC 293 : (1953 Cri LJ 1232) said that the very act of obstruction lay in the assault and the hurt to complainant and that the offence primarily committed was under Section 186, I.P.C. and to convict the accused for the offence under Section 332, I.P.C. would be tantamount to holding them guilty under Section 186, I.P.C. and then convicting them for the offence under Section 332, I.P.C. They came to the conclusion that the prosecution could not circumvent the provisions of Section 195 by a dubious method. (See also *Makaradhwaj Sahu v. State* AIR 1954 Orissa 175 : (1954 Cri LJ 950). The decision in *AIR 1953 Nag 290 : (1953 Cri LJ 1573)* is also pertinent.

46. In some of the applications before me, the only offence is either section 186 or 188 of the IPC. In such type of cases, there should not be any difficulty in quashing the prosecution in view of the bar of section 195 of the Cr.P.C. However, there are few cases on hand, in which, over and above sections 186

or 188 of the I.P.C, the other offences are also there which are not covered under section 195 of the Cr.P.C. It is only in such cases, the court has to be careful. I have noticed that in some of the cases, there is a charge of section 353 of the IPC along with section 186 of the IPC. I am of the view that the very act of obstruction lies in the alleged assault and use of criminal force. In truth and substance, such an offence would fall in the category of sections mentioned in section 195 of the Code and it is not open to bypass its provisions even by choosing to prosecute under section 353 of the IPC only. There is no scope, in any of the matters on hand, having regard to the materials on record, to split up the offences so as to avoid the bar of section 195 of the Cr.P.C as all the offences can be said to have been committed in the course of one transaction. All the offences can be said to have been an integral part of one transaction.

47. In the case of Rajendranath Chouhan vs. Ratnakar Jagati, AIR 1995(1) Orissa LR 250, Arijit Pasayat, J., as his lordship then, was considered the two decisions referred to by me above of the Supreme Court in the case of Suresh Chandra Srivastava (supra) and Hemareddy (supra). I may quote the observations of his lordship in para-5 as under;

"5. So far as the plea relating to absence of essential ingredients of Section 600, IPC, is concerned, it is submitted that since no cognizance can be taken in respect of Section 211 .1PC in the absence of Court, complaint by the concerned Court or by a Court superior to it, cognizance cannot be taken in respect of an alleged connected offence. It is true that it is not permissible for the prosecution to drop a serious charge and select one which does not require adoption of procedure under Section 195 of the Code. (See Or. S. Dutta v. State of U. P .: AIR 1966 SC 523). Its provisions cannot be evaded by resorting to devices of camouflage. Even for offences cognizance of which is per se not barred by this Section, a Magistrate should not take cognizance if it is not a distinct offence or if in truth and substance the offence falls under the category of Sections mentioned in the Section. The correct test applicable as indicated by Apex Court is that where an accused commits some offences which are separate and distinct from those contained in Section 195 only those offences mentioned therein shall be affected, unless such offences form an integral part so as to constitute offences committed as a part of the same transaction, in which case such offences would also fall within ambit of the Section (See State of U. P. v. Suresh Chandra Srivastava and Ors: AIR 1984 SC 1108) Where in the course of the same transaction an offence for which no complaint by a Court is necessary under Section 195(1) of the Code and an offence for which a complaint is necessary under that sub section are committed and it is not possible to split up, the prosecution of the accused for the offences not mentioned should not be upheld. { See State of Karnataka v. Hemareddy and Anr . ; AIR 1931 SC 1417). But merely by changing garb or label of an offence which is essentially an offence covered by the provisions of the Section, prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it. Action of the JMFC refusing to reconsider

the cognizance relating to Section 500, 1PC cannot be faulted in view of the fact that the case has been pending for seven years. It is true that any person can question legality and propriety of cognizance as indicated by the Apex Court in the case of *K M. Mathew v. State of Kerala and Anr .* (1992) 5 OCR 66: But such a prayer cannot be made after inordinate delay. Though no period cannot be prescribed by any hard and fast rule, much belated approach can be a ground for noninterference."

48. I must, at this stage, also look into the decision of the Supreme Court in the case of *C. Muniappan & Ors. vs. State of Tamil Nadu*, (2010) 9 SCC 567. The Supreme Court

considered the charge under section 188 of the IPC vis-a-vis section 195 of the Cr.P.C. I may quote the relevant observations as under;

"27. Section 195 Cr.PC reads as under :

"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

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"

28. Section 195(1)(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide *Govind Mehta v. The State of Bihar*, AIR 1971 SC 1708; *Patel Laljibhai*

Somabhai v. The State of Gujarat, AIR 1971 SC 1935; *Surjit Singh & Ors. v. Balbir Singh*, (1996) 3 SCC 533; *State of Punjab v. Raj Singh & Anr .*, (1998) 2

SCC 391; 2 K. Vengadachalam v. K.C. Palanisamy & Ors ., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr ., AIR 2005 SC 2119).

29. The test of whether there is evasion or non-compliance of Section 195 Cr.PC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq & Ors. v. The State of West Bengal, AIR 1953 SC 293; and Durgacharan Naik & Ors v. State of Orissa, AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.PC. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

30. In M.S. Ahlawat v. State of Haryana & Anr ., AIR 2000 SC 168, this Court considered the matter at length and held as under :

"....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." (Emphasis added)

31. In Sachida Nand Singh & Anr. v. State of Bihar & Anr ., (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

"7. .. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must

normally receive strict interpretation unless the statute or the context requires otherwise." (Emphasis supplied)

32. In Daulat Ram v. State of Punjab, AIR 1962 SC 1206, this Court considered the nature of the provisions of Section 195 Cr.PC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

"The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside." (Emphasis added)

33 Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not

been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

34. Learned counsel for the appellants have submitted that no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, entire prosecution case falls.

35. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever

been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that absence of a complaint under Section 195 Cr.PC falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case.

36. There is ample evidence on record to show that there was a prohibitory order; which had been issued by the competent officer one day before; it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no 'Rasta Roko Andolan'. Unfortunately, the agitation which initially started peacefully turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned."

49. It appears that in C. Muniappan (supra), two separate first information reports were registered. One for the offence punishable under sections 147, 148, 149, 436 and 302 of the Penal Code and under sections 3 and 4 of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992, and the another one for the offence punishable under section 188 of the IPC. As both the first information reports were clubbed, the same resulted in one consolidated charge-sheet. In such circumstances, it was argued that the court concerned could not have taken cognizance upon the charge-sheet filed by the Investigating Agency in view of the bar of section 195 of the Cr.P.C. On behalf of the State, it was submitted that the

framing of the charge under section 188 in the absence of a written complaint of the public servant could not be said to be fatal to the prosecution case. The

entire prosecution case could not have been discarded merely on the grounds of improperly framing the charge under section 188 of the IPC. The clubbing of the two crimes, i.e., the two first information reports did not cause any prejudice to any of the accused. In such circumstances, the Supreme Court observed in para-36 that quashing of the charge under section 188 of the IPC, by no means, had any bearing on the case of the prosecution so far as the charges for the other offences were concerned.

50. Let me now deal with the second category of the cases, in which, the charge-sheet is yet to be filed as the investigation is in progress. Mr. Amin, the learned Public Prosecutor appearing for the State very vehemently submitted that the statutory power of the police to investigate under the Code is not, in any way, controlled or circumscribed by section 195 of the Cr.P.C. According to Mr. Amin, this Court should not interfere at this stage with the investigation considering the bar of section 195 of the Cr.P.C. Mr. Amin, however, submitted that upon the charge-sheet, 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) of the Cr.P.C.

51. In *State of Punjab vs. Raj Singh & Anr.*, 1998 Cri. L.J., 1104, the Supreme Court took the very same view as regards the statutory power of the police to investigate under the Code not in any way controlled or circumscribed by section 195 of the Cr.P.C. I may quote the relevant observations as under;

"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 467 and 468 I.P.C. by Chem 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. The judgment of this Court in *Gopal Krishna Menon and Anr. Vs. D. Raja Reddy* [AIR 1983 SC 1053], on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a

private complaint even though the offence of forgery was committed in respect of a money receipt produced in the Civil Court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Cr. P. C. "

52. The Supreme Court, in the case of M. Narayandas vs. State of Karnataka & Ors ., AIR 2004 SC 555 considered its earlier decision in the case of Raj Singh (supra) referred to above, and observed as under;

"8. We are unable to accept the submissions made on behalf of the Respondents. Firstly it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise there is no substance in the submission. 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] 2 SCC 391. In this case it has been that as follows :

"2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467, and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(l)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC 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. PC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable 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 proceedings 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.PC. 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) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (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 CrPC. The judgment of this Court in Gopalkrishna Menon v. Raja Reddy, [1983] 4 SCC 240 : [1983] SCC (Cri) 822 : AIR (1983) SC 1053 on which the High Court

relied, has no manners of application to the facts of the instant case for there cognizance was taken on a private complaint even though the office of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 Cr.PC."

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 that 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. "

53. I take notice of the fact that in the following matters, the charge-sheets are yet to be filed.

- (1) Criminal Misc. Application No.24379 of 2016;
- (2) Criminal Misc. Application No.20831 of 2015; (3) Criminal Misc. Application No.21601 of 2016;
- (4) Criminal Misc. Application No.23399 of 2016; and
- (5) Criminal Misc. Application No.26688 of 2016;

54. There is no doubt that the position of law is quite clear.

55. Mr. Amin, the learned Public Prosecutor appearing for the State submitted that even if the prosecutions are to be quashed on the ground of bar of section 195, it is always open for the State to initiate fresh proceedings by following the procedure prescribed by law. It goes without saying, and the State need not even seek permission of this Court in this regard.

56. I am of the view, having regard to the nature of the allegations levelled in the five matters referred to above, which are at the stage of investigation, that the first information reports should be quashed with liberty to the State to initiate fresh proceedings by following the procedure prescribed by law. Whatever investigation has been carried out so far, the same will not be rendered invalid. For the purpose of initiating fresh proceedings in accordance with law, the very same materials can be used. In such circumstances, as an exception, and without being cited as a precedent, in the peculiar facts of the case, I am inclined to interfere even in those cases where the charge-sheets have not been filed. I take notice of the fact that in all the five cases, referred to in para-53 of this judgment, the investigation is practically over, and the only thing left, is to file the charge-sheet.

57. For the foregoing reasons, all the applications succeed and are hereby allowed. The proceedings of the criminal cases, referred to in the earlier part of the judgment, pending in the different courts, are hereby ordered to be quashed. The first information reports, which are yet to culminate in a charge-sheet, are also hereby ordered to be quashed. It is clarified that it shall be open

to the State to file fresh proceedings against the applicants by following the procedure prescribed by law. If the issue, as regards the limitation, as prescribed under section 468 of the Cr.P.C., crops up, then the court concerned shall consider the provisions of section 473 of the Cr.P.C. Rule is made absolute to the aforesaid extent in each of the cases.

Direct service is permitted.