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NON-REPORTABLE

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 838 OF 2011

PARSHOTTAM SHANTILAL CHADDARWALAA ..... APPELLANT(S)

VERSUS

THE STATE OF GUJARAT & ANR. .....RESPONDENT(S)

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present criminal appeal arises out of a judgement and order dated October 7, 2009 passed by the High Court of Gujarat at Ahmedabad rendered in Special Criminal Application No. 1690 of 2009, whereby the High Court dismissed the Special Criminal Application filed by the Petitioner herein.

BRIEF FACTS

2. The factual matrix of the case is that the respondent no.2 herein who, at the relevant time, was the Incharge Registrar, District Court, Bharuch, lodged a First Information Report (hereinafter, 'FIR') before the Bharuch City 'A' Division Police Station on 28th July, 2005 against the petitioner herein as well as two other accused persons alleging commission of the offences punishable under Sections 192, 193, 196, 204, 209, 406, 420, 463, 464, 465, 466, 467, 468, 469, 471, 473, 474, 499, 500, 120-B and 114 of the Indian Penal Code, 1860 (hereinafter 'IPC') which came to be registered vide I-C.R. No.170 of 2005. The allegation in the FIR is to the effect that on 27th March, 2003, the petitioner herein had instituted Special Civil Suit No.79 of 2003 in the capacity of power of attorney holder of the partners of a partnership firm namely, Narmada Finvest in the Court of the Principal Senior Civil Judge, Bharuch for recovery of Rs.5,45,052/- against one Kamlesh Kantilal Patel. The said firm consisted of one Jagjivan Shantilal Dalal, Pashiben Parsottam Chaddarwala and Viren Parsottam Chaddarwala as its partners. An application came to be made in the said suit proceedings seeking an order of attachment before judgment on which notice

came to be issued. During the proceedings of the said suit, an out of court settlement was arrived at between the petitioner and the defendant of the suit namely, Kamlesh Kantilal Patel on 28th March, 2003 according to which the brother of the defendant Laksheshbhai Patel had undertaken to pay Rs.2,25,000/- towards settlement of the dispute. The said Laksheshbhai Patel handed over 15 cheques of Rs. 15,000/- each to the petitioner which were payable on the first day of each month with effect from 01st May. 2003. In view of the settlement dated 28th March, 2003 arrived at between the parties to the suit, on 02nd April, 2003, the petitioner tendered a withdrawal pursis seeking permission to withdraw the suit unconditionally. On the basis of the said application, the Trial Court made an endorsement on the last page of the plaint, and also on the application for interim injunction to the effect that the suit is withdrawn unconditionally. However, at the time of withdrawal of the suit, the deed of settlement was not produced in writing before the Court. As the suit was sought to be withdrawn unconditionally, as per the Rules, no decree was drawn and entry to that effect was made in the Rojkam. In view of the withdrawal of the suit, as per the provisions of the Civil Courts Manual, the documents of

Special Civil Suit No.79 of 2003 were divided into four files viz. A, B, C and D and thereafter, the said files were despatched vide Outward Register No.215 of 2004 to the Record Office of the District Court, Bharuch on 04th May, 2004. The record of Special Civil Suit was thereafter lying in the custody of the co-accused Deputy Registrar-cum-Record Keeper, District Court, Bharuch.

3. The cheques which were handed over by Laksheshbhai Patel to the petitioner herein were presented for realisation and some of the cheques came to be dishonoured. The petitioner, therefore, instituted several complaints against the said Laksheshbhai under Section 138 of the Negotiable Instruments Act, 1881 which later on came to be withdrawn by the petitioner. In the aforesaid FIR by respondent no.2 herein, it is alleged that the petitioner herein had hatched a conspiracy with the co-accused- court employees to extract money from the defendant of the suit. The co-accused had threatened the aforesaid Laksheshbhai Patel of dire consequences if he did not pay the money to the petitioner herein. On account of the said threat, the defendant of the suit met his advocate and during the course of conversation, the advocate told the defendant that if the suit is withdrawn, execution petition cannot be preferred. However, on

2nd December, 2004 or thereabout, the co-accused who was the bailiff in the Court of the Principal Senior Civil Judge, Bharuch again met the defendant of the suit and told him that the execution petition had been filed against him. Subsequently, it was found that the petitioner had filed Special Execution Petition No.43 of 2004 on 27th November, 2004 for recovery of the suit money. Subsequently, the details of the Execution Petition preferred by the petitioner were given to the defendant of the suit and upon verification of the record, following defects were found:-

(a) The application Exh.11 (withdrawal pursis) on which the learned Presiding Officer had made an endorsement, was not in the record of the court, and that the same was allegedly replaced with a bogus and concocted settlement pursis.

(b) The last page affixed to the plaint-Exh.1 on which an endorsement of unconditional withdrawal of suit was made, was removed from the record and was replaced by a bogus page.

(c) Generally, decree is not drawn where the suit is withdrawn, but in the case on hand, bogus decree was prepared at Exh.12 which was bearing signature of the Clerk drawing the decree and the learned Civil Judge, Shri Khimani.

(d) The entire Rojkam was prepared on a type writer subsequently.

(e) The blank page no.17, attached to the plaint Exh.1, was bearing the forged rubber stamp of the Deputy Registrar and also bogus signature of the learned Civil Judge, Shri Khimani.

(f) Bogus rubber stamp of the court was used for fabricating the document.

Accordingly, in the FIR it has been alleged that with a view to extract money from the defendant of the suit, the petitioner herein had hatched a conspiracy along with the co-accused and had tampered with the record of the Court in Special Civil Suit No.79 of 2003. It is also stated in the FIR that the respondent No.2 has been directed by the learned Principal District Judge, Bharuch to lodge a complaint and accordingly the FIR had been lodged.

4. Upon culmination of the investigation, chargesheet came to be submitted before the learned Chief Judicial Magistrate, Bharuch and the same came to be registered as Criminal Case No.14090 of 2005. In the said proceedings, the petitioner moved an application on 27th April, 2007 before the learned Chief

Judicial Magistrate, Bharuch interalia contending that in view of the provisions of Sections 195 and 340 of the Code of Criminal Procedure (Hereinafter, "CrPC"); the learned Magistrate had no power to take cognizance of the case. By the order dated 25th May, 2007, the learned Chief Judicial Magistrate, Bharuch rejected the application. The petitioner carried the matter in revision before the learned Additional Sessions Judge, Bharuch by way of Criminal Revision Application No.112 of 2007 which came to be rejected by the order dated 24th July, 2009.

5. The petitioner aggrieved by the order dated 25.05.2007, filed a Special Criminal Application No. 1690 of 2009 before the High Court of Gujarat at Ahmedabad under Articles 226 and 227 of the Constitution of India read with Section 482 of the CrPC. The High Court vide its judgement dated 07.10.2009 dismissed the said application.

6. Aggrieved by the said judgement of the High Court, the appellant is before us.

CONTENTIONS

7. Ld. counsel for the petitioner herein submits as follows:

7.1 That the High Court failed to appreciate that the alleged offence in question having been committed in relation to court proceedings, would fall within the ambit of Section 195 of the CrPC, hence, cognizance of the same could not have been taken except on a complaint in writing signed by the Learned Presiding Officer.

7.2 That the High Court failed to appreciate that the alleged offence in question having been committed in relation to court proceedings, would fall within the ambit of Section 195 of the CrPC, hence, cognizance of the same could not have been taken except on a complaint in writing signed by the Learned Presiding Officer. The Ld. Counsel for the petitioner vehemently submitted that the High Court and the Courts below have committed grave error of law in not appreciating Sections 195 and 340 of the CrPC.

7.3 That it is clear that in a case where any offence has taken place which is within the purview of Section 195 (1) (b) of the CrPC, it is only the 'Court' which can hold preliminary inquiry and therefore, when such a preliminary inquiry is not held by a Court, no cognizance can be taken on the basis of any such complaint or F.I.R.

7.4 That in the present case the allegation in writing is not addressed to the learned Magistrate and, therefore, the inception of the jurisdiction itself is void ab initio.

7.5 That the inquiry conducted by the Vigilance Branch of the High Court cannot be said to be an inquiry in view of Section 195 of the CrPC as an inquiry /investigation/preliminary inquiry conducted by the Vigilance Branch cannot be termed as an inquiry/ preliminary inquiry by a Court.

7.6 That a proceeding of court does not mean only a live proceeding, even concluded proceedings falls within the expression "proceeding" and this would also include the original record of the case and merely because the suit has been disposed of, the record of the case will not cease to be a record of a judicial proceeding and therefore, the alleged offence in question would squarely fall within the ambit of Section 195 of Crpc.

7.7 That section 195(1)(b)(i) CrPC is clearly attracted in the factual matrix of the present case and therefore cognizance taken by the Court on the FIR and without any complaint by the Court concerned is illegal.

7.8 That Section 195(1)(b)(ii) CrPC which applies to offences described in Sections 463, 471, 475 or 476 is clearly attracted even if the factual averments made in the FIR and the Chargesheet are assumed to be true as the allegation is with respect to an offence committed in respect of a document produced or given in evidence in a proceeding in any court.

7.9 That section 195 (1)(b)(iii) is clearly attracted to the facts of the present case as the Appellant has alleged to have been part of a criminal conspiracy under Section 120B to commit the offences specified in sub clause (i) and (ii) of section 195 (1)(b).

7.10 That the expression "Complaint" referred to in Section 195(1) must be a complaint in Section 2(d) of the CrPC and proceedings thereunder cannot be invoked by an FIR under Section 154 of the CrPC.

7.11 That in a case invoking Section 193 of IPC, the same will attract Section 195(1)(b)(i) to which the principles laid down in Section 195 (1)(b)(ii) have no application. The judgment of a bench of five judges in the case of Iqbal Singh Marwah has no application to cases under Section 195(1)(b)(i).

8. *Per contra*, Ld. Counsel for the respondent submits as follows:

8.1 That settled jurisprudence supports the view that an FIR, when initiated by an authorized official on the direction of the High Court is maintainable even if certain technicalities are challenged and is in compliance of section 340(3) of CrPC.

8.2 That "concluded proceedings" are those that have reached a final decision, whereas withdrawn proceedings, having never been decided on the merits, do not fall within this category.

8.3 That the threshold for invoking Section 195(1)(b)(i) & Section 195 (1)(b)(ii) has not been satisfied.

8.4 That the amended provision of Section 195 gives a clear indication qua the legislative intent pertaining to the bar imposed by the provision. The Section was enacted to curtail the frivolous complaints made by the private individuals.

8.5 That the relevant provision is held to be mandatory, however, non-compliance of the provision ought not to take away the remedy against the offense committed by the Petitioner. Also, in a case wherein the Vigilance inquiry was conducted by the High Court and it was found that the offense under the relevant sections have been committed, thus, directing the District Court to file the complaint for the prosecution of the Petitioner, it

becomes patently clear that the compliance of Section 340(3) of Cr. P.C. was observed while filing an FIR in the matter as the said direction were from the Constitutional Court itself.

8.6 That the offences provided under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are different and therefore cannot be said to be mutually inclusive to each other.

8.7 That an act which was an offence will not be converted into innocent act because of the limitation under Section 195 Cr.P.C

ANALYSIS

9. Heard Ld. Counsel for the appellant as well as Ld. Counsel for the respondent. We have also perused relevant documents on record and the judgment passed by the High Court.

10. The High Court vide its judgement dated. 07.10.2009 dismissed the Special Criminal Application No. 1690 of 2009 while observing as under:

> *"11. Adverting to the facts of the present case, the facts are in two parts. The first part pertains to the tampering, destruction, fabrication and substitution of documents forming part of the record of Special Civil Suit No.79 of 2003 which was lying in the record room after the civil suit came to be withdrawn. The second part is the production of the forged and fabricated decree in the execution proceedings. Thus, firstly what has to be ascertained is as to which of the offences are in respect of the record of the Civil Suit and which of the offences are in relation to the execution proceedings. The petitioner and other accused are sought to be*

prosecuted for the offences punishable under Sections 193, 196, 204, 209, 406, 420, 466, 467, 468, 471, 473, 474, 420, 120-B and 114 IPC. The offences punishable under Section 193 and 196 IPC would fall within the ambit of clause (b) (i) of sub-section (1) of Section 195 whereas Sections 466, 467, 468 and 471 would fall within the ambit of clause (b) (ii) of sub- section (1) of Section 195. In the present case insofar as the offences under Section 193 and 196 IPC are concerned, the same relate to the execution proceedings because it is in the said proceedings that the false and fabricated decree has been produced, Whereas insofar as the offences under Sections 466, 467, 468 and 471 of the Indian Penal Code are concerned, the same have been committed in connection with the record of the Special Civil Suit. On behalf of the petitioner it has been contended that the record of the Special Civil Suit is also a proceeding within the meaning of the expression "proceeding, therefore, even after the disposal of the suit, the nature of the proceeding does not change, hence the offence committed would be in relation to the proceedings of the Special Civil Suit and the offence of forgery and fabrication having been committed while the documents were in custodia legis the provisions of Section 195(1)(b)(ii) would be clearly attracted.

12. Therefore the question that arises is whether Section 195 of the Code envisages a concluded proceeding also to be a proceeding within the meaning of the said expression so as to attract the bar of the said provision. Proceedings of a suit would stand concluded, either by way of a judicial pronouncement or if the party withdraws or does not press the same. What would be the legal implications once a suit is withdrawn? Would the proceeding still subsist or would it cease to exist. In the opinion of this Court, once a proceeding is withdrawn, there would be no proceeding before the Court as the plaintiff has taken back the proceeding. The position would be akin to no proceeding having been filed except for the purpose of barring a subsequent suit on the same cause of action. However, the record would be required to be maintained only for the purpose of record to indicate that such proceeding had been instituted. In the circumstances, once the suit had been withdrawn, there was no proceeding in the Court. In the opinion of this Court, by merely maintaining the documents in the record room, it cannot be said that the documents are in custodia legis, as envisaged under Section 195 of the Code. Hence, tampering with the record which is kept in the record room after the suit is disposed of would not fall within the purview of the provisions of section 195 of the Code as the same cannot be said to be an offence in relation to any proceeding in any Court. Besides, as held

by the Apex Court in Iqbal Singh Marwah's case, for the purpose of falling within the ambit of Chapter XXVI of the Code, the offence committed should be of such type which directly affects the administration of justice, viz. which is committed after the document is produced or given in evidence in court. In the ordinary course an offence would be committed in connection with a document produced or evidence given in court with the object of using the same in the very same proceeding to obtain a favourable result and such offence would directly affect the administration of justice as the Court would rely upon such document for the purpose of adjudicating the case. Whereas, once the case is concluded, tampering with the documents would not in any manner affect the administration of justice. Such offence would be a plain and simple offence under the Indian Penal Code of tampering with documents and forging and fabricating documents and not an offence affecting the administration of justice. In the circumstances, any offence committed in relation to the documents kept in the record room, cannot be said to be an offence falling within the ambit of Section 195(1) (b) (ii) of the Code so as to attract the provisions of Section 340 of the Code.

13 Adverting to the second part of the offence, viz. production of the said forged and fabricated decree in the execution proceedings, the same would be directly covered by the decision of the Apex Court in the case of Iqbal Singh Marwah (supra). As noticed hereinabove, the offence in question is committed in two parts: firstly, tampering with the original record of the Court which was lying in the record room after withdrawal of the suit by destroying part of the original record and substituting the same with a forged and fabricated decree and secondly instituting execution proceedings on the basis of such fabricated decree Thus the second part of the offence consists of producing a forged and fabricated decree in the execution proceeding. The Apex Court in the said decision has held that for the purpose of falling within the ambit of Chapter XXVI of the Code, the offence committed should be of such type which directly affects the administration of justice, viz. which is committed after the document is produced or given in evidence in court. Any o'fence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice. Applying the said principle to the facts of the present case, insofar as the second part of the offence is concerned, the same has been committed prior to the production of the document in the Court, in the circumstances, it would not be

an offence which directly affects the administration of justice so as to fall within the ambit of section 195 of the Code.

14. In view of the above discussion, since the offence in question does not fall within the ambit of section 195 of the Code, as a natural corollary, the exception below section 195(1) as well as the provisions of section 340 of the Act would not be come into play and there is no embargo on the power of the Court to take cognizance of the offence on the charge-sheet filed by the police authorities pursuant to the first information report lodged by the respondent No.2. In the circumstances, no infirmity can be found in the impugned order dated 24th July, 2009 passed by the learned Additional Sessions Judge, Bharuch in Criminal Revision Application No.112 of 2007 as well as in the order dated 25th May, 2007 passed by the learned Chief Judicial Magistrate, Bharuch below Exh.17 so as to warrant any intervention by this Court."

11. Learned Senior Advocate for the petitioner submitted that the High Court failed to appreciate that the alleged offence in question having been committed in relation to court proceedings would fall within the ambit of Section 195 of CrPC and hence, cognizance of the same could not have been taken except on a complaint in writing singed by the learned Presiding Officer though this_argument looks attractive at the first blush, however considering the facts of the matter, the material submitted before this court and the law applicable to the facts of the present case, we are of the opinion that the submissions of learned Shri Ahmadi, are unacceptable.

12. As stated above, the factual scenario of the present case show that the proceedings initiated by way of a suit concluded on a pursis filed by the petitioner himself on 2nd April, 2003. It was submitted in the pursis that as the parties have arrived at an amicable settlement the plaintiff be permitted to withdraw the suit unconditionally. On receipt of the application as per the procedure being followed in the respective Trial Court the learned Trial Judge made an endorsement on the last page of the plaint as well as on the application for interim injunction to the fact that suit is withdrawn unconditionally. Though, the statement was made in the pursis, in receipt of the settlement arrived at between the parties, the petitioner had not produced the deed of settlement before the Court. An entry was made in the Rojkam (daily order sheet) that as the suit was sought to be withdrawn unconditionally, no decree is drawn.

13. The petitioner who was carrying an ill intention and with the oblique motive by hatching conspiracy with some court employees started harassing one of the defendant Laksheshbhai Patel by demand of money. The threats of dire consequences were also extended to Laksheshbhai Patel on his failure to pay the amount.

14. When the defendant sought legal advice for the counsel and made enquiry, one of the accused, a court employee that is the baliff in the court of Principal Senior Civil Judge, Bharuch told him about filing of the Execution Petition. On that backdrop filing of the said Execution Petition by the petitioner was indicative of an ill intention and the oblique motive of the petitioner.

15. On the further enquiry certain startling facts were disclosed namely: 1) the application that is withdrawn the pursis on which the endorsement was made by the Presiding Officer was missing from the record; 2) it was replaced by another bogus and concocted document as under the title as 'settlement pursis'. 3) when there is entry in the Rojkam that the decree is not drawn as the suit was withdrawn but contrary to this entry there was a bogus decree bearing signature of the clerk drawing the decree and signature of the Judicial Office that is Civil Judge Shri Khimani; 4) it was also revealed that bogus rubber stamps were used, while replacing the documents.

16. All these facts referred to above, clearly indicate that the proceedings initiated by filing of Civil Suit were concluded on submitted the withdrawal pursis. All the subsequent acts that is

preparation of bogus documents and replacing these bogus documents to the court record were the acts post conclusion of the proceedings. It may not be out of place here to mention that as the suit was withdrawn on the withdrawal pursis and the entry was made in Rojkam the documents in the said civil Suit No. 79 of 2003 were divided into four files viz. A, B, C and D and thereafter the said files were despatched vide Outward Register No. 215 of 2004 to the Record Office of District Court, Bharuch on 4th May, 2004, as per the provisions of the Civil Courts Manual. The record, thereafter, was lying in the custody of the Deputy Registrar-cum-Record Keeper, District Court, Bharuch. Thus, the record was not in the custody of the court before whom the civil suit was filed.

17. In the factual matrix of the present case, Section 195 CrPC is not at all applicable. On the contrary, the principles which are expounded by this Court in certain judgments and collectively, referred to in the judgment of ***M.R.Ajayan v. State of Kerala & Ors.***[1] in para 21 relating to prosecution under Section 195 CrPC are applicable in the present case. In our opinion, the following principles from ***M.R. Ajayan (supra)*** are applicable:

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iv. Broadly, the scheme of the Section requires that the offence should be such which has a direct bearing on the discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a Court of justice, affecting the administration of justice.

v. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by the Court.

vi. To attract the bar under Section 195(1)(b), the offence should have been committed when the document was in "custodia legis" or in the custody of the Court concerned.

viii. High Courts can exercise jurisdiction and power enumerated under Section 195 on an application being made to it or suo-motu, whenever the interest of justice so demands.

ix. In such a case, where the High Court as a superior Court directs a complaint to be filed in respect of an offence covered under Section - 195(1)(b)(i), the bar for taking cognizance, will not apply.

It is not in dispute that the object of imposition of the bar under Section 195 CrPC is to avoid the frivolous litigation and not to provide shelter or tool to a mischief player or an offender.

18. Thus, in our opinion, the judgment and order passed by the High Court, is just and proper. The High court by considering the facts, in its proper perspective, arrived at a just conclusion. Therefore, we see no reason to show any indulgence in the judgment and order passed by High Court impugned in the present appeal. The appeal thus being devoid of any merit is liable to be dismissed. Accordingly, the same is dismissed.

19. Pending application(s), if any, shall be disposed of accordingly.

.....J
[BELA M. TRIVEDI]

.....J
[PRASANNA B. VARALE]

NEW DELHI;
MAY 13, 2025.