



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3521]

TUESDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 3169/2026

Between:

ABDUL AZEEM, S/O SHAIK HUSSAIN, AGED 44 YEARS, R/O.
D.NO.5/886-1, NOORUDDINPETA, MACHILIPATNAM, KRISHNA
DISTRICT

GORRIPATI GOPICHAND, S/O LATE LEELA KRISHNA, AGED 60
YEARS, R/O. EDEPALLI, MACHILIPATNAM, KRISHNA DISTRICT.

...PETITIONERS/ACCUSED Nos.4 and 6

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AMARAVATI,
GUNTUR DISTRICT.

2. THE SUPERINTENDENT OF POLICE, KRISHNA DISTRICT, AT
MACHILIPATNAM.

3. STATION HOUSE OFFICER, SUB INSPECTOR OF
POLICE, INUGUDURU POLICE STATION.

...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused(S):

MALLAVOLU NIKITHA

Counsel for the Respondent/complainant(S):

PUBLIC PROSECUTOR

The Court made the following:

ORDER:

Criminal Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C.,') by the Petitioners/ Accused Nos.4 and 6, seeking to quash the proceedings against Petitioners/Accused Nos.4 and 6 in C.C.No.555 of 2020 on the file of II Additional Judicial First Class Magistrate, Machilipatnam, Krishna District.

2. The allegations against the Petitioners arise from a report lodged by one Mr. Lakshmimojinaidu Adapa, a labourer and resident of Ramanaidupet, Machilipatnam. He lodged a complaint with the police alleging that on 07.01.2020 at about 17:20 hours, near the Head Post Office, Main Road, Machilipatnam, the Petitioners, who are sympathizers of the Telugu Desam Party and Janasena Party, formed themselves into an unlawful assembly and observed a *Rasta Roko* by standing on the main road near the Head Post Office and raising slogans. It was further alleged that, as a result of their actions, inconvenience was caused to the public by obstructing the free flow of traffic. Based on the said report, a case in Crime No.5 of 2020 was registered in the Robinsonpet Police Station for the offences punishable under Sections 341 and 188 read with Section 34 of the Indian Penal Code, 1860 (for brevity 'the I.P.C.,').

3. Learned Counsel for the Petitioner, Ms. M. Nikitha, contends that none of the offences under Sections 341 and 188 of 'the I.P.C.,' are made out. There is no material placed on record to establish that any order was promulgated by a lawfully empowered public servant and that such order was in force at the time of the alleged offence. Therefore, there are no allegations of disobedience resulting in harmful consequences as required under Section 188 of 'the I.P.C.' Further, there is no act of wrongful restraint as defined under Section 339 of 'the I.P.C.,' and in the absence of any voluntary obstruction preventing a person from proceeding in any direction in which he has a right to proceed, the offence under Section 341 of 'the I.P.C.,' is not attracted. The FIR is bereft of the essential ingredients required to constitute the alleged offences, and therefore the registration of the case itself amounts to an abuse of the process of law.

4. Ms. P.Akhila Naidu, learned Assistant Public Prosecutor, in refutation of the submissions advanced by the learned Counsel for the Petitioners, would contend that the allegations in the FIR clearly disclose the commission of cognizable offences. It is urged that the Petitioners, being political sympathizers, had deliberately congregated on a public thoroughfare and staged a *Rasta Roko*, thereby obstructing the free flow of traffic and causing inconvenience to the general public. Such conduct squarely attracts the mischief contemplated under Section 341 of 'the I.P.C.,' inasmuch as the voluntary obstruction of the road constitutes wrongful restraint within the

meaning of Section 339 of 'the I.P.C.' Further, the act of forming an unlawful assembly and raising slogans in defiance of lawful authority amounts to disobedience of public order, thereby invoking Section 188 of 'the I.P.C.,' irrespective of whether a specific written order is produced, since the very nature of the act demonstrates conscious disregard of lawful directions intended to preserve public tranquillity. The learned Assistant Public Prosecutor would therefore submit that the FIR is not bereft of essential ingredients, but rather *prima facie* establishes the offences alleged, and that the Petitioners cannot seek to quash the proceedings at the threshold by invoking technicalities, as the matter requires full-fledged trial and appreciation of evidence.

5. Heard the learned Counsel for the Petitioners and the learned Assistant Public Prosecutor.

6. Thoughtful consideration is bestowed on the arguments advanced by the learned Counsel for both sides. I have perused the entire record.

7. In the light of the case of the prosecution and the contentions of the learned Counsel for both the sides, now the point for consideration is:

"Whether the proceedings in C.C.No.555 of 2020 on the file of II Additional Judicial First Class Magistrate, Machilipatnam, Krishna District is liable to be quashed in exercise of the inherent powers of the High Court under Section 482 of 'the Cr.P.C.,'/Section 528 of 'the BNSS'?"

8. In this regard it is apposite to refer to the judgment of the Hon'ble Apex Court in **C. Muniappan v. State of T.N.**,¹ wherein at paragraph Nos.28 & 29, it is held as under:

“28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those sections. (Vide Govind Mehta v. State of Bihar [(1971) 3 SCC 329, Patel Laljibhai Somabhai v. State of Gujarat [(1971) 2 SCC 376, Surjit Singh v. Balbir Singh [(1996) 3 SCC 533 : State of Punjab v. Raj Singh [(1998) 2 SCC 391 : K. Vengadachalam v. K.C. Palanisamy [(2005) 7 SCC 352 : and Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370)

29. The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq v. State of W.B. [(1953) 1 SCC 637 and Durgacharan Naik v. State of Orissa [AIR 1966 SC 1775 : this Court held that the provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it.”

9. Thus, in **C. Muniappan** *supra*, it is held that Section 195 of ‘the Cr.P.C.’ bars courts from taking cognizance of offences like Section 188 of ‘the IPC’ unless there is a written complaint by the concerned public servant,

¹ (2010) 9 SCC 567

in order to prevent frivolous or malicious prosecutions and to ensure adherence to the prescribed procedure. This bar cannot be circumvented by misdescribing the offence under other provisions, as the true nature of the offence determines the applicability of Section 195 of 'the Cr.P.C'.

10. The Hon'ble Apex Court in **Govind Mehta v. State of Bihar**², at paragraph No.12 it is held as under:

"12. According to Mr Jyoti Narayan, the point of time at which the legality of the cognizance taken by the Magistrate to be adjudged, is the time when cognizance is actually taken under Section 190 of the Code and applying that test in the present case, it will be seen that there has been a breach of Section 195(1)(b) and (c) and Section 476 of the Code. The proposition that the point of time at which the legality of the cognizance taken is to be adjudged is the time when cognizance is actually taken is laid down by this Court in M.L. Sethi v. R.P. Kapur [AIR 1967 SC 528]. The Magistrate has normally got jurisdiction to take cognizance under Section 190 of the Code in the circumstances enumerated therein. Section 195 is in fact a limitation on the unfettered powers of a Magistrate to take cognizance under Section 190 of the Code. Therefore, at the stage when the Magistrate is taking cognizance under Section 190, he must examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by any of the clauses (a) to (c) of Section 195(1). Therefore, it is needless to state that if there is a non-compliance with the provisions of Section 195, the Magistrate will have no jurisdiction to take cognizance of any of the offences enumerated therein."

11. Therefore, in **Govind Mehta supra**, it is held that the legality of cognizance must be assessed at the time the Magistrate takes cognizance under Section 190 of 'the Cr.P.C.,' and Section 195 operates as a limitation on such power. If there is non-compliance with Section 195 of 'the Cr.P.C.,' the Magistrate lacks jurisdiction to take cognizance of the specified offences.

14. The Hon'ble Apex Court in **Surjit Singh v. Balbir Singh**³, at paragraph No.6 it is held as under:

² (1971) 3 SCC 329

“6. The object thereby is to protect persons from needless harassment by prosecution for private vendetta; to preserve purity of the judicial process and unsullied administration of justice; to prevent the parties of the temptation to pre-empt the proceedings pending in a court and to pressurise and desist parties from proceeding with the case. Equally when the act complained of relates to an offence, i.e., contempt of lawful authority of public servant, or against public justice or for offences relating to documents produced or given in evidence, public justice demands absolute bar of private prosecution and that power be given to the court to lay complaint under Section 340 of the Code as per the procedure prescribed therein. In Patel Laljibhai case [(1971) 2 SCC 376 the main controversy was as to when the accused had become a party to the proceedings. However, after the Code came into force in 1974 replacing the earlier Code of 1898 it was omitted and so it is no longer of any relevance. It is seen that the appellants therein had filed a civil suit on the basis of a cheque dated 22-11-1963 and the civil suit had come to be dismissed on 30-1-1965. Thereafter, the private complaint was filed on 16-11-1965. In the light of those facts it was held that the respondent was a party to the proceedings in the suit and that, therefore, the private complaint was not maintainable.”

12. In light of the above, in **Surjit Singh** *supra*, it is held that the provision aims to prevent private vendetta, protect the integrity of judicial proceedings, and avoid harassment or misuse of criminal process, especially in matters affecting public justice. Accordingly, in such cases, private prosecution is barred and only the court is empowered to initiate proceedings under Section 340 of ‘the Cr.P.C.’ as illustrated in *Patel Laljibhai* case.

13. The Hon’ble Apex Court in **State of Punjab v. Raj Singh**⁴, at paragraph No.2 held as under:

“2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter

³ (1996) 3 SCC 533

⁴ (1998) 2 SCC 391

XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 CrPC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in Gopalakrishna Menon v. D. Raja Reddy [(1983) 4 SCC 240 on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 CrPC.”

14. Thus, in **Raj Singh** *supra*, it is held that Section 195 of ‘the Cr.P.C.,’ applies only at the stage of taking cognizance by the court and does not restrict the statutory power of the police to investigate an FIR disclosing a cognizable offence. However, after investigation, the court cannot take cognizance in view of Section 195 of ‘the Cr.P.C.,’ unless a complaint is filed by the competent authority under Section 340 of ‘the Cr.P.C’.

15. The Hon’ble Apex Court in **K. Vengadachalam v. K.C. Palanisamy**⁵, at paragraph Nos.3 & 4 held as under:

“3. By the impugned order, the High Court of Madras quashed the prosecution of the respondents, which was launched under Sections 467, 468, 471, 472 and 477-A read with Section 34 of the Penal Code (for short “IPC”) on the ground that the complaint was barred under Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short “CrPC”). Undisputedly, the forgery is said to have been committed before the document was filed. Earlier, there was diverse opinion of this Court as to whether protection of Section 195(1)(b)(ii) CrPC was available in relation to forgery committed prior to the filing of document or after its filing. A Constitution Bench decision of this Court in the case of Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370 has categorically laid down in para 33 of the judgment that protection engrafted under Section 195(1)(b)(ii) CrPC would be attracted only when

⁵ (2005) 7 SCC 352

the offences enumerated in the said provision have been committed with respect to a document after it had been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis. This being the position, in our view, the High Court was not justified in quashing prosecution of the respondents on the ground that provisions of Section 195(1)(b)(ii) CrPC were applicable.

4. Mr K.T.S. Tulsi, learned Senior Counsel appearing on behalf of the respondents submitted that the respondents are entitled to claim protection under Section 195(1)(a) CrPC, which enumerates the offences punishable under Sections 172 to 188 IPC. It has been pointed out that according to the petition of complainant, the accused persons had falsely filed a complaint before the Deputy Registrar, Chits, who dismissed the matter finally. The said complaint was not dismissed by the Deputy Registrar on merits, but without any adjudication, inasmuch as there was no finding that the complainant had lodged a false complaint before the Deputy Registrar. The present complaint does not relate to falsity or otherwise of the complaint before the Deputy Registrar; rather according to the prosecution case, the accused persons are said to have forged the document. This being the position, in our view, the provisions of Section 195(1)(a) CrPC, shall have no application to the case in hand. For the foregoing reasons, we are of the view that the High Court was not justified in quashing prosecution of the respondents.”

16. Accordingly, in **K. Vengadachalam** *supra*, it is held that Section 195(1)(b)(ii) of ‘the Cr.P.C.’ applies only when forgery is committed after a document is produced in court; hence, it does not bar prosecution for forgery committed prior to its filing. Similarly, Section 195(1)(a) of ‘the Cr.P.C.’ is inapplicable where the allegation is of forgery and not of filing a false complaint, and therefore, the High Court erred in quashing the prosecution.

17. The Hon’ble Apex Court in **Basir-Ul-Huq v. State of W.B.**,⁶ at paragraph No.12 held as under:

“12. Section 195 CrPC, on which the question raised is grounded, provides, inter alia, that no court shall take cognizance of an offence punishable under Sections 172 to 188IPC, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under Section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence

⁶ (1953) 1 SCC 637

other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well. The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the cognizance by the Magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made. It was however argued that if on the same facts an offence of which no cognizance can be taken under the provisions of Section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of the section and prosecution for that other offence is taken cognizance of without the requirements of Section 195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code.”

18. Thus, in **Basir-Ul-Huq** *supra*, it is held that Section 195 of ‘the Cr.P.C.,’ mandates a written complaint by the concerned public servant for offences under Sections 172–188 of ‘the IPC’, but it does not bar cognizance of other distinct offences arising from the same facts. However, its provisions cannot be circumvented by disguising an offence covered under Section 195 as a different offence to avoid the statutory bar.

19. The Hon’ble Apex Court in **State of U.P. v. Mata Bhikh**⁷, wherein at paragraph Nos.15 & 16 it is held as under:

“15. On a scrutiny of Section 195(1)(a), we are of the view that a successor in office of a public servant concerned will also fall within the ambit of the expression ‘public servant concerned’. Any other view contrary to it will only create difficulties in certain situations. For example, in a case where a public servant concerned promulgates a preliminary order under Section 133, 145 or 146 of the Code of Criminal Procedure and is transferred or retires or ceases to be in office on any account before a final order is passed, would it mean that the successor who is under the law to continue the same proceeding has no right to file a complaint if the preliminary order is disobeyed. The answer would be that the successor in office can file a complaint. In every such situation,

⁷ (1994) 4 SCC 95

one cannot expect the superior officer to whom the public servant is administratively subordinate to file a complaint against the wrongdoers disobeying either the preliminary order or the final order promulgated by the public servant concerned.

16. Therefore, in the light of the dictum laid down in Ajaib Singh [AIR 1968 SC 1422 we are of the view that the successor in office of the public servant gets into the same position of the public servant concerned and he is in law eligible to file a complaint against wrongdoers. To say in other words, the successor in office falls within the ambit of the expression 'public servant concerned'. The view taken by the High Court in the impugned judgment cannot be sustained and accordingly, the judgment of the High Court is set aside and the appeal is allowed."

20. Consequently, in **Mata Bhikh** *supra*, it is held that a successor in office of a public servant is also covered within the expression "public servant concerned" under Section 195(1)(a) of 'the Cr.P.C.,' and is competent to file a complaint. Therefore, the successor has the same legal authority as the original officer, and the contrary view of the High Court is unsustainable.

21. The Hon'ble Apex Court in **State of Karnataka v. Hemareddy**⁸, at paragraph No.8 it is held as under:

"8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld."

22. Thus, in **Hemareddy** *supra*, it is held that where in the same transaction, offences both covered and not covered under Section 195(1)(b) of 'the Cr.P.C.,' are committed, they cannot be split up for separate prosecution. Accordingly, prosecution for offences outside Section 195(1)(b) cannot be

⁸ (1981) 2 SCC 185

sustained independently when they are inseparably connected with offences requiring a court complaint.

23. The Hon'ble Apex Court in **Ajaib Singh v. Joginder Singh**⁹, at paragraph No.5 it is held as under:

"5. The learned counsel next contends that the complaint could only be filed by the Magistrate before whom the original proceedings were taken. He says that according to Section 195(1)(b) CrPC a complaint in respect of Sections 193, 195 and 211 IPC, can only be made by the Court in which the proceedings out of which the offences arose took place. We see no force in this contention. Section 559 enables a successor-in-office of a Magistrate to file a complaint. The relevant portion of Section 559 reads as follows:

"559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate."

This section was substituted for the original Section 559 by the Code of Criminal Procedure (Amendment) Act (18 of 1923). Since the amendment it has been held, and we think rightly, that a successor in office of a Magistrate can file a complaint under Section 476, CrPC, in respect of an offence under Section 195 IPC, committed before his predecessor. (See Behram v. Beparor [27 Cr LJ 776] Bara KanonManjhi v. GopiManjhi [AIR 1927 Pat 327] ; and In re SubramaniamChettiar [AIR 1957 Mad 442] . This section applies to all Magistrates and there is no reason why the plain terms of the section should be cut down to limit it, as suggested by the learned counsel for the appellant, to Magistrates whose courts are permanent. It seems to us further clear that sub-section (2) has not the effect of limiting Section 559(1) Section 559(2) applies when there is a doubt as to who the successor is, and that doubt can be resolved in the manner laid down in sub-section (2). The sub-section does not mean, as contended by the learned counsel, that until a successor is determined under sub-section (2) there is no successor for the purposes of sub-section (1). If there is no doubt about who the successor is, then that person can exercise the powers under sub-section (1). We accordingly hold that the complaint was properly filed by Shri Joginder Singh "Karangarhia", Magistrate."

⁹1968 SCC OnLine SC 253

24. In light of the above, in **Ajaib Singh** *supra*, it is held that a successor Magistrate is competent to file a complaint under Section 195 of 'the Cr.P.C.,' as Section 559 empowers a successor-in-office to exercise the powers and duties of the predecessor. Therefore, a complaint filed by a successor Magistrate is valid, and the contention that only the original Magistrate can file it has no merit.

25. At this juncture, it is apposite to refer the judgment of the Hon'ble Apex Court in **Bandekar Bros. (P) Ltd. v. Prasad Vassudev Keni**¹⁰, wherein at para No.48, it is held as under:

"48. Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) CrPC must be followed. Thus, in State of Karnataka v. Hemareddy [State of Karnataka v. Hemareddy, (1981) 2 SCC 185 : 1981 SCC (Cri) 395], this Court referred to a judgment of the Madras High Court (V.V.L. Narasimhamurthy, In re [V.V.L. Narasimhamurthy v. State, 1953 SCC OnLine Mad 236 : AIR 1955 Mad 237]) and approved its ratio as follows : (Hemareddy case [State of Karnataka v. Hemareddy, (1981) 2 SCC 185 : 1981 SCC (Cri) 395], SCC pp. 190-91, paras 7-8)

"7. ... In the third case, Somasundaram, J., has observed : (V.V.L. Narasimhamurthy case [V.V.L. Narasimhamurthy v. State, 1953 SCC OnLine Mad 236 : AIR 1955 Mad 237], SCC OnLine Mad)

'The main point on which Mr JayaramaAyyar appearing for the petitioner seeks to quash this committal is that on the facts an offence under Section 193 IPC is disclosed for which the court cannot take cognizance without a complaint by the court as provided under Section 195(1)(b) of the Criminal Procedure Code. The first question which arises for consideration is whether on the facts mentioned in the complaint, an offence under Section 193 IPC is revealed. Section 193 reads as follows:

"193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage 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."

¹⁰(2020) 20 SCC 1

"Fabrication of false evidence" is defined in Section 192. The relevant portion of it is:

"Whoever causes any circumstance to exist intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance 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"."

The effect of the allegations in the complaint preferred by the complainant is that the petitioner has caused this will to come into existence intending that such will may cause the Judge before whom the suit is filed to form an opinion that the will is a genuine one and, therefore, his minor daughter is entitled to the property. The allegation, therefore, in the complaint will undoubtedly fall under Section 192 IPC. It will, therefore, amount to an offence under Section 193 IPC i.e. fabricating false evidence for the purpose of being used in the judicial proceeding. There is no doubt that the facts disclosed will also amount to an offence under Sections 467 and 471 IPC. For prosecuting this petitioner for an offence under Sections 467 and 471, a complaint by the court may not be necessary as under Section 195(1)(b) CrPC a complaint may be made only when it is committed by a party to any proceeding in any court.

Mr JayaramaAyyar does not give up his contention that the petitioner, though he appears only a guardian of the minor girl, is still a party to the proceeding. But it is unnecessary to go into the question at the present moment and I reserve my opinion on the question whether the guardian can be a party to a proceeding or not, as this case can be disposed of on the other point viz. that when the allegations amount to an offence under Section 193 IPC, a complaint of court is necessary under Section 195(1)(a) CrPC and this cannot be evaded by prosecuting the accused for an offence for which a complaint of court is not necessary.'

8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld.'"

26. Therefore, in **Bandekar Bros. (P) Ltd.**, *supra*, it is held that where, in the same transaction, offences both attracting and not attracting Section 195 of 'the Cr.P.C.,' arise and are inseparable, the mandate of Section 195(1)(b) of 'the Cr.P.C.,' must be followed. Such requirement cannot be avoided by

prosecuting the accused for other offences for which a court complaint is not required.

27. This Court in **Kantamaneni Ravishankar v. State of A.P.**,¹¹ at para No.86 held as under:

“86. Therefore, to register a crime against a person, who disobeyed the ordinance, there must be a complaint from public servant about the disobedience of ordinance. Hence, the very registration of crime for the offence punishable under Section 188 of I.P.C. is contrary to the settled law laid down by the Apex Court and other High Courts (referred supra) and the police officer is incompetent to register a crime for the offence punishable under Section 188 of I.P.C. on the complaint of any other person other than a public servant and any other person, who is authorized by public servant. Consequently, registration of crime against the petitioner is vitiated by irregularity.”

28. Thus, in **Kantamaneni Ravishankar supra**, it is held that registration of an offence under Section 188 of ‘the IPC’ requires a complaint by the concerned public servant, and any FIR registered by police on a complaint from others is legally unsustainable and vitiated.

29. This Court, in **Kollu Ravindra v. State of A.P.**¹² has categorically held that a complaint invoking offences under Sections 172 to 188 of ‘the I.P.C.,’ must emanate from a “public servant” as envisaged under Sections 190 and 200 of ‘the Cr.P.C.’ In the absence of such a statutory complaint, the learned Magistrate is divested of the competence to take cognizance of the alleged offence. The bar contained in Section 195 of ‘the Cr.P.C.,’ therefore, operates as a clear embargo on the assumption of cognizance based merely on a police report.

¹¹2020 SCC OnLine AP 726

¹² 2025 SCC OnLine AP 3870

30. This Court, further also held in **Kanakamedala Ravindra Kumar v. State of A.P.**¹³ that when the allegations arise out of a single, indivisible transaction giving rise to multiple offences, one falling squarely within the ambit of Section 195 of 'the Cr.P.C.,' and another ostensibly outside its sweep, such offences, being inextricably interwoven, cannot be artificially segregated to bypass the statutory embargo. The Court has categorically held that mere deletion of Section 188 of 'the I.P.C.,' from the charge sheet does not efface the bar, for the factual substratum of the alleged act continues to be integrally connected with the disobedience of a promulgated order, thereby mandating a complaint by the competent public servant as required under Section 195(1)(a) of 'the Cr.P.C.'

31. Considering the law laid down by the Hon'ble Apex Court in **C. Muniappan** *supra*, the learned II Additional Judicial First Class Magistrate, Machilipatnam was not authorized to take cognizance in view of the embargo under Section 195 of 'the Cr.P.C.'

32. Further, as per Section 195 of 'the Cr.P.C.,' there is a bar for taking cognizance for the offences punishable under Sections 172 to 188, both inclusive of, 'the I.P.C.,' unless there is a complaint in writing by the public servant concerned.

33. In the instant case, there is no 'complaint' by the public servant, and there was only chargesheet filed under Section 188 of 'the Cr.P.C.' The

¹³ Criminal Petition No: 987/2020

'complaint' as contemplated under Section 190 read with 200 of 'the Cr.P.C.,' was not filed. When such a complaint was not filed, but based on the police report, the learned Magistrate was not authorized to take cognizance of the alleged offences, inasmuch as, under Section 195 of 'the Cr.P.C.,' there is an embargo for taking cognizance.

34. The Court, upon meticulous scrutiny of the record, found that the very substratum of the prosecution rested upon an impermissible foundation. Section 195 of 'the Cr.P.C.,' erects a jurisdictional bar against cognizance of offences under Sections 172 to 188 of 'the I.P.C.,' except upon a written complaint by the public servant concerned. In the present case, no such statutory complaint was lodged, instead, cognizance was sought to be assumed upon a police report. This procedural infirmity strikes at the root of the prosecution, rendering the initiation of criminal proceedings wholly incompetent and vitiated in law. The embargo under Section 195 of 'the Cr.P.C.,' is not a mere technicality but a substantive safeguard against frivolous or malicious prosecutions, and its breach deprives the Magistrate of jurisdiction *ab initio*.

35. It is manifest that the allegations contained in the FIR do not satisfy the *sine qua non* of wrongful restraint as contemplated under Section 339 of 'the I.P.C.' The gravamen of the offence under Section 341 of 'the I.P.C.,' is the voluntary obstruction of a determinate individual from proceeding in a direction in which he is legally entitled to move. A mere averment of inconvenience to

the public or disruption of traffic, without specification of any person so restrained, falls short of the statutory requirement. In the absence of such particulars, the invocation of Section 341 of 'the I.P.C.,' is legally untenable and cannot be sustained.

36. The inherent jurisdiction vested in this Court under Section 482 of 'the Cr.P.C.,' is designed to obviate abuse of the process of law and to secure the ends of justice. Where cognizance is assumed upon a procedurally impermissible foundation, as in the present case where the statutory embargo under Section 195 of 'the Cr.P.C.,' has been disregarded, the continuation of proceedings would amount to oppressive harassment of the accused. The Court is therefore enjoined to exercise its inherent powers to interdict such proceedings at the incipient stage, lest the criminal process itself be reduced to an instrument of injustice.

37. Undoubtedly, the preservation of public order and the regulation of civic life are matters of paramount importance. Yet, the invocation of penal consequences must be circumscribed by the statutory safeguards enacted by the legislature. Demonstrations or political expressions, even if inconvenient, cannot *ipso facto* be criminalized unless they fall squarely within the four corners of the penal provisions. In the absence of a promulgated order by a competent public servant and a complaint in writing as mandated under Section 195 of 'the Cr.P.C.,' the liberty of the citizen must prevail over prosecutorial zeal. The majesty of the rule of law demands scrupulous

adherence to these statutory preconditions before subjecting individuals to the rigours of criminal trial.

38. Further, the Court observed that the allegations in the FIR, even if taken at face value, do not disclose the essential ingredients of the offences invoked. Section 188 of 'the I.P.C.,' requires disobedience of a lawful order promulgated by a competent authority. Thus, the FIR is bereft of the *sine qua non* for these offences, and continuation of proceedings would amount to an abuse of process.

39. In culmination, this Court is of the opinion that the prosecution was unsustainable both on jurisdictional and substantive grounds. The absence of a statutory complaint under Section 195 of 'the Cr.P.C.,' the lack of foundational ingredients for the alleged offences, and the taint of *mala fides* collectively render the proceedings in FIR No.05 of 2020 an abuse of the process of law.

40. Therefore, the proceedings against the Petitioners/Accused Nos.4 and 6 in C.C.No.555 of 2020 on the file of II Additional Judicial First Class Magistrate, Machilipatnam, Krishna District, are liable to be interfered and quashed.

41. In the result, the Criminal Petition is allowed. Accordingly, the proceedings against the petitioners in C.C.No.555 of 2020 on the file of II Additional Judicial First Class Magistrate, Machilipatnam, Krishna District, are hereby quashed.

As a sequel, Miscellaneous petitions, if any pending, shall stand closed.

DR. Y. LAKSHMANA RAO, J

Date: 21.04.2026
RSI

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THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 3169 of 2026

Date: 21.04.2026
RSI