REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1261-1262 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION(CRL.) NOS. 2786-2787 OF 2017]

CENTRAL BUREAU OF INVESTIGATION ...Appellant

Versus

M. SIVAMANI ...Respondent

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. These appeals have been preferred against Order dated 16th October, 2015 of the High Court of judicature at Madras in Criminal Revision Case No.2 of 2009 and M.P. No.1 of 2009. The High Court has quashed the proceedings against the respondent in C.C. No.15 of 2007 pending before the Additional Special Judge for CBI cases, Chennai.

2. Facts stated in the charge sheet filed by the appellant-CBI against the respondent are that a claim petition was filed before the Motor Accident Claims Tribunal (MACT), Cuddalore seeking compensation of Rs.22,00,000/- for death of Mohamed Farooque in a road accident on 11th October, 2002. The MACT partly upheld the claim and awarded Rs.14,97,000/-. On appeal of the National Insurance Company (Insurance Company), the Madras High Court ordered investigation by CBCID into the allegation that the claim was false. After investigation, the CBCID filed charge sheet. The matter was later taken over by CBI under the directions of the Madras High Court which led the CBI to file the impugned charge sheet under Sections 120-B r/w 182, 420, 468, 468 r/w 471 IPC and 13(2) r/w 13(i)(d) of Prevention of Corruption Act, 1988 r/w 511 IPC against A1 to A9. The respondent is A-5. According to the CBI, the Insurance Company was cheated by A-1 by making false claim in connivance with the other accused. Mohamed Farooque sustained injuries by falling on his own from a scooter and not in accident as alleged. Different accused were given different roles in conspiracy. The role given to the

respondent, who is an advocate, is of misrepresentation and producing false evidence, knowing the true facts.

3. During pendency of proceedings on the charge sheet, the respondent moved a petition pleading bar under Section 195(1)(a)(i) CrPC by submitting that cognizance in respect of offence under Section 182 IPC could not be taken except "on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate." Charge sheet by CBI was not such a complaint. The trial court dismissed the petition.

4. On a revision before the High Court, the High Court reversed the order of the trial court. It was held:

> *"....Since Section 182, IPC is found in the final report, a complaint in writing from the competent authority is very much essential and no deviation can be taken. Further, in Section 195(1)(a)(iii), it is mentioned that if there is any criminal conspiracy to commit such offence, complaint in writing by the competent authority is necessary. In the instant case, in the final report, it has been clearly stated that all accused have contrived themselves and agreed to perform the said act. Further, since the accused have been facing a charge under Section 120-B, IPC, the Court can very well come to a conclusion that each accused is having vicarious liability. Under the said circumstances, the defence taken on the side of the respondent is sans merit. It has already been pointed out that in respect of the*

offences mentioned in Section 195(1)(a)(i), a complaint in writing is very much essential. Further, as stated supra, in the instant case, Section 120-B is also available. Under the said circumstances also, a written complaint is very much essential as per the provisions of Section 195(1)(a)(i) and (iii) of Cr.P.C. The Court below has given a finding to the effect that the High Court has directed the CBI to conduct investigation and file a final report and the same has been done. It is pertinent to note that the order passed by the High Court is not at all sufficient to flout/bypass the mandatory provision of Section 195, Cr.P.C. Under such circumstances, the contentions put forth on the side of the respondent are not having any substance. It has already been discussed in detail that the reasons given by the Court-below for dismissing the present petition are totally against the existing law and the same can be eschewed."

5. We have heard learned counsel for the parties.

6. It is submitted on behalf of the appellant that it was on account of element of public interest that the High Court directed CBCID to look into the allegation relating to bogus claim. By a subsequent order dated 1st March, 2006 in W.P. Nos.7389, 39956 and 39968 of 2005, further direction was given to handover the matter to the CBI in following terms:

"We are, however, refraining from entering upon the details lest it may likely to prejudice either party, but we think that since the accusations are directed mainly against the local police officials, it is desirable to entrust the investigation of the matter to an independent agency like the CBI so that all concerned including the Insurance Companies may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the

investigation credibility. Mr. Somayaji may be right in saying that the local police are carrying out the investigation faithfully, but the same will lack credibility, since the allegations are mainly against the Police Department. Therefore, in our opinion, it would be advisable and desirable as well as in the interest of justice to entrust the investigation to the CBI forthwith in respect of the complaints filed by the National Insurance Company as well as other Insurance Companies.

We accordingly direct that the CBI shall investigate into the said complaints filed by the Insurance Companies as well as complaints relating to the use of fake FIRs by different police stations. ... ...”

In view of above, on correct interpretation of the provision, bar of Section 195 cannot apply in view of direction of the High Court.

The question is whether there is non-compliance of Section 195(1)(a)(i) CrPC in court taking cognizance of the offence in question , i.e. Section 182 IPC.

7. Section 195(1) CrPC is as follows:

“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, or of some other court to which that court is subordinate."

(Emphasis added)

8. Contention raised on behalf of the appellant-CBI is that the object and purpose of the bar created under the law against taking cognizance in respect of the specified offences is to control frivolous or vexatious proceedings by private parties. In **State of U.P. versus Mata Bhikh**[1] it was observed :

1 (1994) 4SCC 95 `

> *" 6. The object of this section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section without which the trial under Section 188 of the Indian Penal Code becomes void ab initio. See Daulat Ram v. State of Punjab [AIR 1962 SC1206]. ... ..."*

9. It is submitted that the scheme of the provision shows that the specified offences in respect of whom the bar is created have direct impact on administration of public justice. As against a private party, it is only the public servant or his superior to whom he is administratively subordinate is permitted to file a complaint. Reliance has been placed on the judgment of this Court in ***Iqbal Singh Marwah* versus *Meenakshi Marwah***[2] laying down that interpretation of the provision which leads to a situation where victim of crime is rendered remediless has to be discarded and interpretation should advance the object[3]. The Constitution Bench of this Court interpreted the bar under Section 195(1)(b)(ii) to be limited to a document where forgery was committed after it

2 (2005) 4 SCC 370
3 Para 23 & 25.

was produced or given in evidence before the court. It was held that if forgery was committed before the document was produced before the court, the bar under the said provision was not applicable. In ***Perumal versus Janakai***[4] it was held that bar under the provision will not apply if a High Court, as a superior court, directs a complaint to be filed in respect of offence covered by Section 195(1)(b)(i). It was, thus, submitted that in the present case protection under Section 195(1)(a)(i) cannot apply as it was not at the instance of any private party but at the instance of the High Court that CBI investigation was directed to be conducted. "Other public servant to whom he is administratively subordinate" should not exclude the High Court.

10. Learned counsel for the respondent however supported the view taken by the High Court. It was submitted that there was no reason to ignore the statutory bar against taking cognizance of an offence under Section 182 except on the complaint in writing of the public servant concerned or who is administrative superior to whom which expression could not include the High Court. It was submitted that though on failure to perform a public duty, the

4 (2014) 5 SCC 377

public servant or his superior may be directed by the High Court by a *mandamus* to file a complaint, direction of the High Court to conduct investigation was not enough to exclude the statutory bar against taking of cognizance. Reliance has been placed on **M.S. Ahlawat versus State of Haryana**[5] laying down as follows:

> *"5. Chapter XI IPC deals with "false evidence and offences against public justice" and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. 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. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice."*

11. We have considered the rival submissions. We find merit in the contention raised on behalf of the appellant. While the bar against cognizance of a specified offence is mandatory, the same

5 (2000) 1 SCC 278

has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. The expression "the public servant or his administrative superior" cannot exclude the High Court. It is clearly implicit in the direction of the High Court quoted above that it was necessary in the interest of justice to take cognizance of the offence in question. Direction of the High Court is at par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service. The view taken by the High Court will frustrate the object of law and cannot be sustained.

12. Accordingly, we allow these appeals and set aside the impugned order. Since the matters have been hanging in fire for the last more than 15 years, it will be in the interest of justice that the proceedings are concluded as far as possible within six months.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(UDAY UMESH LALIT)

NEW DELHI
1ST AUGUST, 2017.