

(1997) 12 CAL CK 0028
In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction C.R.R. No. 2302 of 1997

Vijay Bahadur Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 22-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 190, 195(1), 2, 340, 340(1)
Penal Code, 1860 (IPC) — Section 120B, 192, 193, 196, 199

Citation : (1998) 1 CALLT 462

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Mr. V.B. Singh in Person, for the Appellant; Mr. Rabi Sankar Chatterjee, MR. Ranjan Roy and Mr. Debabrata Roy, for the Respondent

Judgement

D.B. Dutta. J.

1. The instant application under sections 397, 401 and 482 of the Criminal Procedure Code is for quashing the criminal proceeding in G.R. Case No. 2205 of 1996 pending in the 12th court of " Metropolitan Magistrate, Calcutta.

2. How the aforesaid proceeding arose may be stated thus :

By an order dated 6.2.95 passed in C.O. No. 5437(W) of 1994, Justice Samaresh Banerjea sitting in a single Bench held that the order dated 29th March, 1994 which appeared in the order-sheet of the concerned record of the C.O.5437(W) of 1994 was not at all the order which was actually passed by His Lordship in the said proceeding. His Lordship directed the Registrar, Appellate Side to cause an inquiry to find out as to what was his exact order that was passed on 29th March. 1994 in C.O.5437(W) of 1994. The Registrar was directed to find out which particular court officer had taken the dictation of the order in question on the said date and to take out the transcript of that order from the relevant short hand notebook. In pursuance of that direction the Registrar submitted his report along with the relevant transcript taken out from the relevant shorthand note-

book and after examining the same, Justice Banerjea by his subsequent order dated 10th February, 1995 passed in C.O.5437(W) of 1994 reiterated his finding that the purported order dated 29th March 1994 was forged and observed that since the matter involves forgery of court record including the signature of the presiding Judge of the court, it required indepth investigation so that whosoever be the person involved in such forgery cannot go unpunished. The petitioner of the present revisional application appeared before Justice Banerjea on 10.2.94 and claimed that he had acted as Special Officer of a school in pursuance of the order dated 29.3.94 of the court passed in C.O.5437(W) of 1994 and that a copy of that order was served upon him by a forwarding letter addressed by Gayatri Chowdhury, the advocate on record of the writ petitioner. Justice Banerjea by his order dated 10.2.95 placed on record that the present petitioner was never appointed as Special Officer by him. In support of such claim, the petitioner produced before Justice Banerjea a xerox copy of the letter. The said letter was addressed to different authorities who are respondents in the concerned proceeding. Justice Banerjea directed them to produce the said letter along with xerox copy of the purported order dated 29.3.94. Pursuance to that direction, different respondents appeared before justice Danerjea and submitted copies of the letters of Gayatri Chowdhury received by them. The District inspector of Schools submitted that it was the petitioner who served the letter of Gayatri Chowdhury. The Director, Secondary School Education also submitted before Justice Banerjea that his office did not receive any communication from Gayatri Chowdhury. Gaytri Chowdhury, who was the Advocate on record for the writ petitioner did not appear before justice Banerjea on any of the occasions after she detected the forgery as she was hospitalised due to her serious illness and subsequently expired. In the circumstances, His Lordship considered it difficult to find out who were involved in that forgery. His Lordship was of the view that an investigation should be made by an expert investigating agency to find out the persons involved in the forgery and considering the gravity of the offences. His Lordship by his order dated 27.3.95 directed the DIG of Police, CBI Calcutta to investigate for the purpose of finding out who are the persons responsible for the forgery of the court record and the signature of the presiding Judge of the court and also to submit the report before His Lordship within certain specified time. The Registrar was directed to make all such necessary records available to the investigating agency. By the said order dated 27.3.95, His Lordship also made it clear that the CBI after such investigation would be at liberty to take all action in accordance with law including criminal prosecution against the offenders. His Lordship directed the Registrar to serve a copy of this order on the CBI for taking necessary action and in pursuance of this direction, the Registrar by his letter dated 5.4.95 forwarded a copy of the order dated 27.3.95 to the CBI for necessary action. Since the order dated 27.3.95 passed by justice Banerjea disclosed commission of cognizable offences by the present petitioner and others, the CBI treated it as FIR and started a case u/s 120B, 420, 467. 471 and 477A of the IPC. After investigation, the CBI submitted its charge-sheet on 30.8.96 against the present petitioner. According to the charge-sheet,

investigation revealed that Vijay Bahadur Singh, a practising lawyer of Calcutta High Court, dishonestly and fraudulently got a writ petition filed under Article 226 of the Constitution on 22.3.94 in the name of S.S. Dubey v. State of West Bengal through one J.N. Rao after forging the signature of the said J.N. Rao. The investigation further revealed that the petitioner caused the removal of the original order dated 29.3.94 passed by justice Samarendra Banerjee in C.O.5437(W) of 1994 from the record and replaced it by a forged and fabricated order purporting to appoint himself as special officer of the School in question and empowering him to operate all the bank accounts of the said school. The investigation also revealed that on the strength of the said forged order, the present petitioner dishonestly induced the Secretary and teacher-in-charge of that school to believe that he was duly appointed as the Special Officer and directed the teacher-in-charge to act as per his advice. It was also established that the petitioner made various correspondences to the said school and issued a cheque of Rs. 28,080/- in favour of one A.P. Sinha unauthorisedly. The result of the investigation, according to the charge-sheet, made out a prima facie case under sections 192, 193, 420, 467, 468, 471 of the IPC.

3. Mr. V.B. Singh the petitioner appearing the person made the following points, in assailing the legality of the cognizance. The offences involved are specified in sub-clauses (i) and (ii) of clause (b) of sub section (1) of section 195 of the Code of Criminal Procedure and are alleged to have been committed in or in relation to a proceeding in a court and as such, for taking of cognizance of such offences, a court complaint would be necessary under sub section (1) of section 195, and since no complaint as contemplated under sub section (1) of section 195 CrPC was lodged with the Magistrate, taking of cognizance was bad in law. being the breach of the express prohibition contained in section 195(1) CrPC. It was further contended by the petitioner that the procedure prescribed by section 340 of the CrPC for lodging complaint has not at all been followed in the instant case and as such, the cognizance was bad. The petitioner cited several decisions namely Sugar Syndicate, Bahadurgarh Vs. Excise and Taxation Commissioner, Punjab, , Shri Virindar Kumar Satyawadi Vs. The State of Punjab, , Sheo Kumar Bhairu Prasad Sao Vs. N.P. Tripathi and Others, , B.K. Pal Chaudhry Vs. The State of Assam, 1985 Cri LJ 1956: Shrikrishna Khatri v. Gobardhan Wain Tandon. 1997 CriLJ 999 : Prasanna Kumar Roy Karmakar v. State of West Bengal and 1997 CriLJ 4148 : Amjad Ali v. Marfat Ali Biswas.

4. Mr. Ranjan Roy, the learned counsel appearing for the CBI (Respondent No.2), contended that a complaint by the court is required only when the forged document is produced in evidence in court and since the forged order cannot be said to have been produced in evidence before the court, the bar u/s 195(1)(b) CrPC will not be attracted here. Reliance has been placed on the decision cited on behalf of the petitioner namely 1985 CriLJ 1956 : Shrikrishan Khatri v. Gobardhan Nath Tandon and the decision of the Supreme Court reported in Surjit Singh and others Vs. Balbir Singh, .

5. Section 195(1)(b) (i) and (ii) of the Code of Criminal Procedure provides that no court shall take cognizance of any offence specified in sub clauses (i) and (ii), except on the complaint in writing of the court concerned. The offences specified in sub clause (i) are punishable under sections 193 to 196, 199, 200, 205 to 211 and 228 of IPC, while sub clause (ii) specifies the offence described in section 463 and those punishable under sections 471, 475 and 476 of the Indian Penal Code. Section 195(1)(b) (i) and (ii) does not require a court complaint for taking cognizance of an offence specified in sub clause (i) and (ii), unless it is committed under certain circumstances. So far as the offences specified in sub clause (i) are concerned, they must be alleged to have been committed in, or in relation to any proceeding in any court, while the offences specified in sub clause (ii) must be alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court. A plain reading of the provisions of section 195(1)(b) (i) and (ii) makes it clear that every court is prohibited from taking cognizance of the offences specified in sub clause (i) and (ii), except on a complaint in writing of the concerned court, whenever such offences are alleged to have been committed under the circumstances stated above. Now, the offences specified in the two sub clauses are described with reference to the sections of the Indian Penal Code under which they are made punishable, except in one case, that is to say, the case of section 463 of the Indian Penal Code. In the case of section 463, the words used are "any offence described in section 463". Section 463 of the Indian Penal Code simply defines the term "forgery" or, in other words, specifies the circumstances under which a person can be said to have committed forgery. The offence of forgery is, however, punishable u/s 465 of the IPC and sections 466, 467, 468 provide for punishment of different species of forgery. In this connexion, the decision of the Supreme Court in the case of Dr. S.L. Goswami Vs. The High Court of Madhya Pradesh at Jabalpur, may be referred to. In the said decision, it has been held that an offence u/s 466 of the Penal Code is an offence which falls within the description of section 463 and is covered by clause (c) of sub section (1) of section 195 of the old Code of Criminal Procedure which corresponds to sub section (i)(b)(ii) of the present Code. Following this decision of the Supreme Court, it can be said that section 463 of the Indian Penal Code which defines forgery as a general term is referred to in sub section (i)(b)(ii) in a comprehensive sense so as to embrace all species of forgery. In other words, even though sections 465, 466, 467, 468 and 469 of the Indian Penal Code are not explicitly specified in sub section (1)(b)(ii), the offences punishable under those sections can also be said to be the offences which are covered by the expression "any offence described in section 463".

6. Section 340(1) of the Code of Criminal Procedure prescribes the procedure to be followed by a court for making a court complaint as required u/s 195(1)(b). The section reads that when, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interest 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, record a finding to that effect, make a complaint thereof in writing and send it to a Magistrate of the first class having jurisdiction. Sub section (3)(a) reads that a complaint made under this section shall be signed, where the court making the complaint is a High Court, by such officer of the court as the court may appoint. "Section 340 thus speaks of two inquiries. One is an inquiry into the offence which is to be made by the court to which the complaint is to be lodged and the other is a preliminary inquiry which is to be made by the court by which the complaint is to be lodged. The expression "preliminary inquiry" is followed by the words "if any, as it thinks necessary". It clearly suggests that the preliminary inquiry is only optional and not obligatory and the nature, mode and extent of such an inquiry appears to be entirely within the discretion of the court concerned. The only purpose for this preliminary inquiry is to form an opinion as to whether the offence concerned does or does not appear to have been committed under the circumstances specified in sub section 195(1)(b) (i) and (ii) and also for the purpose of determining the expediency of an inquiry into the offence concerned in the interest of justice."

7. Let us now endeavour to find out what offences, if any, can be said to appear to have been committed in this case. Xerox copy of the order passed by justice Samaresh Banerjea in C.O. No. 5437(W) of 1994 on 27.3.95 and the xerox copy of the charge-sheet submitted by the CBI, which were produced by the learned counsel for the CBI at the time of hearing of this revisional application constitute the only materials on record for the purpose of ascertaining as to which offences can be said to appear to have been committed in the instant case. On a scrutiny of the facts and circumstances revealed by the above materials on record, it can be said that they disclose commission by the petitioner of (1) an offence of fabricating false evidence punishable u/s 193 of the IPC for the purpose of being used otherwise than in any stage of a judicial proceeding. (ii) the offence of cheating punishable u/s 420 of IPC. (iii) the offence of forgery punishable u/s 465 of the IPC, (iv) the offence of forgery of a court record punishable u/s 466 of the IPC, (v) the offence of forgery for the purpose of cheating as punishable u/s 468 of the IPC and (vi) the offence of dishonest and fraudulent user of a forged document as genuine punishable u/s 471 of the IPC.

8. The offence u/s 420 of the IPC is not specified in any of the two sub clauses (i) and (ii) of clause (b) of sub section (1) of section 195 of the Code of Criminal Procedure and is clearly outside the scope and purview of sub-section (1)(b)(i) and (ii) and accordingly, the bar under this sub section cannot get attracted in relation to the said offence, necessitating a court complaint for taking cognizance thereof.

As regards the offences punishable u/s 465, 466 and 468 IPC, I have already

observed that even though they are not explicitly mentioned in sub clause (ii) of clause (b) of sub section (1) of section 195, these offences also fall within the purview of this sub clause.

The offences under sections 193 and 471 IPC are, of course, expressly specified in sub clauses (i) and (ii) respectively.

9. "Now, we must not be oblivious of the fact that the offence essentially and primarily disclosed by the facts and circumstances of this case is the offence of forgery of a court record. Sub section (1)(b)(ii) is attracted only when the offence of forgery is in respect of a document produced or given in evidence in a proceeding in any court . The forged order dated 29.3.94 of the single bench of Samaresh Banerjea, J, appearing in the record of C.O. No. 5437(W) of 1994 is a document, no doubt, but cannot be termed as a document "produced or given in evidence" in the concerned proceeding and the court within the meaning of sub clause (ii) of clause (b) of sub section (1).

In *Sushil Kumar and Others Vs. State of Haryana and Others*, the Supreme Court held that until the original document is produced in the court, the bar of section 195(1)(b)(ii) does not get attracted. Such a view was reiterated by the Supreme Court in *Surjit Singh and others Vs. Balbir Singh*, Incidentally, it may be pointed out here that the decision of a single Bench of this court reported in 1985 CriLJ 1956; *Shrikrishan Khatry v. Gobardhan Nath Tandon* which was cited on behalf of the petitioner, also echoes the aforesaid proposition to the effect that unless it was prima facie established that the original forged document was in fact produced as evidence, the Magistrate has no jurisdiction to proceed with the enquiry u/s 340 CrPC nor does he have jurisdiction to file a complaint. Mr. B. Kumar did not, however, advance any argument to suggest that the original forged document was produced in evidence before the Bench. Accordingly, it must be held that for the offences punishable under sections 466 and 468 involving the element of forgery as described in section 463 of the IPC, the bar u/s 195(1)(b)(ii) is not at all attracted, necessitating a court complaint.

It cannot also be said that the offence u/s 471 IPC has been committed in respect of a document produced or given in evidence before the court concerned. That being so, so far as the offence u/s 471 IPC is concerned, the bar u/s 195(1)(b)(ii) is also not attracted. In the facts and circumstances of this case.

The offence u/s 193 cannot be said to have been committed in or in relation to a proceeding before the court concerned. The facts and circumstances revealed from the materials on record suggest the commission of fabrication of a false evidence punishable u/s 193 of IPC for the purpose of being used otherwise than in a judicial proceeding and for such offences the mischief of sub section (1)(b)(ii) is not attracted.

10. Normally, if an offence of forgery is committed, certain ancillary offences are also committed along with the offence of forgery. There may be cases where the offences covered by section 195(1)(b) (i) and (ii) involved in a case can or

cannot be split up from other offences not covered by that section. In the instant case, all the offences which appear to have been committed do not fall within the purview of section 195(1)(b) (i) and (ii).

11. Assuming for the sake of argument that the offences primarily and essentially disclosed by the facts and circumstances of this case are the offences covered by section 195(1)(b)(ii), I will now proceed to examine if the cognizance taken in this case is vitiated by any illegality so as to render the entire proceeding liable to be quashed. The underlying purpose of imposing an embargo created by section 195 upon the power of taking cognizance of offences specified in sub clauses (i) and (ii) of clause (b) of sub section (i) of section 195 except on a complaint by the court concerned and the prescription of the procedure by section 340 for making such a complaint is well-settled. To quote the language of the Supreme Court used in *Patel Laljibhai Somabhai Vs. The State of Gujarat*, , "the underlying purpose..... 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 revengful 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 these offences and it is only by misleading the courts and thereby perverting 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 supplied 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".

12. In the instant case, it was not at the instance of a private party that the present prosecution has been launched. The process of launching the prosecution was initiated by the court when certain facts and circumstances came to light. The order dated 27.3.95 would at once reveal the fact that the court itself took pains to ascertain the commission of the offences. The court directed an inquiry to be held by the Registrar, Appellate Side for the purpose of ascertaining what order was actually passed by the court on 29.3.94 and in pursuance of that

direction, the Registrar held an inquiry and submitted a report before the court which was also taken into consideration by the court in coming to a prima facie finding as to the nature of the offences that were committed in this case. Since the offences are such that it could not be committed without there being a well planned conspiracy involving a number of persons, the court was concerned not only to ascertain the offences that might have been committed but also to find out the offenders who are responsible for the commission of those offences and for bringing the offenders to book investigation by an expert investigating agency such as CBI was considered necessary by the court and accordingly, the court directed an investigation by the CBI. The court's order giving such direction for such investigation was forwarded by the Registrar by his letter and the CBI took cognizance upon that letter as its enclosure namely the order of the court disclosed commission of some cognizable offences. After the investigation, the CBI submitted the charge-sheet before the Magistrate who was pleased to take cognizance on the basis of that charge-sheet. Unlike the provisions of sub sections (i) and (ii) of section 479A of the prosecution of a witness for giving false evidence and which have somewhat corresponding provisions in section 344 of the new Code providing for summary trial by the court itself instead of lodging any complaint, section 340 of the Code does not make it obligatory upon a court making the preliminary inquiry contemplated thereunder to give any opportunity of being heard to the person to be proceeded against. From the order dated 27.3.95 passed by the concerned single Bench in C.O. No.5437(W) of 1994. It is clear that the provisions of section 340 CrPC were substantially complied with in considering the expediency of launching the prosecution. It is not a case where the CBI lodged a suo motu FIR and took up investigation. If the investigation that was conducted by the CBI can be deemed to be a part of the preliminary inquiry within the meaning of section 340 because for the reasons that section 340 does not prescribe any specific procedure to be followed for holding such a preliminary inquiry nor does it debar the court from taking the assistance of police in ascertaining facts and the court directed lodging of a complaint through the Registrar, Appellate Side, strictly in terms of section 340 of the Code and the cognizance taken by the Magistrate upon such a complaint, no exception could be taken on behalf of the petitioner against the cognizance, nor could there be any scope for invoking the bar u/s 195(1)(b)(i) and (ii). If the cognizance is to be quashed only because of the fact that the court did not lodge any complaint in writing strictly within the meaning of section 2(d) of the Criminal Procedure Code read with sub section (3) of section 340 direct to the Magistrate for taking cognizance, the ends of justice would suffer irreparably and this court clothed with the inherent jurisdiction u/s 462 CrPC cannot allow the interest of justice to suffer only on a hyper technical ground. The underlying purpose and object of creating the embargo u/s 195(1)(b)(i) and (ii) have, after all, been fully achieved in the facts and circumstances of this case. The word "complaint" appearing in section 195 should, in my view, be construed as a general sense and not in the strict sense of the term as defined in section 2(d). The fact remains that the inquiry which ultimately culminated in the charge-sheet before the Magistrate

was started at the instance of the court concerned. In the peculiar facts and circumstances of this case, I have no hesitation to hold that the impugned cognizance is not hit by the mischief of section 195(1)(b) of CrPC.

13. Before I conclude, I should also deal with the decision that were cited by the petitioner. In *Sugar Syndicate, Bahadargarh Vs. Excise and Taxation Commissioner, Punjab*, a single Bench of the Punjab High Court was considering the question of admissibility of a refund of sales tax paid, in exercise of the powers under Article 226 of the Constitution. It is not clear how this decision could have any relevance to the facts and circumstances of the present case, in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, section 476 of the old Code which corresponds to section 340(1) of the new Code was held to be exhaustive of all the power of a court as such to lay a complaint and a complaint filed by it otherwise than under that section should not be entertained. This ruling, in my view, is of no help to the petitioner in the matter of quashing of the proceeding, in the facts and circumstances of this case. It is not understood why the decision in *Sheo Kumar Bhairo Prasad Sao Vs. N.P. Tripathi and Others*, was relied upon by the learned counsel for the petitioner. In *B.K. Pal Chaudhry Vs. The State of Assam*, the court was concerned with sub sections (1) and (5) of section 479A of the old Code and as such, this decision has no manner of application to the facts and circumstances of the present case. The decision reported in 1985 CriLJ 1956. I have already observed, helps the respondent CBI rather than the petitioner. In 1997 CriLJ 999, a Division Bench of our High Court directed filling of criminal complaint for different offences specified in section 195. The question with which we are concerned here did not arise for consideration in that case and as such, the said decision is hardly of any assistance. The decision reported in 1997 CriLJ 4148 also. In my view, does not apply to the facts and circumstances of the present case.

14. In view of what I have discussed above, it would necessarily follow that no interference would be justified in exercise of this court's revisional and inherent jurisdiction. In the result, the revisional application falls and is hereby accordingly dismissed.

15. Application dismissed