Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2165 OF 2014
(Arising out of S.L.P. (Crl.) No. 7521 of 2012)

George Bhaktan ...Appellant

Versus

Rabindra Lele & Ors. ...Respondents

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J U D G M E N T

Delay condoned.

2. Leave granted.

3. The present appeal, by special leave, calls in question the legal defensibility of the order dated 03.03.2012, passed by the High Court of Orissa at Cuttack in CrMC No. 5808/2001 whereby the learned Single Judge has quashed the order of cognizance dated 18.10.2000 passed by the learned SDJM, Panposh, Rourkela in ICC Case No. 92 of 1998.

4. The broad essential facts which are required to be adumbrated for the adjudication of the appeal are that the appellant-complainant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the accused-respondents alleging commission of offences under Section 425, 468 and 471 of the Indian Penal Code, 1860 (for short 'the IPC') on the foundation that the complainant, the Managing Director of Ores India (P) Ltd. had approached the accused persons for supply of machines and equipments for establishing an Iron Ore Crusher Unit at village Regalveda in the district of Sundargarh with the financial assistance from Orissa State Financial Corporation (OSFC). The accused persons being desirous of supplying the machinery and equipments persuaded the complainant to place the purchase order in their favour and on the basis of their past performance, the appellant placed the purchase order on 23.10.1997. As stipulated in the said purchase order, the accused persons, apart from other things, had agreed to provide designing and drawing for complete plant with 15 months guarantee from the date of dispatch. On the basis of the purchase order, the complainant sent cheques for Rs.15 lakhs and, as

alleged, after receipt of the said money the accused persons sent their written confirmation to OSFC acknowledging the receipt of the money. The OSFC, in turn, paid Rs.25 lakhs to the accused persons as an advance keeping in view the commitment made by the complainant.

5. As the complaint would further uncurtain, in spite of substantial amount of money being paid by way of advance, no steps were taken by the accused persons to ensure supply of machineries and equipments with an ulterior motive, as a consequence of which the complainant suffered huge loss. It is asserted in the complaint petition that with the intention to cause wrongful loss and damage to the complainant, accused persons procured a letter pad of the complainant from a staff of the company and typed a letter with the signature of George Bakhtan on that letter so that they would get an extension from the OSFC regarding the date of purchase. It is further alleged that the accused persons orchestrated a conspiracy and contrived to manipulate the transaction but eventually the machineries were not supplied. In this backdrop, the

complaint was lodged for the offences which have been mentioned hereinbefore.

6. On the basis of the complaint, initial statement of the complainant was recorded under Section 200 of the Code and thereafter an enquiry was conducted under Section 202 of the Code and ultimately cognizance was taken. Be it stated, for some reason, the order of cognizance initially taken was set aside by the High Court and the matter was remitted to the trial court to deal with the aspect of cognizance in accordance with law. Thereafter, vide order dated 18.10.2000, the learned Magistrate took cognizance in respect of the offences.

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7. Being grieved by the aforesaid order, the respondents preferred a petition under Section 482 of the Code. The primary plank of proponement before the High Court was that the order of cognizance was sensitively susceptible inasmuch as the alleged forged document was produced in the suit brought by the respondents and, therefore, the prohibition contained in Section 195(1)(b)(ii) would get attracted on all fours. To bolster the said submission, reliance was placed on a two-Judge Bench decision in

***Gopalakrishna Menon and Anr. V D. Raja Reddy and Anr*.**[1] The said submission was resisted by the counsel for the complainant placing reliance on ***Smt. Nagawwa V. Veeranna Shivalingappa Konjalgi and others*[2].** The High Court, appreciating the legal submissions, came to hold as follows:-

> "8. In the case at hand, the prosecution is on the basis of a private complaint and in the absence of a complaint from the appropriate civil court, where the alleged fraudulent document has been produced, would not be sustainable and such proposition is no longer res integra what has been settled by the Hon'ble supreme Court in the judgment rendered in the case of *Gopalakrishna Menon & another* (supra).
>
> 9. In view of the aforesaid conclusion, I am of the considered view that if the prosecution is allowed to continue, serious prejudice would be caused to the petitioners and they would be called upon to face the trial which would not be sustainable. Hence, the order of cognizance dated 18.10.2000 passed in I.C.C. case No. 92 of 1998 by the learned S.D.J.M., Panmposh, Udit Nagar, Rourkela is set aside and it is left open for the opposite party-company, if so advised, to make such complaint before the Civil Court, Vadodara if aggrieved in any manner to the alleged forged document produced before the said court who would be competent to deal with the same."

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[1] (1983) 4 SCC 240
[2] (1976) 3 SCC 736

8. As is evincible, at the said juncture, the High Court did not think it appropriate to dwell upon the justifiability of the order taking cognizance on facts, for it set aside the order solely on the basis of the principle stated in ***Gopalakrishna menon*** (supra).

9. Attacking the aforesaid order Mr. Tejaswi Kumar Pradhan learned counsel for the appellant submitted that the order passed by the High Court suffers from incurable infirmity, for it has relied on a decision which has not been accepted by the Constitution Bench in ***Iqbal Singh Marwah and Another V. Meenakshi Marwah and Another***[3]. It is also urged by him that it would have been advisable on the part of the High Court to deal with the lis on the bedrock of law as well as on the factual score and as the same has not been done, the impugned order is wholly unsustainable and deserves to be set aside.

10. Mr. Mohan Rao, learned counsel appearing for the respondents, resisting the aforesaid submissions urged that though the principle stated in ***Gopalakrishna Menon's*** case (supra) may not be applicable in praesenti, yet had

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[3] (2005) 4 SCC 370

the High Court perused the documents which have been alleged to have been forged by the complainant it would have come to a definite conclusion that no case has been made out in respect of the alleged offences. It is his further submission that present case is one which falls in one of the seven categories as enumerated in ***State of Haryana and others v. Bhajan Lal and others***[4]. That apart, Mr. Rao would also contend that the allegation in the complaint petition as regards the receipt of amount by way of cheques sent by the complainant is a false one inasmuch as the cheques for the said amount were dishonoured and proceedings under Section 138 of the Negotiable Instruments Act, 1881 were instituted against the respondents and hence, the instant criminal proceeding, being a malafide one, deserves to be quashed.

11. On a perusal of the order passed by the High Court, it is absolutely pellucid that it has not adverted to any aspect pertaining to the allegations in the complaint or the material brought on record to arrive at a conclusion whether a prima facie case has been made out or not. It has singularly addressed the controversy on the legal

4 1992 Supp (1) SCC 335

backdrop that when a document is produced in a civil proceeding, it attracts the bar under Section 195(1)(b)(ii) of the Code and, therefore, the complaint is not tenable in law. In ***Gopalakrishna Menon's*** case the two-Judge Bench referred to various provisions of the Code and eventually ruled thus:

> "If S. 195 (1)(b)(ii) is attracted to the facts of the present case, in the absence of a complaint in writing of the Civil Court where the alleged forged receipt has been produced, taking of cognizance of the offence would be bad in law and the prosecution being not maintainable, there would be absolutely no justification to harass the appellants by allowing prosecution to have a full dressed trial."

12. In ***Sachida Nand Singh and another v. State of Bihar and another***[5] a three-Judge Bench was dealing with the question whether a prosecution can be maintained in respect of a forged document produced in a court unless complaint has been filed by the court concerned in that behalf. Elaborating the posed question the Court stated that the question involved is whether prohibition contained in Section 195(1)(b)(ii) of the Code would apply to such prosecution. Proceeding further the three-judge Bench

5 (1998) 2 SCC 493

observed that though the question was ticklish, yet it had almost received a quietus with the pronouncement in ***Patel Laljibhai Somabhai v. State of Gujarat***[6]***,*** however, a subsequent decision in ***Gopalakrishna Menon's*** case struck a different note and thereby revived the issue that had been put to rest. After referring to the language employed in Sections 340 and 195 of the Code and the decisions in ***Raghunath v. State of U.P.***[7]***, Mohan Lal v. State of Rajasthan***[8] and ***Legal Remembrancer of Govt. of W.B. v. Haridas Mundra***[9]***,*** the Court finally opined thus:-

> "Of course in the end of that decision it was mentioned that prosecution on the basis of a private complaint, in the absence of a complaint from appropriate civil court, is not sustainable. Learned Judges made reference to the decisions in *Patel Laljibhai Somabhai and S.L. Goswami (Dr) v. High Court of M.P.*[10], and observed that the ratio in those decisions support the view taken by them. The forgery alleged in *Goswami case* took place during the period when the document in question was in the custody of the Court and in such a case the bar under Section 195(1)(b)(ii) would certainly apply. But, with great respect, we are unable to agree that the ratio in *Laljibhai Somabhai* would support the

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6 (1971) 2 SCC 376
7 (1973) 1 SCC 564
8 (1974) 3 SCC 628
9 (1976) 1 SCC 555
10 (1979) 1 SCC 373

> conclusion reached in *Gopalakrishna Menon case***.**

13. From the aforesaid it is limpid that the principle stated in ***Gopalkrishna Menon*** (supra) has specifically been overruled in ***Sachida Nand Singh's*** case. Despite the three-Judge Bench decision in ***Sachida Nand Singh*** (supra) the controversy was not allowed to rest. Thereafter the conflict was seen in the principle stated in ***Surjit Singh v. Balbir Singh***[11]***,*** a decision rendered by a three-Judge Bench and ***Sachida Nand Singh*** (supra) and both pertained to interpretation of Section 195 (1)(b)(ii) of the Code and, therefore, the controversy travelled to the Constitution Bench in ***Iqbal Singh Marawah's case.***

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14. The Constitution Bench after analyzing in detail the contours of provisions contained in Section 340, 195(1)(b) and after referring to the decisions in ***Patel Laljibhai*** (supra), ***Raghunath*** (supra) and taking note of deletion of certain words occurring in Section 195(1) of the old Code, and the 41st report of the Law Commission, came to hold as follows:

> " In view of language used in Section 340 CrPC the Court is not bound to make a

11 (1996) 3 SCC 533

complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195(1) (b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b) (ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discouraged."

15. Thereafter, the larger Bench proceeded to observe thus:

> "An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in *Sachida Nand Singh* after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large."

16. On the base of aforesaid ratiocination, the Constitution Bench approved the principle laid down in ***Sachidanand Singh*** (supra) by stating thus:

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> "In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 19591)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis* "

In view of the aforesaid the law laid down in ***Gopalkrishna Menon*** (supra) is no more good law.

17. Be it stated, the Constitution Bench repelled the argument of strict construction and distinguishing many a decision, came to hold that Section 195 is not a penal provision but is a part of procedural law, namely, CrPC, which elaborately gives a procedure for trial of criminal cases. Proceeding further, their Lordships held that the provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court and a penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence.

18. Dealing with the argument that there should be no conflict in the findings recorded by the civil and criminal court, the Constitution Bench referred to earlier

Constitution Bench decision in ***M.S. Sheriff V. State of Madras***[12] and declined to accept the said submission.

19. Eventually, taking note of the facts in that case, the Court held the Will in question had been produced in the Court subsequently and there was no allegation that the offence as enumerated in Section 195(1)(b)(ii) was committed in respect of the said Will after it had been produced or filed in the Court, the bar created by the said provision would not come into play and hence, there was no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the complainants therein.

20. In the case at hand, as we find, the allegation in the complaint is that the respondents had forged the signature of the complainant and submitted to the Corporation seeking extension of the period of supply. Thereafter, seeking certain relief a suit was filed and in the suit the document was filed. There is no allegation that this document was forged when the matter was subjudice before the Civil Court. Thus, the dicta of the Constitution

[12] 1954 SCR 1144

Bench is squarely applicable. The High Court has clearly erred in relying on the principle stated in ***Gopalakrishna Menon's case*** (supra) which makes the impugned order wholly indefensible.

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21. We have already taken note of the submission of Mr. Rao that the High Court has not adverted to the factual score whether a case has been made out on the basis of the material brought on record. In the absence of any findings in that regard by the High Court, we do not intend to take up the burden on ourselves. That makes it obligatory on our part to set aside the order passed by the High Court and remand the matter to it for fresh consideration whether in the obtaining factual matrix the order of cognizance deserves to be lancinated. We would request the High Court to dispose of the petition within a period of three months as the matter has been continuing for long. We may hasten to clarify that we have not expressed any opinion on the merits of the case.

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22. Consequently, the appeal is allowed, the order passed by the High Court is set aside and the matter is remanded to the High Court for fresh disposal in accordance with law.

..................................J.
[Dipak Misra]

..................................J.
[Vikramajit Sen]

New Delhi;
September 24, 2014

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