

**(1987) 04 BOM CK 0013**

**In the Bombay High Court**

**Case No :** Criminal Writ Petns. No's. 483 and 485 of 1986

Pravinchand Jagjivandas Gandhi and another

APPELLANT

Vs

Ibrahim Mohammad Merchant and another

RESPONDENT

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**Date of Decision :** 06-04-1987

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 195  
Penal Code, 1860 (IPC) — Section 193, 211, 228, 451, 500

**Citation :** (1987) 3 BomCR 29 : (1987) 89 BOMLR 307 : (1987) MhLj 898

**Hon'ble Judges :** S.W. Puranik, J

**Bench :** Single Bench

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## **Judgement**

1. Both these petitions are being disposed of by the following common order, as they involve common questions of facts and law.

2. Briefs facts relevant for the purpose of the present petitions are : The petitioner in Criminal Writ Petition No. 483 of 1986 filed F.I.R. against the respondent in April, 1980 for the alleged offences under Ss. 451 and 506, I.P.C. The first respondent came to know that some report of a criminal offence had been lodged against him. He therefore filed an application for grant of anticipatory bail before the High Court in the last week of April 1980. Thereafter on 2-4-1980 the respondent was arrested and released on bail. On 4th August, 1980 the first respondent was served with a copy of the charge-sheet in Criminal Case No. 978/P/1980. On 28th April, 1983 the first respondent was acquitted honourably and in fact the trial Court found that the petitioner had given a false report to the Police and issued him a notice to show cause why he should not be asked to pay compensation to the first respondent.

3. On 6-7-1983 the first respondent filed a complaint case for the offence of defamation under S. 500, I.P.C. and that was registered as criminal complaint case No. 61/S of 1983. The process was issued in the last week of July 1983 against the petitioner. In August 1984 the petitioner applied to the trial Court requesting the Court to drop the prosecution as the prosecution was intended to

be in respect of defamation allegedly caused to the first respondent by virtue of something stated by the petitioner in his deposition before the trial Court in earlier criminal case. The prosecution had contended that the said prosecution would be an offence under S. 211 or 193 of I.P.C. and hence cognizance of such an offence should not be taken by the Court except upon a complaint in writing by the Court before which the alleged defamatory deposition was given. This bar is created by S. 195 of the Code of Criminal Procedure.

4. On hearing the parties the trial Court rejected the application filed by the petitioner and directed the prosecution under S. 500, I.P.C. to proceed. The petitioner thereafter carried the revision before the learned Sessions Judge which was Criminal Revision Application No. 299 of 1984. By his order dated 21st February, 1986 the learned Sessions Judge dismissed the revision application and confirmed the order of the trial Court. Being aggrieved by these two concurrent orders the petitioner has moved this Court by way of this petition, W.P. 483/86.

5. Shri C. J. Sawant and Shri A. Y. Sakhare appeared for the petitioners, whereas the first respondent was represented by Shri P. R. Vakil and the learned Public Prosecutor appeared for the second respondent.

6. It was contended on behalf of the petitioners that since the alleged defamation as per the complaint case had occurred during the petitioner's deposition before the trial Court as a prosecution witness, the said offence would be one covered under S. 193 or S. 211 of I.P.C., cognizance of which cannot be taken by the Court except on a written complaint by the Court before which the alleged defamatory deposition was recorded. This is as provided under S. 195 of the Criminal Procedure Code. Even otherwise, Shri C. J. Sawant contended that the same transaction of making a defamatory statement constituted an offence under S. 193, I.P.C. and hence a private complaint for the offence under S. 500, I.P.C. is not maintainable. He also relied on the decisions in Basir-ul-huq and Others Vs. The State of West Bengal, and State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, .

7. Shri P. R. Vakil on the other hand contended that the ingredients of one offence of defamation under S. 500, I.P.C. and the ingredients of the offence under S. 193, I.P.C. are entirely distinct and hence whether the Court suo motu takes action of filing a complaint under S. 195, Cr.P.C. or not, the respondent who has been defamed by the said statement in the deposition was entitled to prosecute the petitioner for the offence of defamation independently.

8. It is well settled that the offences under Ss. 193 to 196 (both inclusive) and Ss. 199, 200 and 205 to 211 (both inclusive) and S. 228, I.P.C. are the offences against public justice. Chapter XI of the India Penal Code deals with all such offences of false evidence and offences against public justice. It is for this purpose that S. 195, Cr.P.C. provides that prosecutions for contempt of lawful authorities by public servants or for the offences against public justice as well as for the offence relating to documents given in evidence before the Courts are

made cognizable by a Court only upon a written complaint lodged by the Court before which such offences have been committed during and proceeding. On the contrary Indian Penal Code is divided into various categories of offences, some relating to or against individuals, some relating to offences against public at large or disturbing peace in society, some are in respect of cheating or defamation against individuals and some relating to marriages etc. Chapter XXI of the Indian Penal Code deals with defamation, which is defined in S. 499 and is made punishable under S. 500, I.P.C. The said definition clearly makes it an offences if someone by words, spoken or written, or by signs or visible representations makes or published any imputation concerning the person intending to harm or knowing of having reason to believe that such an imputation will harm the reputation of such a person, he is said to have defamed that person, along with various explanations as well as exceptions. An offence of defamation against an individual is comprehensively stated therein. Whether publication of defamatory words or uttering defamatory words, heard and listened to by people takes place in a proceeding in a Court room or outside the Court precincts does not matter as long as the defamatory words are intended to harm reputation of the other.

9. On the other hand the offences against public justice are offences which are covered by S. 195 of the Criminal Procedure Code which lowers the decorum and dignity of the Court and the sanctity of the proceedings before it. Those offences are distinct in nature and ingredients and as such the Court alone has been given authority to take cognizance of such offences and make a report to the Court for prosecuting the offender. These offences are treated on a different level because they otherwise will impede administration of justice and fairplay. In these circumstances, therefore, the trial Court as well as the revisional Court were right in concluding that the prosecution or complaint under S. 500, I.P.C. was not barred merely because the same transaction could also constitute an offence of giving false evidence before a Court knowing it to be false and covered by S. 193 of the Indian Penal Code.

10. Section 195 of the Code does not bar 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 commission of that offence, other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well.

11. Perusal of the complaint of defamation also makes it clear that an offence of defamation in the instant case is not so closely inter-connected with giving of false evidence before the Court that they could not be split up. As is stated earlier the offence of defamation is an offence of giving false evidence on oath before the Court is an offence against administration of Justice. In these circumstances, therefore, the Criminal Writ Petition No. 483 of 1986 is liable to be rejected and there is no reason to interfere with the concurrent orders of the two Courts below.

12. Similar are the facts in respect of Criminal Writ Petition No. 485 of 1986

arising out of Criminal Case No. 478/P of 1980. During the course of the trial the petitioner Tarulata, wife of the petitioner in the connected petition had filed an affidavit making various defamatory allegations against the respondent and it was by virtue of the said false and defamatory affidavit that the trial Court was persuaded to alter the bail condition of the bond of the respondent who was the accused in the said criminal case and the bail amount of Rs. 900/- was increased to Rs. 2,000/-. The respondent in a separate complaint of defamation (Criminal Complaint Case No. 63/S of 1983) has alleged that the affidavit contained a defamatory allegation against him. The said affidavit was meant to be read by the Court, Counsel as well as the people knowing the first respondent. The petitioner Tarulata in Writ Petition No. 485 of 1986 has also filed a similar application before the trial Court for dropping the proceedings on the ground that the offence covered is one under S. 193 or 211 of I.P.C. and the Court cannot take cognizance of a private complaint except upon a complaint lodged by the Court itself. The trial Court rejected that application and the Sessions Court in revision had also confirmed the said order. Against these two concurrent orders Tarulata has filed Criminal Writ Petition No. 485 of 1986. For the reason stated while dismissing Writ Petition No. 483 of 1986 the present petition is also not sustainable and hence both these petitions stand dismissed.

Rule discharged. Interim stay vacated. However in view of the long pendency of the complaint cases, the trial Court is directed to dispose the same on merits with utmost expedition.

13. Order accordingly.