IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 2522 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIKHIL S. KARIEL Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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BHUPATBHAI PUJABHAI BHOI
Versus
HIRABEN WO SOMAJI BHOI & 2 other(s)

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Appearance:
MR MM TIRMIZI(1117) for the Applicant(s) No. 1
MR PRADIP D BHATE(1523) for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2
MS MD MEHTA, APP for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

Date : 12/04/2022

ORAL JUDGMENT

1. Heard learned Advocate Mr.Tirmizi on behalf of the petitioner, learned APP Ms.Mehta on behalf of the respondent State and learned Advocate Mr.P.D. Bhate on behalf of the respondents No.1 and 2.

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2. By way of this petition, the petitioner challenges an order passed by the learned 5th Additional Sessions Judge, Kheda, Nadiad dated 13.6.2013, in Revision Application No.19 of 2013, whereby the learned Sessions Court had been pleased to set aside an order dated 19.1.2013 passed by the learned JMFC, Mahudha, in Court Inquiry No.2/2012, whereby process had been issued against the respondents No.1 and 2 herein for offences punishable under Sections 181, 193, 196, 199, 200, 209 and 471 read with Section 114 of IPC.

3. Brief facts leading to filing of the present petition being that the respondents No.1 and 2 had preferred a Suit before the learned Principal Civil Judge, Mahudha being Regular Suit No.5/2012 *inter alia* challenging a registered Sale Deed dated 15.12.2010, by the Defendant No.1 therein in favour of Defendant No.2 therein. The petitioner herein had in connection with the said Suit preferred a complaint being Court Inquiry No.2 of 2012 before the learned JMFC, Mahudha *inter alia* alleging that the plaintiffs in the Regular Suit i.e. respondents No.1 and 2 herein had caused to prepare a false affidavit showing a pedigree chart dated 14.12.2011, whereby the mother of the petitioner herein, who was named as Divaben instead of her correct name as Babuben, was shown as having died and the petitioner herein, in spite of the fact that he was alive, was also shown as being deceased. Learned JMFC had, initially after verification of the complainant, postponed issuance of process and directed the Investigating Officer to investigate into the allegations and

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submit a report within 30 days. It appears that after the Investigating Officer had submitted his report, order dated 19.1.2013 had been passed by the learned JMFC, Mahudha, issuing process against the respondents No.1 and 2 herein, which was impugned before the learned Sessions Court by way of Revision Application No.19/2013. The respondents No.1 and 2 by way of the Revision Application had *inter alia* raised two principal grounds before the learned Revisional Court, being that the complaint itself was delayed and whereas emphasis was laid on Section 195(1)(b)(ii) of Cr.P.C., whereby it is inter *alia* stated that for the offences against public justice etc., no Court shall take cognizance of an offence described in Section 463, or punishable under Section 471 of the 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, if the complaint in question is not in writing by the public servant concerned or some other public servant, who is subordinate to the public servant before whom the offence alleged is committed. It was the contention of the respondents No.1 and 2 before the learned Sessions Court that since the complaint, was in the nature of a private complaint, therefore, learned Magistrate ought not to have taken cognizance of the same and interference of the Revisional Court was sought for. The learned Revisional Court vide order impugned before this Court *inter alia* relying upon the decision of this Court in case of **State of Gujarat Vs. Dalapatsing Mafasing & Ors., reported in 1993(2) GLR 1775**

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had been pleased to quash and set aside the order dated 19.1.2003 issuing process. The petitioner herein being aggrieved by the order passed by the learned Revisional Court has preferred the present petition.

4. Learned Advocate Mr.Tirmizi on behalf of the petitioner has *inter alia* submitted that the bar of Section 195(1)(b)(ii) would only be applicable, if the document produced or given in evidence is stated to be forged during Court proceedings. Learned Advocate Mr.Tirmizi would submit that in the instant case, a perusal of the complaint preferred by the petitioner clearly reveals that the affidavit of forged pedigree chart had been prepared much earlier than filing of the Civil Suit and the same had been placed as evidence in the Regular Suit. Mr.Tirmizi would submit that, therefore, the forgery committed was not during the course of the proceedings, and hence, bar of Section 195(1)(b)(ii) of Cr.P.C. would not be applicable. In support of his submissions, Mr.Tirmizi has relied upon the decision of the Hon'ble Apex Court in case of **Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Anr., reported in (2005) 4 SCC 370**. Learned Advocate Mr.Tirmizi would submit that in the said decision the Hon'ble Apex Court has clearly drawn a distinction between forgery which is committed before the proceedings are initiated and such forged document is presented before the Court and forgery which is committed during the course of proceedings. Learned Advocate would submit that the Hon'ble Court interpreting Section

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195(1)(b)(ii) of Cr.P.C., has clearly explained the scope of the said Section and has *inter alia* held that the bar of said Section would not operate, if the commission of the act of forgery, was before institution of the proceedings. Learned Advocate would submit that in view of the interpretation of the said section by the Hon'ble Apex Court, the order passed by the learned Revisional Court being clearly erroneous, deserves to be set aside by this Court.

5. As against the same, learned Advocate Mr.Bhate would rely upon the observations of the learned Sessions Court in the order impugned in the present petition and would submit that no interference is required.

6. Learned APP Ms.Mehta has taken this Court through the order passed by the learned Sessions Court and whereas learned APP would submit that the law laid down by the Hon'ble Apex Court would be squarely applicable to the facts of the present case.

7. Heard learned Advocates for the parties, who have not submitted anything further.

8. The only issue which arises for consideration of this Court is whether the order passed by the learned Revisional Court setting aside the interim order passed by the learned Magistrate taking cognizance and issuing process requires interference or not. It would be apposite to note at this stage that in the complaint filed before the learned

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Magistrate it has been specifically alleged by the present petitioner that the accused No.1 had prepared an affidavit dated 14.12.2011 and the said affidavit also contained the forged pedigree chart where the name of the mother of the petitioner – complainant was wrongly mentioned and whereas the complainant and his mother were shown as having expired. The said pedigree chart had also been affirmed before a notary public. That based upon the said affidavit, respondents No.1 and 2 had preferred Regular Suit No.5/2012.

9. Having regard to the said allegations made in the complaint, which fact is uncontroverted, it clearly appears that the allegations of forgery is with regard to a document, which was prepared before filing of the Regular Suit and which was relied upon by the plaintiffs i.e. Respondents No.1 and 2 in the Regular Suit.

10. In this connection, it would be relevant to refer to the decision of the Hon'ble Apex Court in case of **Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Anr.** (supra), relied upon by the learned Advocate Mr.Tirmizi for the petitioner. The observations of the Hon'ble Apex Court at paragraphs 10, 12, 21, 25, 26 and 33, which are relevant for the present purpose are reproduced herein below:

> **"10. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice,**

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and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X of the IPC and the heading of the Chapter is 'Of Contempts Of The Lawful Authority Of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court."

"12. It will be useful to refer to some earlier decisions touching the controversy in dispute which were rendered on Section 195 of Code of Criminal Procedure 1908 (for short 'old Code'). Sub-section (1) (c) of Section 195 of Old Code read as under:

> **"Section 195 (1) No Court shall take cognizance -**
>
> **(c) Prosecution for certain offences relating to documents given in evidence. -- of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in**

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> **respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate"**

"21. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated by Section 195(1) Cr.P.C. is given in Section 340 Cr.P.C. and sub-section (1) and (2) thereof are being reproduced below :

> **340. Procedure in cases mentioned in Section 195 - (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -**
>
> **(a) record a finding to that effect;**
>
> **(b) make a complaint thereof in writing;**
>
> **(c) send it to a Magistrate of the first class having jurisdiction;**
>
> **(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and**
>
> **(e) bind over any person to appear and give evidence before such Magistrate.**
>
> **(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195."**

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"25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in Sachida Nand Singh, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would he highly detrimental to the interest of society at large.

26. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (Third ed.) para 313, the principle has been stated in the following manner :

> **"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong."**

"33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. 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 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."

11. The Hon'ble Apex Court, in the aforesaid decision has *inter alia* held that the bar of Section 195(1)(b)(ii) of Cr.P.C. would be attracted only when the offences enumerated in the said provision have been

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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*'.

12. In the instant case, as discussed above, the document had been prepared even prior to filing of the Regular Suit and whereas the plaintiffs i.e. Respondents No.1 and 2 had relied upon the said document in support of the contentions raised by the plaintiffs in the suit concerned, it is not the case of the present petitioner, nor is it the case of the respondents No.1 and 2 that the alleged forgery was done when the document was in the custody of the Court. Under such circumstances, in the considered opinion of this Court, relying upon the law laid down by the Hon'ble Apex Court in case of **Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Anr.** (supra) as referred to herein above, the bar of Section 195(1)(b)(ii) of Cr.P.C. would not be applicable in the instant case.

13. Thus, the impugned decision of the learned Sessions Court being clearly erroneously and in clear contravention of the law laid down by the Hon'ble Apex Court as discussed herein above, deserves to be interfered with. Hence, the same is quashed and set aside. The proceedings before the learned Magistrate being Court Inquiry No.2/2012 are directed to be revived. Learned Magistrate is directed to complete the proceedings with regard to the said Court Inquiry Case as expeditiously as possible.

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14. With these observations and directions, the present petition is disposed of as allowed. Rule is made absolute accordingly.

Sd/-
(NIKHIL S. KARIEL,J)

V.V.P. PODUVAL

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