Before K. S. Kumaran. J.

RAJ SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Crl. M. No. 15996/*M*/1996

31st January, 1997

Code of Criminal Procedure, 1973—S. 195 (1) (*b*)—*Offences under Sections* 419, 420, 467, 468, 471 *and* 120-*B IPC—Limitation—Bar of Section* 195 (1) (*b*) *Cr.P.C. from taking cognizance of the offences except on a complaint in writing by the Court—If Court cannot take cognizance, investigation into the said offences would be barred, hence, F.I.R. liable to be quashed.*

Held, that in view of the decisions of this Court in Sardul Singh *v.* State of Haryana and Sheela Devi *v.* State of Punjab, it is clear that this Court can quash the F.I.R. also as it would be futile and meaningless to allow the police to investigate the case, if no Court could take cognizance of these offences which fall within the ambit of S. 195 Cr.P.C.

(Para 15)

Further held, that though a Court can be said to take cognizance of the offence only when it applies its judicial mind to the offences stated in the complaint or police report, it is clear that the investigation again cannot be allowed to take the functions of the Court and has therefore to be barred from investigating into these offences. If that is so, there is no purpose in allowing the F.I.R. or the consequential proceedings to continue, if ultimately the Court cannot take cognizance of the offences. In these circumstances I am of the view that the accused or this Court need not wait till the Court concerned takes cognizance of the offences in question, but can quash the F.I.R. itself.

(Para 16)

G. S. Bawa with J. S. Sidhu, Advocate, *for the Petitioners*,

P. P. S. Sidhu, Advocate, *for the Respondents* 2 & 3.

JUDGMENT

K. S. KUMARAN, J.

(1) Second respondent Mukhtiar Kaur and the third respondent—Choti Kaur lodged a complaint before the City Police Station, Mansa

under Sections 419, 420, 467, 468 and 34 I.P.C. (Annexure P-1). They have alleged in this complaint that the petitioners 1 to 3, i.e. Raj Singh, Mal Singh and Punjab Singh filed a regular suit in the Court of Shri G. S. Dhillon and got the judgment and decree against the complainants by misrepresentation and substituting some other ladies in their place. According to the complainants, it is a clear case of forgery and impersonation since they were never served in this case. According to the complaint, the complainants never appeared in the court nor submitted any statement in the Court, and the petitioners got some other ladies in place of the complainants and got a decree in respect of the lands of the complainants. Therefore, they had prayed that a case under sections 467, 468, 420, 419 and 34 I.P.C. may be registered against them. The fourth petitioner is said to have indentified the impersonators. The police have registered the case under Sections 419, 420, 467, 468, 471 and 120-B I.P.C.

(2) The four petitioners have now come forward with this application under Setcion 482 Cr.P.C. for quashing the said F.I.R. (No. 58 dated 5th August, 1996 of Police Station Mansa) on the ground that the police cannot investigate into these offences in view of the provisions contained in Section 195 (1) (b) of the Criminal Procedure Code. According to the learned counsel for the petitioners, as per this Section, no Court shall take cognizance of any offence punishable under any of the sections enumerated therein except on a complaint in writing by the Court where such offence is alleged to have been committed or in relation to any proceeding in that Court, or when such offence is allged to have been committed in respect of a document produced or given in evidence in a proceeding in that Court. Learned counsel for the petitioners, therefore, contends that since there is no complaint by the Court concerned, no Court can take cognizance of such offences and the police cannot investigate into the offences complained of.

(3) The first respondent—State of Punjab has filed a reply opposing this application. Though the respondents 2 and 3 were represented by counsel and were given time for filing reply, they have not filed any reply.

(4) But the contention of the counsel for the respondents 2 and 3 is that only F.I.R. has been lodged and that the Court has not taken cognizance of the same and, therefore, the F.I.R. cannot be quashed. According to the learned counsel for the respondents No. 2 and 3 complainants, what is barred under Section 195 Cr.P.C. is the taking

of the cognizance by the Court of the offences enumerated therein and not the registration of the F.I.R. and since no Court has taken cognizance, this application to quash the F.I.R. is not maintainable.

(5) I have heard counsel for both the sides. A reading of the complaint (Annexure P-1) shows that the petitioners 1 to 3 have obtained a decree against the respondents 2 and 3 by making some other ladies to impersonate the complainants. According to the State, the fourth petitioner allegedly identified the impersonators as the complainants. Learned counsel for the petitioners contends that Section 195 Cr.P.C. is a bar not only to the Court taking cognizance of the alleged offences, but even to the investigation by the police into the offences.

(6) Before I examine this question, it is necessary to refer to the provisions of Section 195 Cr.P.C. which read 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 the abetment of, 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.

(2) Where a complainant 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 dtemed 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.

(7) Learned counsel for the petitioners relied upon a decision of this Court in *Bhan Singh* v. *State of Punjab* (1), in support of his contention. That was a case where the accused got a decree in the Civil Court by producing an impersonator. No complaint was lodged by the concerned Civil Court but the F.I.R. was registered on the basis of the complaint to the police under Sections 467, 468, 471 193, 196 and 120-B I.P.C. In such circumstances, this Court held that the F.I.R. and the conseqential proceedings under Sections 467, 468 and 471, 193, 196 I.P.C. will have to be quashed since the complaint has not been lodged by the Court concerned. In doing so, this Court also relied upon the decision of the Hon'ble Supreme Court in *Gopalkrishna Menon and another* v. *D. Raja Reddy and another* (2).

(8) Learned counsel for the petitioners also relied upon another decision of this Court in *Sardul Singh* v. *State of Haryana* (3). That was also a case where the accused committed an offence of impersonation, forgery and giving false evidence in Civil Court. The F.I.R. was lodged under Sections 205, 209. 420, 467, 468, 506 and 461 I.P.C. On an application to this Court under Section 482 Cr.P.C. for quashing the F.I.R. this Court held that the provisions of Section 195 bar the taking of cognizance of offences under Sections 205 and 209 I.P.C. except on a complaint by the Court where offence was committed. This Court also held that the offences under Sections 467, 468 and 471 I.P.C. were overlapping and that the provisions of Section 195 (1) (b) (ii) are applicable to Sections 467 and 468 also by implication.

(9) Learned counsel for the petitioners also relied upon another decision of this Court in *Sheela Devi* v. *State of Punjab* (4). That was a case where the F.I.R. was lodged for offences under Sections 467, 468, 471, 420, 120-B and 109 I.P.C. against the accused for using a will against the complaint which was declared by the Revenue

(1) 1996 (3) R.C.R. 679.

(2) A.I.R. 1983 S.C. 1953.

(3) 1992 (3) R.C.R. 545.

(4) 1979 C.C. Cases 176.

Court to be a forged one. This Court held that the Court is debarred from taking cognizance of such offences in view of Section 195 read with Section 340 Cr.P.C. and quashed the F.I.R.

(10) Learned counsel for the petitioners also relied upon a decision of the Hon'ble Supreme Court in *State of U.P.* v. *Suresh Chandra Srivastava and others* (5), wherein it was held that Section 195 Cr.P.C. affects only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Code.

(11) Relying upon these decisions learned counsel for the petitioners contends that the offences under other Sections namely, Sections 419, 420 and 120-B I.P.C. also fall within the ambit of Section 195 Cr.P.C. since all thtse offences form an integral part and amount to offences committed as part of the same transactions. I agree with the learned counsel for the petitioners in this respect. The petitioners herein allegedly conspired together and put up impostors and thereby obtained a fradulent decree from the Civil Court as if the respondents 2 and 3 had in fact, been served and had appeared in the Court. Therefore, all these offences of conspiracy, impersonation, cheating, forgery etc. form part of the same transaction and, therefore, these offences allegedly committed under Sections 419, 420 and 120-B I.P.C. will also come within the ambit of Section 195 Cr.P.C. in the circumstances of this case.

(12) Therefore, in view of these decisions, no Court is entitled to take cognizance of these offences except on a complaint in writing by the Court where these offences were allegedly committed by the petitioners.

(13) But the learned counsel appearing for the State relied upon a decision of the Supreme Court in *Mahadev Bapuji Mahajan (dead)* v. *State of Maharashtra* (6), and contended that it is not necessary that the complaint should have been filed by the Court. But, this decision had no application to the facts of tht present case. What happened in the case before the Hon'ble Supreme Court was that the accused had forged revenue records to retain certain lands and

(5) 1984 C.C. Cases 58.

(6) 1994 (2) R.C.R. 673.

produced the forged records before the Revenue Court. A criminal complaint was given against the accused. It was contended by the accused that under Section 195 of the Criminal Procedure Code, the complaint should be filed by the Court concerned, and in the absence of such complaint by the Court, there was a bar for taking cognizance by the criminal Court in respect of the offences which were committed. But this contention was not accepted since the offences were committed even before the commencement of the proceedings before the Revenue Court. But that is not the case here. The petitioners allegedly produced the impersonators before the Civil Court and obtained a decree against the complainants fradulently. Therefore, the offences were committed in the Court while the proceedings were pending. Therefore, this decision will not help the respondents.

(14) Learned counsel for the respondents 2 and 3 complainants contended that Section 195 Cr.P.C. bars only the Court from taking cognizance of the offences enumerated therein except where the complaint in writing is given by the Court/public-servant, and it does not bar the registration of the F.I.R. In support of his contention, he relied upon a judgment of this Court rendered by a Single Judge in *Rishi Pal* v. *State of Haryana* (7). That was a case where the complainant alleged that she never appeared in the Court but was falsely identified and that the accused had got a decree by impersonation. On the basis of the complaint, F.I.R. was registered under Sections 418, 420, 471, 468 and 120-B I.P.C. The petitioner before the High Court prayed for quashing of the F.I.R. on the ground that the Court cannot take cognizance of these offences in view of Section 195 (1)(b)(iii) of the Criminal Procedure Code. But this Court held that though the Court cannot take cognizance of such offences except on the complaint in writing the public servant, there is no bar for initiating the offence, and that the police can register the case without the sanction of the Court. The learned counsel for the respondents 2 and 3 also relied upon the decision of the Hon'ble Supreme Court in *Anil Saran* v. *State of Bihar and another* (8), and contended that only when the Magistrate applied his judicial mind to the offences stated in the complaint or the police report, cognizance can be said to have been taken. Relying upon these decisions, learned counsel for the respondents 2 and 3

(7) 1996 (3) R.C.R. 357.

(8) 1996 (1) R.C.R. 43.

contended that in this Case, the Court has not so far taken cognizance, that Section 195 Cr.P.C. bars only the Court from taking cognizance of offences enumerated therein except on a complaint by the Court/ public servant concerned and, therefore, when there is only the F.I.R., the bar of Section 195 Cr.P.C. does not enable the Court to quash the F.I.R. But with very great respect to the learned Judge who rendered the decision in *Rishi Pal's case* (supra), I am unable to agree with the view taken that the provisions of Section 195 Cr.P.C. bar only taking of the cognizance by the Court and that the police is entitled to register the F.I.R. and initiate the proceedings. It may be that Section 195(1) specifically bars a Court from taking cognizance of the offences enumerated therein except on a complaint by the Court/public-servant concerned, but, no useful purpose will be served by registering the F.I.R. and allowing the police to investigate the same if, ultimately, the same cannot be taken cognizance of by a Court. That will be an exercise in futility and on that ground. I am of the view that the F.I.R. can also be quashed. In this regard, I am also supported by the decision of this Court in *Sardul Singh's* case (supra) wherein it was held as follows :—

> "The reading of the above referred provisions of Section 195 coupled with the procedure prescribed in Section 340 of the Criminal P.C. absolutely leave no doubt that not only cognizance of such offences without the complaint in writing of the Court concerned is barred but also the investigation into such offences because that will amount to taking over the function of the Court, where forgery was committed, by the investigating agency which is against mandate of Section 340 of the Criminal P.C.
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> The above referred view also finds support from the observations of Justice D. S. Tewatia (as he then was) in *Sheela Devi* v. *State of Punjab*, 1979 Chand. L.R. (Cri) 195 (Punjab and Haryana). In that case also, the first information report for offences under Sections 467, 468, 471, 420 and 120-B read with Section 109 of the Penal Code was quashed by holding that the provisions of Section 195(1)(b)(ii) and (iii) read with Section 340 of the Criminal P.C. not only bar the taking of cognizance of the offences by the criminal court but also the investigation into the allegations of such offences by necessary implication, as that will be a futile exercise if the Criminal Court

cannot take cognizance of the offence except on the complaint in writing of the Court where such offences were committed regarding giving of false evidence or forged documents etc."

(15) Therefore, in view of this decision and also the decision of another Single Judge of this Court in *Sheela Devi's case* (supra), it is clear that this Court can quash the F.I.R. also as it would be futile and meaningless to allow the police to investigate the case, if no Court could take cognizance of these offences which fall within the ambit of Section 195 Cr.P.C.

(16) Therefore, though a Court can be said to take cognizance of the offence only when it applies its judicial mind to the offences stated in the complaint or police report, it is clear that the investigation again cannot be allowed to take the functions of the Court and has therefore to be barred from investigating into these offences. It that is so, there is no purpose in allowing the F.I.R. or the consequential proceedings to continue, if ultimately the Court cannot take cognizance of the offences. In these circumstances I am of the view that the accused or this Court need not wait till the Court concerned takes cognizance of the offences in question, but can quash the F.I.R. itself.

(17) Therefore, taking into consideration all these aspects, I am of the view that the F.I.R. in question and the consequential proceedings have to be quashed.

(18) Accordingly, this petition is allowed and the impugned F.I.R. and the consequential proceedings are quashed.

R.N.R.

Before Hon'ble Ashok Bhan & K. S. Kumaran, JJ.

MANGE RAM,—*Petitioner.*

versus

FINANCIAL COMMISSIONER & SECRETARY TO GOVERNMENT AND OTHERS,—*Respodnents.*

C.W.P. 14178 of 1996.

20th February, 1997.

Constitution of India, 1950—*Arts.* 226/227—*Haryana Panchayati Raj Act*, 1994—*S.* 51(1)(*a*)—*Suspension of Sarpanch—Placed under*