

(2021) 04 KL CK 0126

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7641, 8920 Of 2021

P. Radhakrishnan And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 16-04-2021

Acts Referred:

Unlawful Activities (Prevention) Act, 1967 — Section 17, 18
Prevention Of Money Laundering Act, 2002 — Section 4, 50, 50(3)
Indian Penal Code, 1860 — Section 107, 116, 120(B), 167, 192, 193, 195(A), 419, 420, 467, 463, 471, 475, 476
Code Of Criminal Procedure, 1973 — Section 154, 155, 155(1), 156, 190(1), 195, 195(1)(b), 195(1)(b)(i), 340, 340(1), 482, 561(A)
Evidence Act, 1872 — Section 3

Citation : (2021) 04 KL CK 0126

Hon'ble Judges : V.G. Arun, J

Bench : Single Bench

Advocate : M.T. Sureshkumar, R. Renjith, Sreelakshmi Sabu, Rafeez Nooh, Tushar Mehta, S.V. Raju, Zoheb Hossain, Suman Chakravarthy, V. Manu, P. Narayanan, T.A. Unnikrishnan, P. Vijayakumar, Suvin R. Menon, Suvin R. Menon, Harin P. Raval, K.M. Nataraj

Final Decision : Disposed Of

Judgement

W.P(C) No.7641 of 2021

1. The instant writ petition is filed by the Deputy Director, Enforcement Directorate, Kochi Zonal Office, aggrieved by the registration of Exhibit P1

FIR by the Crime Branch wing of the State Police. The essential facts leading to the writ petition, are as under:

On 06.07.2020, O.R.No.7 of 2020 was registered at the Customs Commissionerate (Preventive), Kochi, consequent to seizure of 30 Kgs of gold

worth Rs.14.82 Crores at the Thiruvananthapuram International Airport. The seizure was effected while the gold was being smuggled, camouflaging it

as diplomatic baggage to the UAE Consulate. During the course of investigation it was revealed that the accused had committed offences under the Unlawful Activities (Prevention) Act, 1967 (UAPA) also. This resulted in the National Investigation Agency (NIA) registering a case against the very same accused, alleging commission of offences under Sections 17 and 18 of the UAPA. As the investigation progressed further, commission of the offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (PMLA) also came to light. Thereupon, ECIR/KCZO0/31/2020 was registered by the Enforcement Directorate (ED) on 13.07.2020 arraigning three persons as accused, one Smt. Swapna Suresh being the second accused and Sri. Sandeep Nair, the fourth accused. After registration of the case, the ED filed Exhibit P5 complaint before the Special Court for PMLA cases (Principal Sessions Court, Ernakulam. Later, two more persons were arraigned as accused, the fifth accused being the then Principal Secretary to the Chief Minister of Kerala. On the request of the Investigating Officer, custody of the second accused was given to the ED for seven days from 05.08.2020. The custody period was extended up to 14.08.2020 and thereafter, till 17.08.2020. During this period the accused were questioned and their statements under Section 50 of the PMLA recorded.

2. On 18.11.2020, an audio clip, purported to be that of Smt. Swapna Suresh, was aired by an online media channel, wherein she alleged that the ED officials had made her sign the Section 50 statements without allowing her to read its contents and that, she had been compelled by the officials to implicate the Chief Minister of the State. On 20.11.2020, the Deputy Director of ED sent the Exhibit R1(a) letter to the Director General of Prisons and Correctional Services, requesting for a detailed enquiry about the circumstances under which the alleged audio recording took place and to take appropriate action against the culprits. The Director General of Prisons forwarded the letter to the State Police Chief, who in turn directed a special investigation team to be constituted for conducting preliminary enquiry. During the course of such enquiry, two Women Police Constables, who had been assigned protection duty of Smt. Swapna Suresh, while she was questioned by the ED officials, stated that, on 12.8.2020 and 13.8.2020, they had overheard the ED officials coercing and cajoling the accused to give statements implicating the Chief Minister and others. The allegation being serious,

legal opinion was obtained and Exhibit P1 FIR registered against the ED officials for offences under Sections 116, 120B, 167, 192, 193 and 195A of IPC.

3. The challenge against registration of the FIR and legality of the Crime Branch investigation is led by Sri.Tushar Mehta, learned Solicitor General of

India, supported by Sri. S.V.Raju and Sri.K.M.Nataraj, learned Additional Solicitors General appearing for the Enforcement Directorate and Central

Bureau of Investigation. Sri. Harin P. Raval, learned Senior Counsel appearing for the State of Kerala countered their contentions and justified the

action of the Crime Branch.

4. According to the learned Solicitor General, registration of the crime by the Crime Branch wing of the State Police, against the officers of a Central

Agency alleging flaws and excesses during their investigation, militates against the very concept of cooperative federalism enshrined in the

Constitution. Further, such action, if permitted, will impair the conduct of free, fair and impartial investigation by the Central Agencies. It is contended

that the Special Court having taken cognizance of the offences, based on the complaint filed by the ED, only the Special Court alone empowered to

consider the complaint of the accused and that, parallel investigation by the Crime Branch would impinge the credibility of the investigation so far

conducted by the ED and would result in an incredulous situation of a Magistrate deciding upon the authenticity and genuineness of the statements

given by the accused, in a case under consideration before a Sessions Judge (Special Judge). It is contended that the allegations based on which the

crime is registered, even if accepted in their entirety, do not make out any cognizable offence. That, in view of the bar under Section 195(1)(b)(i) of

the Cr.P.C, the very registration of the crime is illegal. Attention is drawn to the decision in Patel Laljibhai Somabhai v. State of Gujarat, [(1971) 2

SCC 376], wherein the Honourable Supreme Court has explicated on the purpose behind the enactment of Section 195 of the Cr.P.C.

5. Sri.S.V.Raju contended that abetment of an offence punishable with imprisonment under Section 116 of the IPC would apply only on the ingredients

of Section 107 being satisfied, which, as far as the instant case is concerned, are completely absent. It is contended that, in order to attract Section 167

of the IPC, a public servant charged with the preparation or translation of any

document or electronic record should have framed, prepared or translated that document or electronic document in a manner which he knows or believes to be incorrect. Further, such framing, preparation or translation should be with intention to cause or knowing that his action is likely to cause injury to any person. That, in the absence of any allegation of the ED officials having framed or prepared any document or electronic document, the offence under Section 167 of the IPC is not attracted. It is contended that none of the ingredients necessary to constitute the offence of fabricating false evidence under Section 192 of the IPC are made out and even in cases where the ingredients are made out, the prohibition under Section 195 of the Cr.P.C would apply. As regards the offence under Section 195A of the IPC, it is contended that only a witness or any other person can file a complaint in relation to the offence and the words "any other person" should be read ejusdem generis. Hence, a person totally unconnected to the witness and the case cannot file the complaint. Reference is made to the statement of the second accused dated 13.08.2020 wherein, to a query as to whether the Chief Minister of Kerala or his wife had called her personally and whether they were close to her, the second accused had answered that they were neither close to her nor had they called her personally and that all her conversations with the Chief Minister had been for official purposes only. It is contended that if the intention of the investigating officer was to implicate the Chief Minister, that answer would not have been recorded. According to the learned Counsel, falsity of the allegations is evident from the fact that, in spite of the repeated opportunities available to appraise the jurisdictional court of the attempt to coerce her, the second accused had never raised such a complaint. Reference is made to Exhibits P15 and P16 remand orders dated 11.08.2020 and 14.08.2020, wherein the Special Judge, after interacting with accused Nos.1, 2 and 4, had observed that the accused appeared to be in sound health and mind and had no complaints. Particular emphasis is laid on paragraph 7 of Exhibit P17 order, wherein the learned counsel for Smt. Swapna Suresh had alleged that his client was tortured during questioning by the Enforcement Officials, without the presence of a woman officer. It is hence contended that the unbelievable narrative about the presence of women civil police officers while Smt. Swapna Suresh was questioned by ED officials, is nothing but a

cooked up story.

6. Sri. K.M.Nataraj focused on the bar under Section 195(1)(b)(i) of the Cr.P.C and contended that the very purpose of that provision is to prevent

instances like the one under consideration. That, the alleged act of coercing the third accused to name innocent persons as her accomplices being in

relation to a proceeding pending before the Special Court, registration of the crime and investigation into such allegation is barred. The distinction

between Sections 195(1)(b)(i) and 195(1)(b)(ii) is pointed out by emphasising on the import of the words "in relation to any proceeding in any

court" in the former, as against the words "in respect of a document produced or given in evidence in a proceeding in any court" in the latter. It

is contended that the former expression is of much wider amplitude than the latter, as held in *Bhima Razu Prasad v. State* [2021 SCC OnLine 210]. It

is argued that the offence under Section 195A of the IPC would be attracted only if a person is threatened to give false evidence in court and not

otherwise. In support of the proposition, attention is drawn to the latter part of Section 195A, dealing with the conviction of an innocent person in

consequence of "such false evidence" and the definition of the word "evidence" under Section 3 of the Indian Evidence Act.

7. Sri.Harin P. Raval countered the arguments and questioned the maintainability of the writ petition at the instance of an officer of the ED, without

even mentioning whether the petition is filed in his individual capacity or as per the decision of the ED. Learned Senior Counsel took strong exception

to the production of documents pertaining to the ongoing ED investigation along with the writ petition and later as additional documents. It is contended

that the documents are produced without adhering to the procedure prescribed under Rule 147 of the High Court Rules and moreover, they have

nothing to do with the issue raised in the writ petition. The purpose behind production of documents, it is submitted, is more to tarnish the name of

certain highly placed personalities in the State Government, rather than substantiating the contentions in the writ petition. According to the learned

Senior Counsel, the attempt of the learned Solicitor General and other counsel is to divert the attention of the Court from the cardinal issue, by raising

a rhetorical contention that investigation by the Crime Branch would impinge the investigation of the ED case and the authenticity of the statements

recorded under Section 50 of the PMLA. It is contended that the court should see through the smoke screen attempted to be created and address the real issue involved. The real issue being the authority, or rather the duty, of the Police to register a crime when commission of cognizable offences are brought to its notice. In support of this argument, reliance is placed on the decision of the Privy Council in *King-Emperor v. Khwaja Nazir Ahmad* [AIR 1945 PC 18] and of the Supreme Court in *Abhinandan Jha and Others v. Dinesh Mishra* [(1967) 3 SCR 668], *State of Bihar and Another v. J.A.C.Saldanha and Others* [(1980) 1 SCC 554] and the Constitutional Bench decision in *Lalita Kumari v. Government of Uttar Pradesh and Others* [(2014) 2 SCC 1]. It is contended that the bar under Section 195 of the Cr.P.C is only against taking cognizance and does not interdict investigation by the Police. Support for this argument is garnered from the decisions in *State of Punjab v. Raj Singh and Another* [(1998) 2 SCC 391], *M.Narayandas v. State of Karnataka and Others* [(2003) 11 SCC 251], *Shafi @ Kozhi Shafi v. Abdul Salam and Others* [2017 (4) KHC 929] and *Nirmaljit Singh Hoon v. The State of West Bengal and Another* [(1973) 3 SCC 753]. It is submitted that the attempt of the petitioner is to somehow thwart the investigation and prevent the truth from coming out, which is evident from the undue haste with which the writ petition has been filed. That, the petitioner and other officials of the ED had compelled and coerced the accused to give statements implicating highly placed personalities in the State Government, which is a heinous offence that needs to be unearthed and the culprits brought to book. It is also contended the the statements of the accused, recorded while they were in ED custody, cannot be termed as statements under Section 50(3) of PMLA. The circumspection required while exercising the inherent power under Section 482 of the Cr.P.C and the well settled position of the High Court being not expected to sift the evidence for deciding factual issues involved, while exercising such power, is reiterated with the aid of authorities.

W.P(C) No. 8920 of 2021

8. The challenge in this writ petition is against the registration of Crime No.98/CD/ALP/D/2021 at the Crime Branch Police Station, Ernakulam, vide

Exhibit P1 FIR dated 27.03.2021. The short facts, leading to the registration of the crime are as under:

Sri.Sandeep Nair, presently the fourth accused in ECIR/ACZO/31/2020 registered by the Enforcement Directorate, had sent Exhibit P2 letter dated 05.03.2021 to the Special Judge, alleging that he was compelled by the petitioner to name the Chief Minister and certain others as accomplices to the crime. News about the letter published in the visual media was noticed by Advocate R.Sunil Kumar, a practising lawyer. Being of opinion that the deliberate attempt to drag the State's Chief Minister and others into the crime should be investigated, Advocate Sunil Kumar sent a complaint to the Additional Director General of Police (Crime Branch). Thereupon, Exhibit P1 FIR (Crime No. 98 of 2021) was registered for offences under Sections 116, 167, 192, 193 and 195A of IPC. During the course of investigation of the crime, the Crime Branch sought permission to question and record the statement of Sri. Sandeep Nair from the Central Prison, Thiruvananthapuram and the request was allowed by the Special Court as per Exhibit P3 order. The challenge in this writ petition is against Exhibit P1 FIR and Exhibit P3 order and is founded on the same grounds as in W.P(C).No.7641 of 2021. The additional ground of challenge is that registration of a second crime, based on the very same allegations as in the first crime, is barred. In support of this challenge, reference is made to the statement in the first crime (Crime No. 94 of 2021), of another accused in the case, Sri.Sandeep Nair, having also written a similar complaint to the District and Sessions Judge, Ernakulam alleging threat and coercion to give false evidence against the Chief Minister and that the entire matter require an in-depth investigation by registering an FIR. Countering the challenge, learned counsel for the respondent State highlighted the marked differences between the incidents and the allegations in the two crimes, which, according to the learned counsel, can, by any stretch of imagination, be treated to be the same or even similar. Elaborate legal contentions are put forth by both sides, relying on the decisions of the Apex Court in Ram Lal Narang v. State (Delhi Administration) [(1979) 2 SCC 322], State of West Bengal v. Swapan Kumar Guha and Others [(1982) 1 SCC 561], T.T.Antony v. State of Kerala and Others [(2001) 6 SCC 181], Upkar Singh v. Ved Prakash and Others [(2004) 13 SCC 292], etc.

9. The legal issues arising for consideration in both writ petitions, except the challenge on the ground that Exhibit P1 in W.P(C).8920 of 2021 is the

second FIR, being common, both writ petitions are being considered together.

10. The challenge against maintainability of the writ petition on the premise that the petitioner has filed the case in his individual capacity cannot hold

good. Undoubtedly, the writ petition is filed by the petitioner in his capacity as the Investigating Officer in ECIR/ACZO/31/2020. The fact that, the

writ petition is filed with official sanction is evident from the appearance of the learned Solicitor General. At the same time, I find substance in the

objection raised by the Sri. Raval against the manner in which the documents pertaining to the ED case is produced and persons, who are not made

parties, named in the writ petition. The explanation offered for production of the documents is that they form part of Exhibit P5 complaint. If that be

so, the petitioner ought to have produced the entire set of documents appended to Exhibit P5 complaint, rather than producing the documents of his

choice. Even though the petitioner's action is liable to be deprecated, that does not warrant dismissal of the writ petition.

11. Moving on to the merits of the contentions urged, the first and foremost is the contention based on the prohibition under Section 195 of the Cr.P.C.

Needless to say that the finding on that contention will have an impact on the other legal points. Indisputably, the crimes are registered for offences

punishable under Sections 116, 120B, 167, 192, 193 and 195A of the IPC of which, Section 193 is an offence falling within the ambit of Section 195(1)

(b)(i) of the Cr.P.C. In order to understand the scope and ambit of Section 195 of Cr.P.C, it is necessary to analyse and understand the provision.

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; (b)(i) of any offence punishable under any of the following sections of the Indian

Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200,

205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, 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, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court 115[or by such officer of the Court as that Court may authorise in writing in this behalf], or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court

according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.â??

12. The purpose of enacting Section 195 (Criminal Procedure Code 1898, which is in pari materia with Section 195 of the 1973 Code) was considered

by the Apex Court in *Patel Laljibhai Somabhai v. State of Gujarat*, [(1971) 2 SCC 376]. The relevant portion of the said judgment reads as under:

â??The underlying purpose of enacting Section 195(1)(b) and (c) and Section 476, seems to be to control the temptation on the part of the

private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous,

vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for

the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of

public justice, which is the direct and immediate object or victim of those offence and it is only by misleading the courts and thereby

pervverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of

the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability

of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of

public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right

recognized by Section 190 CrPC, of the aggrieved parties directly initiating the criminal proceedings. 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 us to be more appropriate

to adopt the strict construction of confining the prohibition contained in Section 196(1)(c) only to those cases in which the offences

specified therein were committed by a party to the proceeding in the character as such party.â??

The reason behind bringing certain specified offences under the purview of Section 195 of the Cr.P.C is because the commission of those

offences have direct impact on an ongoing judicial proceeding and thereby, on the administration of justice. Section 193 of the IPC being

one such offence, the prohibition under Section 195 of the Cr.P.C will apply.

13. The next question is whether the prohibition under Section 195(1)(b)(i) of Cr.P.C is from taking cognizance only or whether the Police is

interdicted from conducting investigation of the offences enumerated in the section. Senior Counsel Shri.Harin P. Rawal argued with the aid of

precedents that Section 195(1)(b) does not prohibit registration of crimes and investigation by the police. This argument is countered by Senior Counsel

Sri. K.M. Nataraj, by drawing a distinction between Sections 195(1)(b)(i) and 195(1)(b)(ii). It is contended that all the offences mentioned in Section

195(1)(b)(i) are non-cognizable and hence the Police cannot register crime without following the procedure under Section 155 of the Cr.P.C and that

the provision considered in the decisions cited by Mr.Raval was Section 195(1)(b) (ii), wherein the offences are cognisable. In order to address the

contention, it is necessary to consider the cited decisions.

14. In *Nirmaljit Singh Hoon v. State of W.B.*, (1973) 3 SCC 753, the offences were under Sections 463, 471, 475, 476 of the IPC and hence the Apex

Court held that police authorities have a statutory right under Sections 154 and 156 of the Code to investigate into a cognizable offence, without

requiring any sanction from a judicial authority and even the High Court has no inherent power under Section 561-A of the Code (Section 482 of the

new Code) to interfere with the exercise of that statutory power.

15. In *State of Punjab v. Raj Singh* [(1998) 2 SCC 391], the appeal had arisen from the order by which the High Court had quashed an FIR, registered

during the course of a civil suit, alleging commission of offences under Sections 419, 420, 467 and 468 of the IPC. The FIR was quashed on the

ground that Section 195(1)(b)(ii) of the Cr.PC prohibited entertainment of and investigation into the offences by the police. While interfering with that

judgment the Honourable Supreme Court held that from a plain reading of Section 195 Cr.PC, it is manifest that the prohibition comes into operation

only 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, even if the offence is alleged to have been committed in, or in

relation to, any proceeding in court. The Apex Court further held that the statutory power of the police to investigate under the Code is in no way

controlled or circumscribed by Section 195 of the Cr.PC. 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) of the Cr.PC, 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 of the Cr.PC.

16. The distinction between Sections 195(1)(b)(i) and 195(1)(b)(ii) has been succinctly laid down in *Narendra Kumar Srivastava v. State of Bihar*,

[(2019) 3 SCC 318] in the following words;

â??13. It is clear from sub-section (1)(b) of Section 195 CrPC that the section deals with two separate set of offences:

(i) of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 IPC, when such

offence is alleged to have been committed in, or in relation to, any proceeding in any court; [Section 195(1) (b)(i)]

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476 IPC, 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. [Section 195(1)(b)

(ii)].

14. On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly

distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category

of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.

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21. As already mentioned, clauses under Section 195(1) (b) CrPC i.e. sub-section 195(1)(b)(i) and sub-section 195(1)(b)(ii) cater to

separate offences. Though Section 340 CrPC is a generic section for offences committed under Section 195(1) (b), the same has different

and exclusive application to clauses (i) and (ii) of Section 195(1)(b) CrPC.

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23. In *Sachida Nand Singh* [*Sachida Nand Singh v. State of Bihar*, (1998) 2 SCC 493 : 1998 SCC (Cri) 660] , this Court had dealt with

Section 195(1)(b)(ii) CrPC unlike the present case which is covered by the preceding clause of the section. The category of offences which

fall under Section 195(1)(b)(i) CrPC refer to the offence of giving false evidence and offences against public justice which is distinctly

different from those offences under Section 195(1)(b)(ii) CrPC, where a dispute could arise whether the offence of forging a document was

committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present

case.

24. The case in hand squarely falls within the category of cases falling under Section 195(1)(b)(i) CrPC as the offence is punishable under

Section 193 IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High

Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we

deem it proper to set aside the costs imposed by the High Court.â??

17. The Honourable Supreme Court had occasion to consider this question in *Bandekar Brothers Pvt. Ltd and Anr v Prasad Vasudev Keni etc.* [2020

SCC OnLine SC 707], the relevant portion of which is extracted hereunder;

â??19. At this stage, it is important to understand the difference between the offences mentioned in Section 195(1) (b)(i) and Section 195(1)

(b)(ii) of the CrPC. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of

the CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been

committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence punishable under these sections does not

have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court.

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22. Contrasted with Section 195(1)(b)(i), Section 195(1) (b)(ii) of the CrPC speaks of offences described in Section 463, and punishable

under Sections 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or

given in evidence in a proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation

to", making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be

committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being

introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the Appellant's case namely,

this Court's judgment in Iqbal Singh Marwah (supra).

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33. The aforesaid judgments clearly lay down that when Section 195(1)(b)(i) of the CrPC is attracted, the ratio of Iqbal Singh Marwah

(supra), which approved Sachida Nand Singh v. State of Bihar (1998) 2 SCC 493, is not attracted, and that therefore, if false evidence is

created outside the Court premises attracting Sections 191/192 of the IPC, the aforesaid ratio would not apply so as to validate a private

complaint filed for offences made out under these sections.

18. Recently, in Bhima Razu Prasad v. State [2021 SCC OnLine 210], the Apex Court had occasion to consider the import of the words "in

relation to" in Section 195(1)(b)(i). Paragraph 51 therein, which is contextually relevant, reads as under:

"51. The purpose of Explanation 2 to Section 193, IPC is evidently to ensure that a person who fabricates false evidence before an

investigating or inquiring authority prior to the trial of the case does not escape penalty. This encompasses all nature of proceedings,

whether civil or criminal. However, whether the commission of such offence would require the complaint of a Court under Section 195(1)(b)

(i) would depend upon the authority before whom such false evidence is given. For example, if a person gives false evidence in an inquiry

before the Magistrate under Section 200, CrPC, that would undoubtedly be an offence committed before a Court under Section 195(1)(b)(i),

CrPC. However, this would not be the case where false evidence is led before an investigating officer prior to the Court having taken

cognizance of the offence or the case being committed for trial.â??

19. It may be pertinent to note that as far as the instant cases are concerned, the Special Court has taken cognizance of the offences under the

PMLA on 12.10.2020. As such, recording of the accusedâ??s statements would undoubtedly fall within the import of the words â??in relation to any

proceeding in any courtâ?? mentioned in Section 195(1)(b)(i).

20. The next question to be considered is whether the prohibition under Section 195(1)(b)(i) could be made applicable to all the offences or should be

confined to the offences enumerated therein. The purpose behind the enactment of Section 195 being to ensure that the proceedings of the court are

not sullied, nor the administration of justice not meddled with, if the other offences are interwoven and inseparable from the offences within ambit of

Section 195(1)(b)(i), necessarily, the prohibition will have to be extended to the other offences also. This question was considered in *Bandekar*

*Brothers*â?? case (supra) and answered at paragraph 44 of the judgment, as under:

â??44. Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which

Section 195 of the CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the Cr.PC must be

followed.â? *Basir-ul-Huq v. State of W.B.* [AIR 1953 SC 293] is yet another precedent which had considered the question of distinct

offences disclosed by the same facts being clubbed along with offences falling within the ambit of Section 195. After holding that the bar

would not apply to distinct offences, the Apex Court clarified the position as under;

â??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 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.â??

21. The above discussion leads to the only possible conclusion of the bar under Section 195(1)(b)(i) Cr.P.C being applicable to the offences mentioned in the two FIRs, the allegations being to the effect that attempts were made to fabricate false evidence and to coerce and threaten the accused to give false statements. It may be pertinent to note that, if such attempts had fructified, it would have definitely sullied the proceedings of the court and impacted administration of justice. Therefore, even though the other offences alleged are under Section 167 and 195A of IPC, they are undoubtedly interwoven with and inseparable from the offence under Section 193 and therefore susceptible to the prohibition under Section 195(1)(b)(i) of Cr.PC.

Adopting the same reasoning, it has to be held that the offence under Section 193 IPC being a non-cognisable offence, the Crime Branch could not have registered the crimes without following the procedure under Section 155(1) Cr.P.C, despite the deeming clause under Section 155(4). Hence, the remedy of the aggrieved persons was to approach the Special Court. Having held so, it will be apposite to have a look at Section 340 of Cr.PC.

â??340. Procedure in cases mentioned in Section 195.â??(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be

made into any offence referred to in clause (b) of sub-

section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in

respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any,

as it thinks necessary,â?

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the

Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.â??

22. From a reading of the Section it is evident that any aggrieved person can alert the court about commission of a crime committed with intent to

mislead the court or to scuttle the proceedings pending before it and that, even in the absence of any complaint, the court is at liberty to take action, on

receiving information regarding commission of offences enumerated under Section 195(1)(b). In *N. Natarajan v. B.K. Subba Rao* [(2003) 2 SCC 76],

the Apex Court has upheld the right of any aggrieved citizen to approach the jurisdictional court under Section 340 in the following words:

â??8. In our view it is not necessary to pursue the approach of either of the parties. It is well settled that in criminal law a complaint can be

lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences

adverted to in Section 195 CrPC there is a restriction that the same cannot be entertained unless a complaint is made by a court because the

offence is stated to have been committed in relation to the proceedings in that court. Section 340 CrPC is invoked to get over the bar

imposed under Section 195 CrPC. In ordinary crimes not adverted to under Section 195 CrPC, if in respect of any offence, law can be set

into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under Section 340 CrPC. For

that matter, the wording of Section 340 CrPC is significant. The court will have to act in the interest of justice on a complaint or otherwise.

Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in

the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed, covered by the said

provision. Therefore, it is wholly unnecessary to examine this aspect of the matter. We proceed on the basis that the respondent has locus

standi to present the complaint before the Designated Judge.â??

The point that emerges is that, either on being alerted through an application or on getting information regarding the commission of the

offence under Section 195(1)(b), the jurisdictional court can conduct a preliminary enquiry and form the opinion whether it is expedient to

conduct an enquiry. Further, if convinced about the need for an enquiry, the court can record its finding to that effect and make a

complaint in writing and send it to the magistrate of first class having jurisdiction.

23. As far as the instant cases are concerned, the Special Court has already received a complaint from Sri.Sandeep Nair and has allowed the

application submitted by the Crime Branch to question him in jail. The 161 statement of Sri.Sandeep Nair recorded thereafter was made available to

me in a sealed cover. In my considered opinion, while interdicting the Police from continuing the investigation, interest of justice requires that the

Special Judge be permitted to look into the materials collected by the Crime Branch, treating it as the information mentioned in Section 340(1), so as to

decide whether it is expedient to conduct an enquiry.

In the result, the FIR and further proceedings in Crime Nos. 94 of 2021 and 98 of 2021 of Crime Branch Police Station are quashed. The Investigating

Officers shall forthwith submit all records pertaining to the crimes before the Special Court in a sealed cover. The learned Special Judge can look into

those records and other materials, if any available, while deciding whether it is expedient to conduct an enquiry.

The writ petitions are disposed of as above.