

A SENIOR MANAGER (P&D), RIICO LTD.

v.

THE STATE OF RAJASTHAN & ANR.

(Criminal Appeal No. 1845 of 2017)

B NOVEMBER 03, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

C *Penal Code, 1860 – ss.420, 467, 478 and 471 – FIR registered by appellant alleging forgery of the letter in question and fraud by Respondent No.2 – Final report filed stating that since the said letter was filed in a civil suit filed by Respondent No.2, thus, in view of provisions of s.195(1)(b)(ii) CrPC, the police cannot investigate the matter – Such final report accepted by Chief Judicial Magistrate (CJM) – After some litigation between the parties wherein the matter was remanded back by Revisional Court-Additional Sessions Judge (ASJ), CJM eventually vide order dated 20.06.2009 considered the matter on merits and held that prima facie no case of forging and playing fraud were made out against the accused-Respondent No.2 – Revision application filed by the appellant before ASJ, dismissed – Said order was challenged by appellant before High Court by filing petition u/s.482, CrPC, which was dismissed – On appeal,*

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E held: CJM in his order dated 20.06.09 as well as the Revisional Court had considered the material on record and came to the conclusion that no prima facie case was made out against the accused that he has committed any forgery or played any fraud – High Court also took the same view that no evidence was available on record suggesting that letter in question was prepared by Respondent No. 2 – No infirmity found in the said order – Code of Criminal Procedure, 1973 – ss.195(1)(b)(ii) and 482.

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G *Code of Criminal Procedure, 1973 – s.195(1)(b)(ii) – If applicable – Held: Section 195(1)(b)(ii) 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 – However, in the instant case, the allegedly forged letter dtd. 10.04.1992 was filed in a civil suit on 27.04.1992 – No case that forgery was committed*

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after the letter was filed in the court – Thus, provision u/s.195 (1)(b)(ii) was not attracted. A

Dismissing the appeal, the Court

HELD: 1.1 In the present case, the letter dated 10.04.1992 is claimed to be a forged letter not signed by appellant. The said letter was filed before the Court on 27.04.1992 in a civil suit filed by the respondent no.2. There is no case that forgery was committed after the letter was filed in the Court. Thus, provision under Section 195(1)(b)(ii) Cr.P.C. was not attracted. [Para 9][219-F] B

1.2 The Chief Judicial Magistrate in his order dated 20.06.2009 as well as the Revisional Court had considered the material on record and came to the conclusion that no *prima facie* case was made out against the accused that he had committed any forgery or played any fraud in forging the document. The said order of the Revisional Court was challenged before the High Court and High Court also came to the conclusion that no evidence was available on record to suggest that letter dated 10.04.1992 was prepared by Respondent No. 2. The High Court held that no illegality can be found in the order of Revisional Court. No infirmity is found in the said view of the High Court [Paras 12, 13][221-D, G] C D E

Sachida Nand Singh & Anr. v. State of Bihar & Anr. (1998) 2 SCC 493 : [1998] 1 SCR 492 – referred to.

Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr. (2005) 4 SCC 370 : [2005] 2 SCR 708 – followed. F

Case Law Reference

[1998] 1 SCR 492	referred to	Para 3
[2005] 2 SCR 708	followed	Para 8

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1845 of 2017. G

From the Judgment and Order dated 07.02.2017 by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Misc. Petition No. 320/2012.

A Dr. Manish Sighvi, Irshad Ahmad, Shailja Nanda Mishra, Advs. for the Appellant.

Ms. Ruchi Kohli, Ms. Nidhi Jaswal, Ms. Bhavya Tandon, Ajay Kumar Talesara, S. Sarfaraz Karim, Tejasvi Kumar, Ambar Qamaruddin, Advs. for the Respondents.

B The Judgment of the Court was delivered by

C **ASHOK BHUSHAN J.** 1. This appeal has been filed against judgment dated 07.02.2017 of Rajasthan High Court dismissing Single Bench Criminal Miscellaneous Petition which was filed by the appellant questioning the judgment dated 22.07.2011 of Additional Sessions Judge dismissing the Criminal Revision Petition preferred by the appellant.

2. The facts giving rise to this appeal disclose several stages of litigation arising out of First Information Report lodged by appellant dated 29.04.1992 under Section 420 IPC.

D 3. The brief facts of the case necessary to be noted for deciding this appeal are:

E A letter dated 10.04.1992 was purported to be issued by Regional Manager, RIICO, Sriganganagar to the Respondent No. 2 M/s. Kanha Refined Oil and Vanaspati Pvt. Ltd. through Ravi Setia (Partner). The appellant who was working as Regional Manager and had allegedly signed the above letter when came to know about the letter dated 10.04.1992, he asked Respondent No. 2 on 23.04.1992 to produce the original copy of the letter within 24 hours. The letter was not produced before the office of Respondent No. 2 rather on 27.04.1992 the letter was produced by his counsel in Suit Case No. 2/84 titled M/s. Kanha Refined Oil and Vanaspati Pvt. Ltd. Vs. RIICO Limited. On 29.04.1992 the appellant filed a First Information Report No. 184 under Section 420 IPC alleging that on 10.04.1992 a letter has been forged by Respondent No. 2 and got it dispatched from the office by a Class IV employee, Raghuvir Singh on 10.04.1992. It is alleged that by playing fraud, forged and bogus document has been prepared by Respondent No. 2 hence, offence under Sections 467, 468 and 471 IPC are made out. FIR was registered under Section 420. A Final Report was submitted by the Inspector, Police Station Kotwali. In the Final Report, it was mentioned that since the letter dated 10.04.1992 has been filed in Case No. 2/84, in view of provisions of Section 195(1)(b)(ii) Cr.P.C. the police cannot investigate the matter.

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The Final Report was accepted by the Chief Judicial Magistrate by order dated 22.05.1998, relying on Section 195(1)(b)(ii) Cr.P.C. The appellant filed a Criminal Revision before the Additional Sessions Judge who *vide* his order dated 01.05.2000 set aside the order of Chief Judicial Magistrate and remanded the matter. The Trial Court passed a fresh order granting opportunity of hearing to the complainant. The Chief Judicial Magistrate after the remand again relying on Section 195(1)(b)(ii) Cr.P.C. held that letter having been filed in civil suit, cognizance cannot be taken. The Protest Petition was dismissed and Final Report was accepted. The Criminal Revision was filed by the appellant challenging the order dated 12.03.2003. The Revisional Court held that the provision of Section 195(1)(b)(ii) Cr.P.C. is not applicable to the facts of the present case. The Revisional Court has placed reliance on the judgment of this court in *Sachida Nand Singh & Anr. Vs. State of Bihar & Anr., (1998) 2 SCC 493*, where it was held that when the document before producing in the Court has been prepared in a forged manner, provision of Section 195(1)(b)(ii) Cr.P.C. cannot be made applicable. The Revisional Court set aside the order of subordinate court and directed the court below to pass an order in accordance with law, on the basis of evidence available on file.

4. Operative portion of the judgment is as follows:

“ORDER

Hence, by allowing the Revision of the Revisionist, the order dated 12.03.2003 is hereby set-aside and Subordinate Court is hereby ordered that it shall pass an order afresh in accordance with law, on the basis of evidence available on file and after granting opportunity of hearing to the Complainant. The Case File shall be produced before the Subordinate Court on 08.08.2003.”

5. After the order of Revisional Court, the Chief Judicial Magistrate again considered the matter and by order dated 20.06.2009 rejected the Protest Petition of appellant. The Chief Judicial Magistrate noticed the order of the Revisional Court that benefit of Section 195(1)(b)(ii) Cr.P.C. can not be granted to the accused in the present case. The Chief Judicial Magistrate did not rely on Section 195(1)(b)(ii) Cr.P.C. rather looking to the materials on record came to the conclusion that *prima facie* case of forged document and playing fraud have not been made out against the

A accused. Aggrieved against the order dated 20.06.2009, a Revision
 Application was also filed before the Court of Additional Sessions Judge
 by the appellant which has been dismissed on 22.07.2011. The order
 dated 22.07.2011 was challenged before the High Court by filing a petition
 under Section 482 Cr.P.C. which has been dismissed by the High Court
 on 07.02.2017 which order is under challenge in this appeal.

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 6. Dr. Manish Singhvi, learned counsel for the appellant submitted
 that in the present case the forged letter dated 10.04.1992 was filed in
 Civil Court on 27.04.1992 that is subsequent to letter having been forged.
 The provisions of Section 195(1)(b)(ii) Cr.P.C. were not attracted and
 there was no prohibition in law in taking cognizance of the offence. He
 submitted that the Respondent No. 2 was the beneficiary of the letter
 which was addressed to him hence the courts below ought to have taken
 cognizance of the offence. He submitted that Courts below committed
 error in not taking cognizance of the offence.

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 7. Learned Counsel appearing for Respondent No. 2 refuting the
 submission of counsel for the appellant contended that present is a case
 where there is no issue pertaining to Section 195(1)(b)(ii) Cr.P.C. He
 submitted that learned Chief Judicial Magistrate in his order dated
 20.06.2009 has not dismissed the Protest Petition on the ground of bar
 of Section 195(1)(b)(ii) Cr.P.C. rather has after considering the evidence
 on record held that no *prima facie* case has been made out against the
 Respondent No. 2 for taking cognizance of the offence. He further
 submitted that from the evidence on record, it is clear that letter was
 dispatched from the office of Regional Manager and it has further come
 on record that a Class IV employee Shri Raghuvir Singh of the office
 has dispatched the letter. He submitted that there is no material on record
 to even *prima facie* suggest that the Respondent No. 2 is involved in
 forging the letter. He submitted that the courts below after considering
 the materials have rightly come to the conclusion that no case has been
 made out to allow the Protest Petition filed by the appellant.

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 8. We have considered the submissions of the learned counsel for
 the parties and have perused the record. In so far as, submission of the
 appellant regarding Section 195(1)(b)(ii) Cr.P.C. the law is not well
 settled by the Constitution Bench judgment that Section 195(1)(b)(ii)
 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

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has been produced or given in evidence in a proceeding in any court. A
The Constitution Bench in *Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.*, (2005) 4 SCC 370 in para 33 & 34 had held:

“33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh (1998) 2 SCC 493 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. B

34. In the present case, the Will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b) (ii) CrPC would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.” C

9. Reverting to the facts of the present case, present is a case where letter dated 10.04.1992 is claimed to be a forged letter not signed by appellant. From the materials on record, it is clear that the said letter dated 10.04.1992 was filed before the Court on 27.04.1992 in Case No. 2/84. There is no case that forgery was committed after the letter was filed in the Court. Thus, provision under Section 195(1)(b)(ii) Cr.P.C. was not attracted. A perusal of the Final Report which was submitted by Inspector, Police Station Kotwali, it is clear that the Inspector after conducting an investigation ultimately concluded that in view of Section 195(1)(b)(ii) Cr.P.C. Police cannot investigate the matter. The Final Report is filed as Annexure P.4. A perusal of which also indicates that the Inspector, obtained the Original Letter dated 10.04.1992 from the Case No. 2/84 and had sent writing of the undisputed script and specimen script of appellant to handwriting expert and opinion was obtained that signatures of S.K. Sharma on letter dated 10.04.1992 was forged. D

A 10. After the remand by Revisional Court on 01.05.2000, the Chief
Judicial Magistrate in his order dated 12.03.2003 again relied on Section
195(1)(b)(ii) Cr.P.C. for coming to the conclusion that cognizance cannot
be taken. Criminal Revision was filed against the said order before the
Revisional Court and Revisional Court *vide* its judgment dated 21.07.2003
B has decided the issue of Section 195(1)(b)(ii) Cr.P.C. The Revisional
Court held that the provisions of Section 195(1)(b)(ii) Cr.P.C. are not
attracted. The Revisional Court *vide* its order dated 21.07.2003 set
aside the order of Subordinate Court and directed the Subordinate Court
to pass a fresh order in accordance with law after considering the
evidence on file on merit. Subsequent the order passed by the Revisional
C Court, matter was not carried on any further for the accused. Thus, the
issue of Section 195(1)(b)(ii) Cr.P.C. came to an end in favour of the
appellant. The order of Chief Judicial Magistrate dated 20.06.2009 as
well as the Revisional Court dated 22.07.2011, does not rely on Section
195(1)(b)(ii) Cr.P.C. for rejecting the Protest Petition of the appellant.
D Thus, the submission on the basis of Section 195(1)(b)(ii) Cr.P.C. are
not relevant for deciding the present appeal. In fact submission raised
on behalf of the complainant pertaining to non-applicability of Section
195(1)(b)(ii) Cr.P.C. has been accepted by the Courts below as already
noted above. Thus, no benefit can be availed by appellant on the strength
of above submission.

E 11. The Chief Judicial Magistrate in his order dated 20.06.2009 as
well as the Revisional Court has considered the material on record and
came to the conclusion that no *prima facie* case is made out against the
accused that he has committed any forgery or played any fraud in forging
the document. The Chief Judicial Magistrate has also referred to the
F Report No. 37/97. The Revisional Court also after considering all the
submissions of appellant have dismissed the Revision on merits. It is
useful to refer to the following observations of Revisional Court:

G *“According to the aforesaid offensive elements the Revisionist
during the course of investigation in his statements recorded
under Section 161 Cr. P.C. has only stated that Ravi Setia in
order to play fraud prepared the letter by committing forgery,
whereas the Junior Accountant Atar Singh in the office of the
Revisionist has stated during his statements dated 19.05.1992
that the alleged letter dated 10.04.1992 has not been
dispatched by him, rather it has been dispatched by the*

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Assistant Employee Raghuvir Singh. In this way in the context of the writing of said letter, it was necessary to send the writing of the Class IV Employee Raghuvir Singh to the Handwriting Expert at FSL. Further, the FSL in its Report No. 37/97 dated 31.01.1998 has given this conclusion that the specimen signatures of the Revisionist and disputed signatures upon matching mark Q-1 and Q-2 have been stated to be forged one. But in this conclusion it has also been mentioned that it has not been established as to these signatures are of whom and these signatures would have made by Ravi Setia. In this way letter the letter dated 10.04.1992 would have prepared by the Respondent No. 2 in a forged manner, at this stage, it has not become clear in any manner. Therefore, at this stage, there is no ground available for taking cognizance against the Respondent No. 2 under Section 467, 468 and 471 I.P.C."

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12. The above order of the Revisional Court was challenged before the High Court and High Court also came to the conclusion that no evidence is available on record to suggest that letter dated 10.04.1992 was prepared by Respondent No. 2. The High Court held that no illegality can be found in the order of Revisional Court. Although, the Final Report was submitted as noted above on the ground relying on Section 195(1)(b)(ii) Cr.P.C. but before submitting the report investigation was conducted by the Inspector, Police Station Kotwali and the materials collected during the investigation were all referred to in the Final Report. Holding that the Section 195(1)(b)(ii) Cr.P.C. is not attracted in the present case, the Revisional Court *vide* its judgment dated 21.07.2003 has directed the court below to pass an order in accordance with law on the basis of evidence available. Hence, the Chief Judicial Magistrate looked into the material on record and came to conclusion that there are no sufficient material for taking cognizance against the accused.

13. High Court also took the same view, in which we do not find any infirmity. In view of the forgoing discussion, we do not find any merit in this appeal. The appeal is dismissed, accordingly.