

GAHC010029372019



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/982/2019

SANTOSH KUMAR PODDER
S/O- RAJESHWAR PODDER, R/O- RAJGHAR ROAD, OPP. SUNDAY CAR
BAZAR, P.S. CHANDMARI, DIST- KAMRUP (M), ASSAM, PIN- 781003

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
TRANSPORT, DISPUR, GHY-6

2:PUBALI GOSWAMY
D/O- SRI SRINATH GOSWAMI
R/O- SAURAV NAGAR
BELTOLA
P.S. BASISTHA
DIST- KAMRUP (M)
ASSAM

3:THE MEMBER
MOTOR ACCIDENT CLAIM TRIBUNAL NO.3
KAMRUP (M) AT GHY
PIN- 781001

4:THE OFFICER-IN-CHARGE
BASISTHA P.S. BASISTHA
GHY-28
DIST- KAMRUP (M)
ASSAM

5:SRI PRINCE ROY
S/O- SRI DILIP ROY
R/O- VILL- DWARAKA NAGAR

P.O. AND P.S. DISPUR
DIST- KAMRUP (M)
ASSAM
PIN- 781006

6:THE ORIENTAL INSURANCE COMPANY LTD.
KHANAPARA BRANCH
KHANAPARA
GHY
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. G C PHUKAN, MR. K GOGOI,MR. A R TAHBILDAR,MR. S M SARMA

Advocate for the Respondent : SC, TRANSPORT, MR. N DAS, SC, ASSAM,PP, ASSAM,MR. C SHARMA (R6),MR. S DUTTA (R6),MR SISHIR DUTTA (R6),MR. R DE (R5)

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Advocate for the petitioner : A. R. Tahbildar

Advocate

Advocate for the respondents : Ms. M. D. Bora

SC, Transport Department

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 20.01.2026

Whether the pronouncement is of the operative part of the judgment? : No.

Whether the full judgment has been pronounced? : Yes

JUDGMENT AND ORDER

Heard Mr. A. R. Tahbildar, learned counsel for the petitioner, also heard Ms. A. Saikia, learned counsel appearing on instructions of Ms. M. D. Bora, learned Standing Counsel, Transport Department, Assam and Shri Subham Dutta, learned counsel for the respondent no. 6.

2. The petitioner before this Court is aggrieved vide judgment dated 10.12.2018 passed in M.A.C. Case No. 1331/2015 by the member, Motor Accident Claims Tribunal No 3 at Guwahati. Wherein the direction was issued to the Basistha Police Station for registering a case for giving false evidence by the petitioner.

3. The Respondent No. 2 filed a claim Case under Section 166/140, Motor Vehicle Act, 1988 being M.A.C. Case No. 1331/2015 before Member Motor Accident Claims Tribunal No. 3 Kamrup (Metro), at Guwahati claiming compensation on account of injury sustained by her in a motor vehicle accident that occurred on 23.12.2014 at about 3:00pm at Gaharikata Chowk, Beltola, due to rash and negligence driving of a Pulsar motor-cycle bearing registration No. AS-01-BK-4340.

4. In the said case, the owner of the motorcycle and his son were both arrayed as Opposite Parties along with the Oriental Insurance Company Limited, namely the Insurer of the alleged offending vehicle. The petitioner was examined as DW 4 in the said case, as the person who had driven the said vehicle. The Proforma Respondent in the present proceedings was examined as DW 2 who had stated before the Tribunal that he was the pillion rider of the vehicle and the petitioner was driving/ riding the vehicle. A Juvenile Case No.

13604/2014 was lodged before the Juvenile Justice Board against the Proforma Respondent No. 5. The Board ultimately acquitted the Proforma Respondent No. 5 accepting his plea that he was the pillion rider in the said vehicle. All these materials were brought before the learned Motor Accident Claim Tribunal No. 3, Guwahati.

5. It is the contention on behalf of the petitioner that despite all these materials available before the Tribunal, the award was passed in favour of Respondent No. 2 as a *Claimant*. The petitioner although is not essentially concerned with the award passed against Respondent No.2 is however affected by the direction in the said judgment/award that a copy of the said judgment/award sent to the Officer-in-Charge of the Basistha Police Station for treating the judgment as complaint to register a case against the petitioner for giving false evidence.

6. It is the submission on behalf of the petitioner that he never gave any false evidence nor false submissions before the Tribunal. All the evidence brought before the Motor Accident Claim Tribunal was duly corroborated and supported by the other defence witnesses.

7. It is submitted that the petitioner did not adduce any false evidence in order to attract the provisions of Section 193 of the Indian Penal Code. It is submitted that there is no reference to any materials evident from the perusal of the judgment by learned Tribunal to return a finding that the petitioner had adduced false evidence before the Tribunal warranting proceedings under Section 193 of the Indian Penal Code.

8. It is further submitted that this direction of the Tribunal is in violation of Section 195 of the Cr.P.C., wherein Section 195(b)(1) under the said Code no

Court can take cognizance of an offence alleged to have been committed under Section 193 of Indian Penal Code, except on a complaint in writing of that Court or by such Officer of the Court, as the Court may authorize.

9. It is submitted that there was no complaint made against the petitioner, nor did the Court direct registration of any complaint against the petitioner. Under such circumstances, the direction of the Tribunal to lodge an FIR to Basistha Police Station is contrary to the procedure prescribed under Section 195 of the Cr.P.C. Further, the procedure to be followed in respect of any cases mentioned under Section 195 is provided for under Section 340 of the Cr.P.C. The petitioner, therefore, submits that the writ petition be allowed and the impugned order be interfered with to the extent that was issued to the Basistha Police Station to register an FIR against the writ petitioner. Direction issued for filing an FIR should be set aside and quash. The writ petition be allowed.

10. Learned counsel for the Respondent strongly objects to the submissions made by the petitioners. That apart, it is submitted by the petitioner that the provision under Section 195, read with Section 340 of the Cr.P.C. is applicable only to a Court. The Motor Accident Claim Tribunal is not a court, it is a Tribunal. Therefore, there is no power bestowed on the Tribunal to take records to the procedure prescribed under Section 340 of the Cr.P.C.

11. In support of his contention the learned counsel for the petitioner has referred to and relied upon the judgment of the Apex Court rendered in Anil Kumar J. Bavishi versus Mahendra Kumar Jalan, passed in Criminal, passed in Criminal Appeal No. 5490 of 2024.

12. Counsel for the parties have been heard, pleadings available on record is carefully perused. The relevant provision of Section 195 and 340 of the Cr.P.C.

are given below:-

“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, 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.

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 for 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."

13. A careful perusal of the said provisions extracted above reveals that in

respect of offences under Section 193 it is provided that no court shall take cognizance except on a complaint in a writing of the court or by such Officer of that Court, as the Court may authorize in writing or some other Court to which the Court is subordinate too.

14. Under Section 340 of the Cr.P.C. a detailed procedure is prescribed as to when the court can proceed to make an enquiry in any offence referred to under Clause B Sub-Section 1 of Section 195. From a plain reading of Section 340 of the Cr.P.C., it is clear that detailed procedure is prescribed under the said section as to when any cognizance is required to be taken in respect of offences alleged prescribed under Section 195(1)(b) of the Cr.P.C.

15. The reference at this stage is also required to be made to the powers of the Claims Tribunal established under the Motor Vehicle Act 1988. Section 169 of the Motor Vehicles Act, 1988, prescribes the procedure and powers of the Claims Tribunal. It is provided therein that the claims tribunal shall have all powers of the Civil Court for the purposes of taking evidence on oath, enforcing attendance of witness, compelling the discovery and production of documents and material objects, and for such other purpose as may be prescribed. The Claims Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter 26 of the Code of Criminal Procedure.

16. Coming back to the Cr.P.C., it is seen that Section 340 of the Cr.P.C. is under Chapter 26. Therefore, under provision of Section 169 of the Motor Vehicles Act, 1988 a Claims Tribunal has been deemed to be a civil court for all purposes of Section 195 and Chapter 26 of the Code of Criminal Procedure. Therefore, the contention of the petitioner that the Motor Accident Claim Tribunal is not a Court, and therefore, does not have the power to take cognizance of offences under Section 195, read with Section 340 of the Cr.P.C.

cannot be accepted. The reference made to the judgment of the Apex Court in Anil Kumar J. Bavishi v/s Mahendra Kumar Jalan in Criminal Appeal No. 5490 of 2024 will not be applicable in the facts of the present case, inasmuch as, the issue before the apex court was in respect of an order relating to offences which were allegedly committed before a Tribunal, known as Municipal Building Tribunal and it was an admitted fact that this tribunal is not defined as a Court. It was on these facts the Apex Court held that the said Tribunal was not a Court. However, this is not a case with Motor Accident Claim Tribunal. Under such circumstances the reliance placed on the judgment of the apex court by the petitioner to that effect that a tribunal including MACT tribunal is not a court, is misplaced, and the contentions of the petitioner that the MACT is not a Court, and therefore has no powers to invoke proceedings under Section 195 of IPC has to be rejected.

17. Coming to the other contentions of the petitioner that the Tribunal did not follow the procedure prescribed under Section 340 of the Cr.P.C, in respect of offences alleged under Section 195 of Cr.P.C., it is seen that the procedure for taking cognizance of any offences under Section 195(1)(b) has to be as per the procedure prescribed under Section 340 of the Cr.P.C. Under the Section 340 of the Cr.P.C. it is mandated that upon any application made on behalf or otherwise if any court is of the opinion that any enquiry should be made into offences relating to Section 195(1)(b) which appears to have been committed in or in relation to the proceedings in that court or in respect of documents produced or evidence adduced in a proceeding in that court, such court may after such preliminary enquiry, if any, as it thinks necessary may undertake the following:-

- (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 for 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.

18. It is also necessary to refer Section 195(3), wherein it is clearly provided that the term Court within Courts means a Civil, Revenue, and Criminal Court and includes a tribunal constituted by or under a Central Provincial or a State Act be declared by their act to be court for the purposes of that Section. Therefore, the MACT being a tribunal established by the State and more particularly having been specifically conferred under Section 169 of the Motor Vehicles Act, powers of a Court, It is clear that the Motor Accident Claim Tribunal although a tribunal has the powers of the court as prescribed under said provisions of the Motor Vehicle Act, 1988.

19. Further, in terms of Section 340(2) the power conferred on a Court with sub section 1 of Section 340 in respect of offences in any case where the court has neither made a complaint under sub section 1 in respect of their offence, nor rejected an application for making such complaint, be exercised by the court to which such former court is subordinate too within the meaning of Sub-Section 4 of Section 195.

20. Under Section 173 of the Motor Vehicles Act against the award passed by Claims tribunal an appeal may be preferred within 90 days from date of the award to the High Court. Therefore, under the provision of Section 195(2) read

with section 340 (2) it was open to the tribunal to put up complaint in writing or by such officer of the Court as that court may authorize or even some other Court to which that court is subordinate to. Under such circumstances it appears to this court that under the provisions of Section 195 read with section 340 of the Cr.P.C. and Section 173 of the Motor Vehicles Act, the power that authorize an officer to lodge a complaint will also lie with the High Court being a superior court to which the Motor Accident Claim Tribunal is subordinate too.

21. However, considering the facts and circumstances of the case, this court is of the considered view that it was open to the Motor Accident Claim Tribunal to authorize any officer competent to lodge a complaint in writing as prescribed under Section 195 read with section 340 of the Cr.P.C. However, the tribunal instead issued a direction to lodge an FIR before the Basistha Police Station which procedure is not contemplated under the provision of Cr.P.C.

22. A plain reading of the order more particularly *Paragraph 23* of the order/award issued by MACT is very clear that the copy of the order was directed to sent to the OC Basistha Police Station to register a case by treating the judgment as a complaint. However, this direction appears to be incomplete with the procedure prescribed under Section 195 read with section 340 of the Cr.P.C. Under Section 195, in respect of offences relating to Section 193 of the IPC, it is only the court which can take cognizance of an offence under Section 195. The cognizance can be taken only by a Court of Competent Jurisdiction. The Investigating Authority or any police station is not competent to take cognizance of offence in terms of Section 195. Therefore, the impugned order/award to the extent that a copy of this order is directed to be sent to the O.C. Basistha Police Station to register a case against the petitioner for giving false evidence is in complete contravention to the procedure prescribed under Section

195 (1)(b) read with section 340 of the Cr.P.C.

23. Under such circumstances, this court therefore interferes the order dated 10.12.2018 to the extent directing the Bashista Police Station to register a case on the basis of the judgment and the award treating it to be a complaint. It is open to the MACT-3 Kamrup, Guwahati to take recourse as per the procedure prescribed under Section 195(1)(b) read with Section 340 of Cr.P.C.

24. Accordingly, this writ petition is disposed of in terms of the above order.

25. No order as to cost. Tribunal records, if requisitioned, be returned forthwith.

JUDGE

Comparing Assistant