IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF AUGUST, 2022

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.10145 OF 2021

BETWEEN:

SMT. LATHA RAJANIKANTH

... PETITIONER

(BY SRI ADITYA SONDHI, SR. ADVOCATE A/W
SRI PARASHURAM A.L., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY HALASURGATE POLICE STATION
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR.

2. M/S AD BUREAU ADVERTISING PVT. LTD.,
ROYAL TOWERS, 781, MOUNT ROAD 1
CHENNAI – 620 002
REPRESENTED BY ITS
MANAGING DIRECTOR
SRI M.ABHIRCHAND NAHAR.

... RESPONDENTS

(BY SRI K.NAGESHWARAPPA, HCGP FOR R1;

SRI S.BALAKRISHNAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO A. QUASH COMPLAINT DATED 30.05.2015 FILED BY THE RESPONDENT NO.2 IN PCR.NO.7847/2015 FIR DATED 09.06.2015 REGISTERED BY THE RESPONDENT NO.1 POLICE IN CR.NO.217/2015 PENDING ON THE FILE OF THE I ACMM, BANGALORE AND CHARGE SHEET FILED THEREIN.

B. ORDER DATED 27.03.2021 PASSED BY THE I ACMM, BANGALORE IN C.C.NO.8355/2021 FOR THE OFFENCE P/U/S 196, 199, 420, 463 R/W 34 OF IPC AGAINST THE PETITIONER AND ALL SUBSEQUENT PROCEEDINGS ARISING THERFROM.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.05.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings in C.C.No.8355 of 2021 pending before I Additional Chief Metropolitan Magistrate, Bengaluru arising out of Crime No.217 of 2015 registered for offences punishable under Sections 196, 199, 420 and 463 read with Section 34 of the IPC. The order of taking cognizance dated 27-03-2021, for the aforesaid offences, is what drives the petitioner to this Court.

2. Shorn of unnecessary details, facts in brief for consideration of the *lis*, are as follows:-

The 2nd respondent M/s Ad Bureau Advertising Private Limited is the complainant. Financial transactions between the complainant and M/s Mediaone Global Entertainment Limited which was represented by its Director one J.Murali Manohar generated disputes with regard to finances in connection with a Tamil cinema titled *Kochadian*. The Director of the said film was the petitioner's daughter and the petitioner's husband was the lead protagonist. The said financial dispute generated into wide publicity as it was in respect of a cinema that had its lead protagonist, a popular star in the Tamil cinema. All the electronic media wanted to publish the dispute between the Mediaone Global Entertainment Limited on the ground that the petitioner-wife of the said protagonist had executed a guarantee on behalf of Mediaone Global Entertainment Limited in favour of the complainant and had failed to honour it as the film went into losses.

3. It is contended that in order to capitalize the image of the star various media outlets both print and electronic began to get in touch with the petitioner, her family members, her managers etc. seeking her comments on the allegations so made by the complainant. The petitioner made a call to all the media not to publish anything without proper verification. Despite the request of the petitioner, it is contended that the media both electronic and print, began to publish and broadcast information of allegations made by the 2nd respondent/complainant, which according to the petitioner affected her dignity and defamed the name of her family. At that juncture, the petitioner knocked the doors of the civil Court at Bangalore against all the news agencies – 70 in number – seeking a restraint against all the 70 channels in publishing news with regard to allegations made by the complainant upon the petitioner or her family. A suit in O.S.No.9312 of 2014 was filed on 01-12-2014 and a detailed order of injunction was granted in favour of the petitioner on

02-12-2014. The Court again hearing the parties on 13-02-2015 returned the plaint for want of territorial jurisdiction and consequently, dissolved the order of injunction that was in operation. The petitioner called in question the said order before this Court in M.F.A.No.2879 of 2015 which also came to be dismissed on 24-02-2016 for default. Both these orders have become final.

4. Contemporaneously, the complainant had registered a private complaint before the competent Court at Bangalore in P.C.R.No.7847 of 2015. The learned Magistrate on accepting the private complaint, directed investigation to be conducted under Section 156(3) of the Cr.P.C., pursuant to which, an FIR was registered against the petitioner on 09-06-2015 in Crime No.217 of 2015 for offences punishable under Sections 196, 199, 420 and 463 of the IPC.

5. The allegation in the complaint made by the complainant was that a particular document which was not in

existence in a media house and which also does not exist was produced before the civil Court at Bangalore in order to get jurisdiction to entertain the suit and take an order of injunction. The said document was forged and the petitioner had initiated proceedings under the aforesaid provision of law by producing a document which is forged before a court of law and thereby cheated the complainant and the Court. The petitioner called in question registration of the said complaint and consequent direction to investigate before this Court in Criminal Petition No.4291 of 2015. This Court by its order dated 10-03-2016 holding it to be pure civil dispute quashed the entire proceedings and gave liberty to the petitioner to either seek damages or action under Section 138 of the Negotiable Instruments Act. This was called in question by the complainant before the Apex Court in Criminal Appeal No.854 of 2018. A three Judge Bench of the Apex Court set aside the order passed by this Court and held that it was a triable case and the Court ought not to have quashed the entire complaint.

It is after the order of the Apex Court, the proceedings continued before the learned Magistrate. The Police after investigation filed a charge sheet in the matter on 27.02.2021 for the aforesaid offences and the learned Magistrate takes cognizance thereto by his order dated 27-03-2021 and issued summons to the petitioner, accused therein. It is this action of the learned Magistrate that drives the petitioner again to this Court in the subject petition.

6. Heard the learned senior counsel Sri Aditya Sondhi, appearing for the petitioner, learned High Court Government Pleader for the State and learned counsel Sri S. Balakrishnan appearing for the 2nd respondent/complainant.

7. The learned senior counsel would vehemently argue and contend that the trial Court could not have taken cognizance in the light of specific bar under Section 195 of the Cr.P.C. as it is a document that was produced before the Court which is alleged to have been forged and Section 195(1)(b)

read with Section 340 of the Cr.P.C. bars a private complaint being registered as the complainant has to report before whom the document is produced. Therefore, the very taking of cognizance by the learned Magistrate is without jurisdiction and would seek quashment of entire proceedings.

8. On the other hand, the learned counsel representing the 2nd respondent/complainant would refute the submissions with equal vehemence to contend that, if the document after production before the Court is tampered with, it is only then the Court is required to register a complaint, as the document would become a *custodia legis*. Therefore, the private complaint in the case at hand was maintainable. He would further contend that the present one is a petition which is second in line and should be dismissed for want of maintainability as the Apex Court has clearly held that it is a triable issue and trial ought to have been permitted. Since

cognizance is now taken, trial is yet to commence. Therefore, the petition should be dismissed even on this ground.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the following points arise for my consideration:

(i) Whether the present petition, second in line, under Section 482 of the Cr.P.C. would be maintainable?

(ii) Whether the order taking cognizance dated 27.03.2021 by the learned Magistrate suffers from want of jurisdiction?

I will consider the aforementioned points in their seriatim.

10. **Point No.(i):**

Whether the present petition, second in line, under Section 482 of the Cr.P.C. would be maintainable?

The petitioner questioning the crime in Crime No.217 of 2015 had approached this Court in Criminal Petition No.4291

of 2015 which came to be allowed by the reason rendered therein. This was called question by the complainant before the Apex Court. The Apex Court set aside the order passed by this Court by the following order:

> *"1. We have heard the learned counsels for the parties*
>
> *2. Leave granted.*
>
> *3. A perusal of the complaint petition, particularly paragraph 12 thereof, would go to show that the complainant did have a triable issue. The version put forward on behalf of the accused – respondent before us really touches upon the merits of the case. We are, therefore, of the view that the High Court was not justified in quashing the impugned proceedings and, rather, should have allowed the trial to progress. Beyond the above we do not consider it necessary to record anything further as the same may prejudice either of the parties.*
>
> ***4. Consequently and in the light of the above, we allow this appeal; set aside the order of the High Court. We make it clear that we have expressed no opinion on merits, save and except that the averments in the complaint constitute a prima facie case for commencement of the trial.***
>
> *5. The appeal is disposed of in the above terms."*
>
> *(Emphasis supplied)*

Pursuant to setting aside of the order, the investigation progressed and the learned Magistrate accepting the charge sheet took cognizance of the offence so alleged in the charge sheet, as afore-quoted. It is after taking cognizance, the petitioner has again knocked the doors of this Court in the subject petition.

11. It is not in dispute that it is a second petition under Section 482 of the Cr.P.C. The issue whether a second petition would become maintainable or otherwise is no longer *res integra* as the Apex Court in the case of ***SUPERINTENDENT AND REMEMBERANCER OF LEGAL AFFAIRS, WEST BENGAL v. MOHAN SINGH AND OTHERS***[1] has held as follows:

> *"2. The main question debated before us was whether the High Court had jurisdiction to make the order dated April 7, 1970 quashing the proceeding against Respondents 1, 2 and 3 when on an earlier application made by the first respondent, the High Court had by its order dated December 12, 1968 refused to quash the proceeding. Mr Chatterjee on*

[1] ***(1975) 3 SCC 706***

behalf of the State strenuously contended that the High Court was not competent to entertain the subsequent application of Respondents 1 and 2 and make the order dated April 7, 1970 quashing the proceeding, because that was tantamount to a review of its earlier order by the High Court, which was outside the jurisdiction of the High Court to do. He relied on two decisions of the Punjab and Orissa High Courts in support of his contention, namely, Hoshiar Singh v. State [AIR 1958 Punj 312 : 60 Punj LR 438 : 1958 Cri LJ 1093] and Namdeo Sindhi v. State [AIR 1958 Ori 20 : 1958 Cri LJ 67 : ILR 57 Cut 355] . But we fail to see how these decisions can be of any help to him in his contention. They deal with a situation where an attempt was made to persuade the High Court in exercise of its revisional jurisdiction to reopen an earlier order passed by it in appeal or in revision finally disposing of a criminal proceeding and it was held that the High Court had no jurisdiction to revise its earlier order, because the power of revision could be exercised only against an order of a subordinate court. Mr Chatterjee also relied on a decision of this Court in U.J.S. Chopra v. State of Bombay [AIR 1955 SC 633 : (1955) 2 SCR 94 : 1955 Cri LJ 1410] where N.H. Bhagwati, J., speaking on behalf of himself and Imam, J., observed that once a judgment has been pronounced by the High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment and there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction over the same. These observations were sought to be explained by Mr Mukherjee on behalf of the first respondent by saying that they should not be read as laying down any general proposition excluding the applicability of Section 561-A in respect of an order made by the High Court in exercise of its appellate or revisional

jurisdiction even if the conditions attracting the applicability of that section were satisfied in respect of such order, because that was not the question before the Court in that case and the Court was not concerned to inquire whether the High Court can in exercise of its inherent power under Section 5 61 A review an earlier order made by it in exercise of its appellate or revisional jurisdiction. The question as to the scope and ambit of the inherent power of the High Court under Section 561-A vis-a-vis an earlier order made by it was, therefore, not concluded by this decision and the matter was res integra so far as this Court is concerned. Mr Mukherjee cited in support of this contention three decisions, namely, Raj Narain v. State [AIR 1959 All 315 : 1959 Cri LJ 543 : 1959 All LJ 56] , Lal Singh v. State [AIR 1970 Punj 32 : 1970 Cri LJ 267 : ILR (1970) 1 Punj 177] and Ramvallabh Jha v. State of Bihar [AIR 1962 Pat 417 : (1962) 2 Cri LJ 625 : 1962 BLJR 553] . It is, however, not necessary for us to examine the true effect of these observations as they have no application because the present case is not one where the High Court was invited to revise or review an earlier order made by it in exercise of its revisional jurisdiction finally disposing of a criminal proceeding. Here, the situation is wholly different. ***The earlier application which was rejected by the High Court was an application under Section 561-A of the Code of Criminal Procedure to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and a half years without any progress at all and it was in these circumstances that Respondents 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash***

the proceeding. It is difficult to see how in these circumstances, it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. *The facts and circumstances obtaining at the time of the subsequent application of Respondents 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and half years. It was for this reason that, despite the earlier order dated December 12, 1968, the High Court proceeded to consider the subsequent application of Respondents 1 and 2 for the purpose of deciding whether it should exercise its inherent jurisdiction under Section 561-A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the order of the High Court.*

> *Even on the merits, we find that the order of the High Court was justified as no prima facie case appears to have been made out against Respondents 1 and 2."*
>
> *(Emphasis supplied)*

Later, the Apex Court following the judgment in ***MOHAN SINGH*** *(supra)* in the case of ***ANIL KHADKIWALA v. STATE (GOVERNMENT OF NCT OF DELHI) AND ANOTHER***[2] has held as follows:

> *"8. In Mohan Singh [Supt. and Remembrancer of Legal Affairs v. Mohan Singh, (1975) 3 SCC 706 : 1975 SCC (Cri) 156 : AIR 1975 SC 1002] , it was held that a successive application under Section 482 CrPC under changed circumstances was maintainable and the dismissal of the earlier application was no bar to the same, observing : (SCC pp. 709-10, para 2)*
>
> > *"2. … Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561-A of the Criminal Procedure Code to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one-and-a-half years without any progress at all and it was in these circumstances that Respondents 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these*

[2] ***(2019) 17 SCC 294***

circumstances, it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. ***The High Court was in the circumstances entitled to entertain the subsequent application of Respondents 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of Respondents 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one-and-a-half years."***

9. In Harshendra Kumar D. v. Rebatilata Koley [Harshendra Kumar D. v. Rebatilata Koley, (2011) 3 SCC 351 : (2011) 1 SCC (Civ) 717 : (2011) 1 SCC (Cri) 1139 : 2011 Cri LJ 1626] , this Court held : (SCC p. 362, paras 26-27)

"26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company.

27. As noticed above, the appellant resigned from the post of Director on 2-3-2004. The dishonoured cheques were issued by the Company on 30-4-2004 i.e. much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court."

10.Atul Shukla [Atul Shukla v. State of M.P., (2019) 17 SCC 299] is clearly distinguishable on its facts as the relief sought was for review/recall/modify the earlier order [Surendra Singh v. State of M.P., 2018 SCC OnLine MP 1425] of dismissal in the interest of justice. Consequently,

> *the earlier order of dismissal was recalled. It was in that circumstance, it was held that in view of Section 362 CrPC the earlier order passed dismissing the quashing application could not have been recalled. The case is completely distinguishable on its own facts.*
>
> *11. The Company, of which the appellant was a Director, is a party-respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application."*
>
> *(Emphasis supplied)*

Later, a three Judge Bench of the Apex Court in a judgment rendered in the case of ***VINOD KUMAR, IAS v. UNION OF INDIA AND OTHERS***[3] again follows the judgment rendered in the case of ***MOHAN SINGH*** and holds that a second petition under Section 482 of the Cr.P.C. would be maintainable save in exceptional and changed circumstances. The Apex Court in the said judgment holds as follows:

> *"This petition filed under Article 32 of the Constitution seeks quashing of criminal complaints/FIRs mentioned in Annexure-P3. Annexure-P3 in turn refers to 28 cases filed or*

[3] ***Writ Petition (Criminal) No.255 of 2021 disposed on 29-06-2021***

initiated against the petitioner including cases listed at Sl.Nos.12 and 24 where conviction was recorded against the petitioner on 24-09-2018 and 10.08.2018 respectively.

In the facts and circumstances of the case, we see no reason to entertain this petition under Article 32. The petitioner, if so advised, can always file appropriate applications under the Code of Criminal Procedure ('The Code', for short) seeking quashing of the individual criminal cases or complaints.

At this stage, Ms. Sonia Mathur, learned Senior Advocate submits that the petitioner had approached the High Court on earlier occasions filing applications under Section 482 of the Code which were later withdrawn.

The law on point as held by this Court in "Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh and others" reported in SCC (1975) 3 706 is clear that dismissal of an earlier 482 petition does not bar filing of subsequent petition under Section 482, in case the facts so justify.

Needless to say that as and when any appropriate application under the Code is preferred by the petitioner, the same shall be dealt with purely on its own merits without being influenced by the dismissal of the instant writ petition."

(Emphasis supplied)

In the light of the law laid down by the Apex Court what is required to be noticed is, whether the present petition is maintainable.

12. The petitioner had earlier called in question registration of crime in Crime No.217 of 2015 which went up to the Apex Court resulting in an order being passed by the Apex Court as afore-quoted. The petitioner did not knock the doors of this Court immediately again. The petitioner after the learned Magistrate taking cognizance of the offences on the final report being filed by the police again knocks the doors of this Court. Therefore, the circumstances that lead the petitioner to the doors of this Court is taking of cognizance and issuance of summons on the final report/charge sheet. On this changed circumstance, the second petition under Section 482 of the Cr.P.C., notwithstanding the earlier one, even it were to be dismissed, is maintainable.

13. The petitioner has filed the present petition on the score that the order of taking cognizance runs counter to the statute and, therefore, cognizance could not have been taken. In the light of the submission being made that it is contrary to the statute, I deem it appropriate to consider the petition on its merit despite the order of the Apex Court, as quoted hereinabove, wherein the Apex Court holds that it was a case for trial. The Apex Court at the time it rendered its order, the present case was at the stage of registration of crime and was pending. In the light of other judgments rendered by the Apex Court on the point, this petition would be maintainable and the hearing of the contentions on their merit would become available. The first point is thus answered against the 2nd respondent/complainant holding that the second petition under Section 482 of the Cr.P.C. was maintainable.

14. **Point No.(ii):**

Whether the order taking cognizance dated 27.03.2021 by the learned Magistrate suffers from want of jurisdiction?

To consider this point whether the order of taking cognizance suffers from want of jurisdiction, it is necessary to notice the statutory frame work which is the foundation for the submission made by the learned senior counsel appearing for the petitioner. The cognizance taken by the learned Magistrate is for offences punishable under Sections 196, 199, 420, 463 r/w Section 34 of the IPC. Sections 196 and 199 of the IPC read as follows:

> *196. **Using evidence known to be false**.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.*
>
> *… … …*
>
> *199. **False statement made in declaration which is by law receivable as evidence**.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement*

> *which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."*

Section 196 deals with using evidence known to be false and Section 199 deals with false statement made in declaration which is by law receivable as evidence. Section 196 makes the user of that evidence becoming liable for punishment whoever corruptly uses or attempts to use it as genuine evidence which he knows to be false or fabricated. Section 199 makes one punishable for the offence of false statement made in a declaration which declaration any Court or any public servant is bound or authorized to receive as evidence. The word 'Court' is the subject matter of *lis*. The other provision is Section 463 of the IPC. Section 463 deals with punishment for forgery and Section 420 deals with cheating. The sheet anchor of the statement of the learned senior counsel is that in the teeth of the offences so alleged, the Court could not have taken cognizance of the offences owing to specific bar under

Section 195 of the Cr.P.C. Section 195 of the Cr.P.C. reads 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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint 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 deemed 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."

(Emphasis supplied)

Section 195(1)(b)(i) & (ii) is what is necessary to be considered. In the case at hand *qua* the facts obtaining herein the private complaint registered by the 2nd respondent invoking Section 200 of the Cr.P.C. is founded on the allegation that the document produced before the civil Court in O.S.No.9312 of 2014 filed by the petitioner was forged and fabricated. The said document reads as follows:

The Publishers and Broadcasters Welfare Association of India

Press Club, Bangalore, Estd.1986

Dated:28-11-2014

Smt. Latha Rajanikanth,
202, Golf View, Cresent Road,
High Ground, Bangalore.

Madam,

Warm greeting to you,

We act on behalf of all the media companies and concerns of India as they are our members. We act for their welfare and protection of their rights in the country. We also act as a forwarding agency in respect of news feeds from various persons/entities and disburse it among members.

One M/s. Ad Beauru Advertising Private Limited, No.781, 1st Floor, Royala Towers, Anna Salai, Chindatripet, Opposite LIC Sub-way, Chennai -- 600 002 has written to us by alleging against you that they were cheated by you in connection with some financial transaction arising out of distribution of Kochadian cinema and has requested us to forward the news to all our media members.

We thought it wise to seek explanation from your goodself we could circulate the news contents and therefore, we request you to give us details pertaining to the said transaction and matter within 3 days, which would equip us better. Otherwise we shall presume that the allegations are correct and we would pass on the matter for publication.

Thanking you,
Your sincerely,
Sd/- Secretary."

The specific allegation in the complaint so registered by the 2nd respondent insofar as it concerns the said document is as follows:

> *"15. It is submitted that "The Publishers and Broad Casters Welfare Association of India" is a fake body created by the accused herein. As per the oral information given by the Press Club, Bangalore no such organization is acting under the Press Club. Moreover the letter dated 28.11.2014 is also fictitious letter created by the accused herein only to suit her false claim. Hence, the accused herein knowing fully well that* ***"The Publisheres and Broad Casters Welfare Association of India" not in existence has filed false statement and sworn affidavit before the Hon'ble City Civil Court (CCH 5) in O.S.No.9312 of 2014 and thereby played a fraud on the Hon'ble Court and obtained the injunction order dated 2-12-2014. Hence, the accused committed an offence as provided under Section 196 and 199 and 463 of IPC. The suit filed by the accused finally disposed of with direction to return the plaint to the accused as barred by territorial jurisdiction and the injunction order granted by the Hon'ble Court was vacated on 13-02-2015."***
>
> *(Emphasis applied)*

It is not in dispute that the petitioner had approached the civil Court in the aforesaid suit wherein the afore-quoted document was appended and on the strength of the said document, interim injunction was granted restraining the

defendants therein not to publish anything in the subject matter of the suit. Later, the suit having been taken up for its consideration on an application being filed for dismissal of the suit for want of territorial jurisdiction holds that the Court did not have territorial jurisdiction and returned the plaint under Order 7 Rule 10 of the Code of Civil Procedure and dissolved the interim order. A challenge is made by the petitioner before this Court by filing an appeal against the said order of return of plaint. The same is dismissed for its default. These orders, as stated hereinabove, have become final.

15. It is therefore, a case where the allegation made is that the petitioner had produced before the civil Court a document which was forged and fabricated to get territorial jurisdiction and secure interim injunction. Section 195 of the Cr.P.C. bars the Court from taking cognizance except as otherwise of a complaint being made by the Court and the

procedure for the Court to act is as is provided under Section 340 of the Cr.P.C. Section 340 of the Cr.P.C. reads as follows:

> *"340. **Procedure in cases mentioned in section 195**.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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,—*
>
> *(a) record a finding to that effect;*
>
> *(b) make a complaint thereof in writing;*
>
> *(c) send it to a Magistrate of the first class having jurisdiction;*
>
> *(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and*
>
> *(e) bind over any person to appear and give evidence before such Magistrate.*

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195."

Section 340 Cr.P.C. deals with offences affecting administration of justice. It is the duty of the Court to complain against any party to the *lis* or a witness if any document within the custody of the Court is tampered or forged.

16. Therefore, what requires to be considered is whether the action of the learned Magistrate in taking cognizance for the offences so alleged notwithstanding the bar under Section 195 of the Cr.P.C. is proper? The allegation in the case at hand is that a document that was forged or fabricated outside the court proceedings is produced before the Court, whether it would become *custodia legis* for the Court to complain against the producer of the said document. The issue with regard to bar under Section 195(1)(b) has been dealt with by the Apex Court from time to time.

17. The kernel of such conundrum was the subject matter of a judgment of the Constitution Bench of the Apex Court in the case of ***IQBAL SINGH MARWAH AND ANOTHER v. MEENAKSHI MARWAH AND ANOTHER***[4]. The Five Judge Bench was constituted to resolve a conflict between two decisions of the Apex Court rendered by a Bench of three

[4] ***(2005) 4 SCC 370***

learned Judges one in ***Surjit Singh v. Balbir Singh – (1996) 3 SCC 533*** and the other in ***Sachida Nand Singh v. State of Bihar – (1998) 2 SCC 493*** regarding interpretation of Section 195(1)(b)(ii) of the Cr.P.C. The Apex Court in ***IQBAL SINGH MARWAH*** answering the said issue holds as follows:

> ***"2. In view of conflict of opinion between two decisions of this Court, each rendered by a Bench of three learned Judges in Surjit Singh v. Balbir Singh [(1996) 3 SCC 533: 1996 SCC (Cri) 521] and Sachida Nand Singh v. State of Bihar [(1998) 2 SCC 493: 1998 SCC (Cri) 660] regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short "CrPC"), this appeal has been placed before the present Bench.***
>
> …. …. ….
>
> *23. In view of the language used in Section 340 CrPC the court is not bound to make a 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 interests 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 discarded.

…. …. ….

25. 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 [(1998) 2 SCC 493: 1998 SCC (Cri) 660] 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.

…. …. ….

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh [(1998) 2 SCC 493: 1998 SCC (Cri) 660] has been correctly decided and the view taken therein is the correct view. Section 195(1)(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.

(Emphasis supplied)

The Five Judge Bench of the Apex Court opined that ***SACHIDA NAND SINGH*** has been correctly decided and Section 195(1)(b)(ii) of the Cr.P.C. 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 a proceeding in any Court i.e., during the time the document was in *custodia legis*. There could be no qualm about the contentions advanced by the learned counsel appearing for the 2nd respondent which was in tune with the

judgment rendered in the case of ***IQBAL SINGH MARWAH***. The judgment in the case of ***IQBAL SINGH MARWAH*** did not consider the words 'in relation to' appearing in Section 195(1)(b)(i) of the Cr.P.C. It was a judgment considering 195(1)(b)(ii) of the Cr.P.C.

18. The Apex Court in a subsequent judgment in the case of ***BANDEKAR BROTHERS PRIVATE LIMITED v. PRASAD VASSUDEV KENI***[5] considering the very issue of bar under Section 195 of the Cr.P.C. for any Court to take cognizance has held as follows:

> *"11. Shri Yogesh Nadkarni, learned counsel appearing on behalf of the respondents, referred to the pending suits, and to the application for conversion of the complaints, which, according to him, were correctly filed under Section 195 read with Section 340 CrPC. He argued that the High Court was correct in its conclusion that Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101] was a case which arose only under Section 195(1)(b)(ii) CrPC, and that the complaints filed in the present case disclose offences which would fall within Section 195(1)(b)(i) CrPC. He also vehemently argued that the debit notes, which were the sheet-*

[5] ***2020 SCC OnLine SC 707***

anchor of the appellants' case, cannot be said to have been forged within the meaning of Sections 463 and 464 IPC, as the debit notes, even if dishonestly or fraudulently made, had to be made within the intention of causing it to be believed that such debit notes were made by a person whom the person making it knows that it was not made, which is not the case, as the debit notes were made on the sole proprietorship's letterhead, with the writing and signatures that were of the proprietor. ***He, therefore, argued that the forgery sections under IPC do not get attracted at all to the complaints, which were correctly filed under Section 195 read with Section 340 CrPC.***

12. Shri Nadkarni contended that the counter-affidavit that was relied upon by the appellants to the respondent's revision applications was clearly an afterthought, in order to buttress a hopeless case. In any event, the complaints read as a whole, would make it clear that the entirety of the complaints were in, or in relation to, offences committed under Sections 191 and 192 IPC used/to be used in judicial proceedings and, therefore, fell squarely within Section 195(1)(b)(i) CrPC. He also argued that after conversion into a private complaint, the Magistrate issued process only under Sections 191 to 193 IPC, which order remained unchallenged by the appellants. He also cited judgments relating to the object sought to be achieved by Section 195, as well as judgments which distinguished Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101] on that ground that it applied only to cases falling under Section 195(1)(b)(ii) and not to cases falling under Section 195(1)(b)(i) CrPC.

13. Having heard the learned counsel appearing on behalf of the parties, it is necessary to set out the relevant sections of CrPC and IPC.

13.1.CrPC

*"**190. Cognizance of offences by Magistrates**.—(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—*

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

***

***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 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 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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint 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 deemed 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.

***

***340. Procedure in cases mentioned in Section 195.**—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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—*

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the First Class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed—

(a)where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 195.

***341. Appeal**.—(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of Section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195, and the superior court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the*

complaint which such former Court might have made under Section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under Section 340, shall be final, and shall not be subject to revision.

***

***343. Procedure of Magistrate taking cognizance**.—(1) A Magistrate to whom a complaint is made under Section 340 or Section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.*

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided."

13.2.IPC

*"**24. "Dishonestly**".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".*

***25. "Fraudulently**".—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.*

* * *

***191. Giving false evidence**.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to*

be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

***192. Fabricating false evidence**.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".*

***193. Punishment for false evidence**.—Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which

may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

***

***196. Using evidence known to be false**.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.*

***

***463. Forgery**.—Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

***464. Making a false document**.—A person is said to make a false document or false electronic record—*

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1.—A man's signature of his own name may amount to forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.—For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000)."

23. At this stage, it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) CrPC. Where the facts mentioned in a complaint attract the provisions of Sections 191 to 193 IPC, Section 195(1)(b)(i) CrPC applies. What is important is that once these sections of IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any court. Thus, what is clear is that the offence punishable under these sections does not have to be committed only in any proceeding in any court but can also be an offence alleged to have been committed in relation to any proceeding in any court.

24. The words "in relation to" have been the subject-matter of judicial discussion in many judgments. Suffice it to say that for the present, two such judgments need to be noticed. In State Wakf Board v. Abdul Azeez Sahib [State Wakf Board v. Abdul Azeez Sahib, 1966 SCC OnLine Mad 80: AIR 1968 Mad 79] , the expression "relating to" contained in Section 57(1) of the Wakf Act, 1954 fell for consideration before the Madras High Court. The High Court held: (SCC OnLine Mad)

> ***"8. We have no doubt whatever that the learned Judge (Kailasam, J.), was correct in his view that even the second suit has to be interpreted as within the scope of the words employed in Section 57(1) namely, "In every suit or proceeding relating to title to Wakf property". There is ample judicial authority for the view that such words as "relating to" or "in relation to" are words of comprehensiveness which might***

both have a direct significance as well as an indirect significance, depending on the context. They are not words of restrictive content and ought not to be so construed. The matter has come up for judiciai determination in more than one instance. The case in Compagnie Financiere ET Commerciale du Pacifique v. Peruvian Guano Co. [Compagnie Financiere ET Commerciale du Pacifique v. Peruvian Guano Co., (1882) LR 11 QBD 55 (CA)] , is of great interest, on this particular aspect and the judgment of Brett, L.J., expounds the interpretation of Order 31 Rule 12 of the Rules of the Supreme Court, 1875, in the context of the phrase "material to any matter in question in the action". Brett, L.J., observed that this could both be direct as well as indirect in consequences and according to the learned Judge the test was this (QBD at p. 63):

> *'... a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary if it is a document which may fairly lead him to a train of inquiry, which may have either of these consequences.' "*

26. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation to", making it clear that if the

provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the appellant's case, namely, this Court's judgment in Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101].

27. In Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101], a five-Judge Bench was constituted in view of a conflict between decisions of this Court as follows: (SCC p. 376, para 2)

> *"2. In view of conflict of opinion between two decisions of this Court, each rendered by a Bench of three learned Judges in Surjit Singh v. Balbir Singh [Surjit Singh v. Balbir Singh, (1996) 3 SCC 533: 1996 SCC (Cri) 521] and Sachida Nand Singh v. State of Bihar [Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660] regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short "CrPC"), this appeal has been placed before the present Bench."*

28. The Court first spoke of the broad scheme of Section 195 CrPC, which deals with three distinct categories of offences, and held that the category of offences contained in Section 195(1)(b)(ii) ought to be read along with the offences contained in Section 195(1)(a) and 195(1)(b)(i), which are clearly offences which directly affect either the functioning or discharge

of duties of a public servant or of courts of justice. This was stated in para 10 of the judgment [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101] as follows: (Iqbal Singh Marwah case [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101] , SCC pp. 380-81)

> *"10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to : (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is — "Of Contempts of the Lawful Authority of Public Servants". These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as — "Of False Evidence and Offences Against Public Justice". The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC).* ***This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the***

> ***proceedings in a court of justice, the expression "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" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court."***
>
> *(Emphasis supplied)*

The Apex Court in ***BANDEKAR BROTHERS*** went on to interpret the words 'in relation to' and was pleased to hold that when any document is produced before the Court or evidence tendered before the Court *albeit* it being created outside, if it is produced 'in relation to' a case before the Court which helps the Court to form an opinion for or against a

particular party, it would come within the ambit of Section 195 of the Cr.P.C. and be a bar.

19. The judgment aforesaid in the case of ***BANDEKAR BROTHERS*** is subsequently considered by the Apex Court in the case of ***BHIMA RAZU PRASAD v. STATE***[6]. The Apex Court formulated a point with regard to importance of words 'in relation to' as appearing in Section 195(1)(b)(i) of the Cr.P.C. and holds as follows:

> ***"II. Import of the Words "in relation to" in Section 195(1)(b)(i), CrPC.***
>
> *30. This brings us to the phrase "in relation to any proceeding in any Court", which appears in Section 195(1)(b)(i), CrPC but is absent in Section 195(1)(b)(ii). It may be argued that this phrase makes the scope of Section 195(1)(b)(i) wider than Section 195(1)(b)(ii).* ***The words "in relation to" under Section 195(1)(b(i) appear to encompass situations wherein false evidence has been fabricated prior to being produced before a Court of law, for the purpose of being used in proceedings before the Court. Therefore, it may not be possible to apply the ratio of Iqbal Singh Marwah by way of analogy to Section 195(1)(b)(i) in every case.***

[6] ***2021 SCC OnLine SC 210***

31. For further elucidation on this point, we may turn to the recent decision of this Court in Bandekar Brothers (supra). The appellants in that case claimed that the respondents/accused had given false evidence and forged debit notes and books of accounts in civil court proceedings between the parties. They had initially filed application under Section 340, CrPC before the relevant Judicial Magistrate. However, they later sought to convert this into private complaints, in reliance upon Iqbal Singh Marwah (supra). The respondents objected on the ground that the bar under Section 195(1)(b)(i) could not be circumvented. Subsequently, the appellants took the plea that offences under Section 195(1)(b)(ii) were also made out:

> *"13. The point forcefully argued by the learned Counsel on behalf of the Appellants is that his clients, being victims of forgery, ought not to be rendered remediless in respect of the acts of forgery which are committed before they are used as evidence in a court proceeding, and that therefore, a private complaint would be maintainable in the fact circumstance mentioned in the two criminal complaints referred to hereinabove.* ***The Court has thus to steer between two opposite poles of a spectrum the "yin" being the protection of a person from frivolous criminal complaints, and the "yang" being the right of a victim to ventilate his grievance and have the Court try the offence of forgery by means of a private complaint. In order to appreciate whether this case falls within the category of avoiding frivolous litigation, or whether it falls within the individual's right to pursue a private complaint, we must needs refer to several decisions of this Court."***

32. This Court thereafter proceeded to distinguish between the offence of fabricating false evidence under Sections 192 and 193, IPC and the offence of forgery. It noted that the averments made by the appellants in their complaints pertained exclusively to giving of false evidence and did not disclose the ingredients of forgery as defined under the IPC. Hence, this Court in Bandekar Brothers upheld the respondents' contentions, and opined that Iqbal Singh Marwah would not benefit the appellants in that case. Even though the false evidence was created outside of the Court, it was by the appellants' own admission, created "in relation to" proceedings before the Court. Thus, this Court held that:

> *"19. At this stage, it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the Code of Criminal Procedure. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the Penal Code, 1860, Section 195(1)(b)(i) of the Code of Criminal Procedure applies. What is important is that once these Sections of the Penal Code, 1860 are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence punishable under these Sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court.*
>
> *22. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the Code of Criminal Procedure speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the Penal Code, 1860, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a*

proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation to", making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the Appellant's case namely, this Court's judgment in Iqbal Singh Marwah (supra)."

(emphasis supplied)

33. We fully agree with the aforementioned reasoning. The presence of "in relation to" under Section 195(1)(b)(i) means that Iqbal Singh Marwah would not have blanket application to every case where a complaint is lodged in respect of an offence specified under that Section. However, on the facts of Bandekar Brothers, this was not a situation in which the offence complained of did not have a "reasonably close nexus" with the court proceedings. The offence of giving false evidence was committed by the respondents, who were party to the court proceedings, for the purpose of leading the Court to form an erroneous opinion on a point material to the result of the proceedings. Hence it could be said that though the offence was not committed during the course of the court proceedings, it was certainly committed "in relation to" such proceedings.

34. Similar circumstances were present in Kailash Mangal v. Ramesh Chand (Dead) Through Legal Representative, (2015) 15 SCC 729 and Narendra Kumar Srivastava v. State of Bihar, (2019) 3 SCC 318, which were the decisions relied upon by this Court in Bandekar Brothers (supra). In Kailash Mangal, it was alleged that the appellant in that case had filed a false

affidavit before the civil court for getting a civil suit decreed in his favour. The respondent filed a private complaint under Section 340, CrPC alleging offence punishable under Sections 193 and 419, IPC. The Division Bench observed that:

> *"10. In the instant case, the false affidavit alleged to have been filed by the appellant was in a proceeding pending before the civil court and the offence falls under Section 193 IPC and the proceeding ought to have been initiated on the complaint in writing by that court under Section 195(1)(b)(i) IPC. Since the offence is said to have been committed in relation to or in a proceeding in a civil court, the case of Iqbal Singh Marwah is not applicable to the instant case."*
>
> *(emphasis supplied)*

39. The construction of the words "in relation to" must be controlled by the overarching principle applicable to Section 195(1)(b), CrPC as stated in Patel Laljibhai Somabhai (supra) and Sachida Nand Singh (supra), which was affirmed by the Constitution Bench in Iqbal Singh Marwah (supra). That is, even if the offence is committed prior to giving of the fabricated evidence in court, it must have a direct or reasonably close nexus with the court proceedings.

40. Looking to the decision in Bandekar Brothers (supra), is true to say that Section 195(1)(b)(i), CrPC may be attracted to the offence of fabricating false evidence prior to its production before the Court, provided that such evidence is led by a person who is party to the court proceedings, for the purpose of leading the Court to form a certain opinion based on such evidence. *The bar against taking of cognizance under Section 195(1)(b)(i) may also apply where a person*

who is initially not a party to the court proceedings fabricates certain evidence, and

1) subsequently becomes a party and produces it before the Court; or;

2) falsely deposes as a witness before the Court on the strength of such evidence, for the purpose of causing the Court to form an erroneous opinion on a point material to the result of the proceedings.

41. However, where a person fabricates false evidence for the purpose of misleading the investigating officer, this may not have any direct nexus with the subsequent court proceedings. There is an indirect nexus inasmuch as if the investigating agency does not suspect any wrongdoing, and the Court commits the case for trial, the evidence will be produced for the Court's perusal and impact the judicial decision-making process. However, it may be equally possible that even if the fabricated evidence appears sufficiently convincing, the investigating agency may drop proceedings against the accused and divert its time and resources elsewhere. ***Therefore, the offence may never reach the stage of court proceedings. Further, if it subsequently comes to light that the evidence was falsely adduced, it will be the investigating agency which will suffer loss of face and be forced to conduct a fresh investigation. Hence, though the offence is one which affects the administration of justice, it is the investigating agency, and not the Court, which is the aggrieved party in such circumstance."***

(Emphasis supplied)

The Apex Court in the case of ***BHIMA RAZU PRASAD*** considered the import of the words of Section 195(1)(b)(i) which was not considered by the Five Judge Bench in ***IQBAL SINGH MARWAH*** *(supra)* as the Five Judge Bench had considered only Section 195(1)(b)(ii). The Apex Court in ***BHIMA RAZU PRASAD*** holds that the result of Section 195(1)(b)(i) would mean that ***IQBAL SINGH MARWAH*** would not be applicable to every case where a complaint is lodged in respect of an offence specified under Section 195 of the Cr.P.C. It also considers ***BANDEKAR BROTHERS*** which dealt with the words 'reasonably closed nexus' and holds that if a document is produced in relation to a Court proceeding, even if the offence is committed prior to giving fabricated evidence, if it has a direct or reasonably closed nexus with Court proceedings, then the bar under Section 195 would become applicable.

20. In the light of the judgment rendered by the Five Judge Bench in ***IQBAL SINGH MARWAH*** being considered in

the subsequent judgments in ***BANDEKAR BROTHERS*** *and* ***BHIMA RAZU PRASAD,*** if the document that is produced in the case at hand is considered, it does not have a reasonable nexus with the issue that was put forth before the concerned Court, notwithstanding the fact that the document was allegedly created outside the Court proceeding and was produced before the Court in the civil proceeding instituted by the present petitioner. Taking of cognizance for offences quoted *supra* would be a bar under Section 195(1)(b)(i) of the Cr.P.C. Section 195(1)(b)(i) clearly refers to offences punishable under Sections 193 to 196, 199, 200, 205 to 211 said to have been committed in or in relation to any proceeding in any Court. Therefore, the offences so alleged under Sections 196 or 199 would stand barred from the learned Magistrate taking cognizance, unless the procedure under Section 340 of the Cr.P.C. is followed by the concerned Court, where the evidence or the document is said to be placed.

21. The other offences alleged against the petitioner are the ones punishable under Sections 420 and 463 read with 34 of the IPC. Section 420 of the IPC requires the ingredients as obtaining in Section 415 of the IPC to be present. Section 415 of the IPC reads as follows:

> *"**415. Cheating**.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
>
> *Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."*

Section 415 of the IPC mandates that there should be inducement from the hands of the accused to the victim to part with any property and the transaction should be tainted with dishonest intention right from its outset. No such ingredient as is needed has even a mention in the allegation. Therefore, the allegation for the offence punishable under

Section 420 of the IPC has been recklessly included without there being any foundation laid in the complaint.

22. The next offence is with regard to Section 463 of the IPC. Section 463 of the IPC though has its mention in Section 195(1)(b)(ii), in the light of the document forged and created outside when the matter was not *custodia legis*, the issue would stand covered by the judgment rendered in the case of ***IQBAL SINGH MARWAH*** *(supra)*. As held by the Apex Court in the case of ***BANDEKAR BROTHERS*** *(supra)*, it cannot be said that offences alleged under Section 193 to 196 as found in 195(1)(b)(i) are so inseparable that it would take within its sweep the offence as indicated under Section 195(1)(b)(ii) as well. If it is not so inseparable, ***IQBAL SINGH MARWAH*** is what would occupy the field. In the considered view of this Court Section 463 of the IPC as is alleged is not so inseparable that would bar the Magistrate from taking cognizance of the offence except on a proceeding

initiated under Section 340 of the Cr.P.C. Therefore, the allegation under Section 463 of the IPC so made against the petitioner and the cognizance so taken by the learned Magistrate only insofar as it concerns Section 463 of the IPC cannot be interfered with. But, cognizance being taken for offences under Sections 196 and 199 of the IPC warrant appropriate interference.

23. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petition is allowed in part.

(ii) The order of the learned Magistrate passed in C.C.No.8355/2021 dated 27-03-2021 insofar as he takes cognizance of the offences under Sections 196, 199 and 420 of the IPC is quashed.

(iii) The order of the learned Magistrate insofar as he takes cognizance for the offence under Section 463 as punishable under Section 465 of the IPC stands sustained.

(iv) The learned Magistrate is at liberty to take further proceedings in the case for the sustained offence and dispose of the matter in accordance with law.

In view of disposal of the petition, I.A.No.1/2022 does not survive for consideration. Accordingly, stands disposed.

Sd/-
JUDGE

bkp