



2024/KER/11523

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

THURSDAY, THE 15TH DAY OF FEBRUARY 2024 / 26TH MAGHA, 1945

CRL.REV.PET NO. 854 OF 2023

AGAINST THE ORDER DATED 31/07/2023 IN CMP 218/2021 OF CHIEF

JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM

REVISION PETITIONER/RESPONDENT IN CMP NO.218/2021 & ACCUSED IN CC
NO. 279/2023:

SOBY GEORGE

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BY ADVS.
T.M.RAMAN KARTHA
REVATHY M.A.
GREESHMA T.G.
SNEHA BRIGIT PRINCE
MANJULA NAIR
M.S.SOUJATH
SYAMA MOHAN

RESPONDENTS/COMPLAINANT, STATE:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM,
COCHIN, PIN - 682031
- 2 DEPUTY SUPERINTENDENT OF POLICE
CENTRAL BUREAU OF INVESTIGATION,
SPECIAL CRIME BRANCH,
THIRUVANANTHAPURAM, PIN - 695008
- 3 UNION OF INDIA
REP. BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
DEPARTMENT OF PERSONNEL,
GOVT OF INDIA, NEW DELHI - 110001



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R1 BY ADV. SRI SANGEETHARAJ N R,
R2 BY SRI K P SATHEESHAN (SR) , CBI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 15.02.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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ORDER

cognizance was taken by the learned Chief Judicial Magistrate for the offence punishable under Section 193 IPC and issued process to the accused/revision petitioner by order dated 31.07.2023 on a complaint submitted by the investigating officer. It is under challenge in this revision by the accused.

2. Heard Sri.T.M.Raman Kartha, the learned counsel for the petitioner and the Sri.K.P.Satheesan, the learned senior counsel appearing for the Central Bureau of Investigation.

3. It is pertaining to a sensational case registered in connection with the death of a famous musician by name Balabhaskar. The officer



of Central Bureau of Investigation, who investigated the crime in RC 3(S)2020/CBI/SCB/TVM lodged a complaint before the Chief Judicial Magistrate to take cognizance against the revision petitioner for the offence punishable under Section 193 IPC on the allegation that he had given a false statement before the complainant/investigating officer deliberately and purposefully with the intention to mislead the investigation. It was taken on file by the Chief Judicial Magistrate and after hearing both the parties, cognizance was taken against the revision petitioner for the offence punishable under Section 193 of the IPC and process was issued to him. It is submitted that the cognizance was taken by overlooking the provision and the ingredients which would constitute the offence punishable under Section 193 IPC. To resolve the issue, it is necessary to extract Section 193 IPC, which runs as follows:



"Whoever intentionally gives false evidence in any 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; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."
(emphasis supplied)

4. The section deals with a situation, wherein false or fabricated evidence was tendered or intended to be used in any judicial proceeding. The main ingredient which would constitute the offence punishable under Section 193 IPC is the involvement of "evidence" either fabricated or false given or tendered intentionally in any stage of a judicial proceeding or for the purpose of being used in any stage of judicial proceeding. The term 'evidence' stands for any relevant material either documentary or oral, which can be taken



note of based on the principle of relevancy and reliability in a judicial proceeding or before a competent authority empowered to adjudicate a matter in issue either civil, criminal or quasi-judicial dealt under the provisions of the Evidence Act. The first limb of Section 193 IPC deals with false evidence either given or tendered and the second limb deals with the fabrication of false evidence for the purpose of being used as "evidence" in a judicial proceeding. What is dealt under Section 193 IPC is centering around the expression "evidence" either false or fabricated. In order to bring the matter within the sweep of Section 193 IPC, there should be "evidence" either false tendered at any stage of judicial proceeding or fabricated for the purpose of being used in any stage of a judicial proceeding. Then comes the question as to the permissibility of fastening criminal liability under Section 193 IPC to a statement, which by its nature will not come



under the purview of "evidence". A statement recorded under Section 161 Cr.P.C by the Investigating Officer will not form part of evidence either before a court or a competent authority empowered to take evidence, but will remain an unsigned statement recorded by the Investigating Officer during the course of investigation and it cannot be brought under the purview of "evidence" or "piece of evidence" and cannot be used for any purpose except for the purpose of contradiction in a judicial proceeding. The embargo under Section 162 Cr.P.C. clearly reveals that a statement recorded other than the one which would fall under the purview of Section 32 or Section 27 of the Evidence Act cannot be used for any purpose at any enquiry or trial in respect of any offence except for the purpose of contradiction and to contradict any witness in the manner provided by Section 145 of the Indian Evidence Act. Such contradiction can only be used for the



purpose of explaining any matter referred to in cross-examination. Necessarily, a statement recorded under Section 161 Cr.P.C. other than the one which would fall under Section 32(1) or admissible under Section 27 of the Evidence Act, cannot be brought under the purview of "evidence". A statement recorded under Section 161 Cr.P.C. cannot be used as evidence even if it is a true version. Necessarily, the question whether it is false or fabricated does not arise for consideration in a judicial proceeding, hence, will stand outside the ambit of Section 193 of IPC. There is no scope for ascertaining the same either "false" or "fabricated" since it is not an evidence. The statement recorded under Section 161 Cr.P.C. and its application in a judicial proceeding will stand controlled by Section 162 Cr.P.C. and the embargo incorporated therein. Necessarily, it cannot be brought within the wide spectrum of "evidence". The corollary is that no criminal liability can be



fastened under Section 193 IPC unless involves "evidence" either false or fabricated and tendered in any judicial proceeding or intended to be used in any stage of judicial proceeding. Necessarily, the false or fabricated statement/document must satisfy that it was intended to use as "evidence" or tendered as "evidence" and it must have the character of "evidence" otherwise.

5. The scope and ambit of Sections 161 and 162 Cr.P.C. in relation to Section 145 of Evidence Act was elaborately considered by the Apex Court in **State of Kerala v. Babu and Others (AIR 1999 SC 2161)** and laid down that Section 161 would stand controlled by Section 162 of the Code. Earlier, the object of enacting Section 162 Cr.P.C. was considered by the Apex Court in **Tahsildar Singh and Another v. State of U.P. (1959 Cr1.L.J.1231)** and laid down as follows:

"It is, therefore, seen
that the object of the



legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention. The Act of 1808 for the first time introduced an exception enabling the said statement reduced to writing to be used for impeaching the credit of the witness in the manner provided by the Evidence Act. As the phraseology of the exception lent scope to defeat the purpose of the legislature, by the Amendment Act of 1923, the section was redrafted defining the limits to confine it only to contradict the witness in the manner provided under Section 145 of the Evidence Act. If one could guess the intention of the legislature in framing the section in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same



purpose i.e. the interest of the accused.”

6. Very recently, the Apex Court in **Parvat Singh and Ors. v. State of Madhya Pradesh [(2020) 4 SCC 33]** had laid down that a statement recorded under Section 161 Cr.P.C. is inadmissible in evidence and cannot be relied upon or used to convict the accused. Hence, it will not satisfy the mandate to be complied with for fastening criminal liability under Section 193 IPC. It is also settled that a statement recorded under Section 161 Cr.P.C. can be used for contradiction and to impeach the credibility of the witness and not otherwise. The reason why it cannot be used for corroboration is so simple that it is not a piece of evidence.

7. The mandate to be complied with and the main ingredient which would constitute the offence punishable under Section 193 IPC is the tendering of false “evidence” intentionally or



fabrication of false "evidence" for the purpose of being used in any stage of a judicial proceeding. Necessarily, the tendering or fabrication must be in respect of something which, otherwise can be used or brought under the purview of "evidence" in a judicial proceeding. The fabrication or the materials tendered should be of the character of "evidence" so as to attract Section 193 IPC and that is lacking in the instant case. Hence, no criminal liability can be fastened under Section 193 IPC merely based on a statement recorded under Section 161 Cr.P.C.. But, the legal position would be different when the witness had mounted on the box and had given false or fabricated evidence. The cognizance taken for the said offence based on the complaint submitted, hence cannot be sustained. The complaint ought to have been dismissed by the trial court. The cognizance taken for the offence under Section 193 IPC and the charge



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framed will stand set aside. The complaint will stand dismissed.

The Criminal Revision Petition will stand allowed accordingly.

Sd/-

P. SOMARAJAN
JUDGE

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