IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2015

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.990 of 2015

S.Mukanchand Bothra
represented by its P.O.A.
M.Gagan Bothra .. Petitioner

Vs.

1.Rajiv Gandhi Memorial Educational
Charitable Trust,
36, Anjaneyar Koil Street,
Chennai – 600 056.

2.M/s.Udayam Engineer College,
Nemili Road,
Chowkkanthangal Village,
Valarpuram Post,
Sriperumbudur.

3.R.Anbarasu
S/o.Raju Gounder .. Respondents

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code against the order of learned VII Metropolitan Magistrate, George Town, Chennai, passed in Crl.M.P.No.795 of 2015 on 04.09.2015.

For Petitioner : Mr.M.Gagan Bothra,
Party-in-Person

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O R D E R

This revision challenges the order of learned VII Metropolitan Magistrate, George Town, Chennai, passed in Crl.M.P.No.795 of 2015 on 04.09.2015, dismissing a complaint u/s.203 Cr.P.C.

2. Petitioner preferred a complaint before learned VII Metropolitan Magistrate, George Town, Chennai, informing commission of offence u/s.191 IPC alleging that false affidavits stood filed by the third accused in the course of proceedings in C.S.No.652 of 2004 on the file of this Court. Learned Magistrate dismissed the complaint in exercise of powers u/s.203 Cr.P.C. under orders dated 04.09.2015 primarily on the reasoning that Section 195 Cr.P.C. was a bar thereto There against, the petitioner has preferred the present revision.

3. Heard Mr.M.Gagan Bothra, who is before this Court as a power of attorney of the party-in-person and on the strength of a decision of the Supreme Court which permits such position and learned Government Advocate [Crl.side], who was required to assist this Court under orders dated 16.09.2015.

4. Mr.M.Gagan Bothra, contended that the bar u/s.195 Cr.P.C. would apply only when the persons accused are public servants and not in respect of

other individuals. The contention clearly is erroneous. The offence alleged in the instant case is of giving false evidence - 191 IPC, punishable u/s.193 thereof. A reading of Section 195 Cr.P.C. makes clear that no Court shall take cognizance of any offence punishable u/s.193 IPC when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court 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. As in the instant case the alleged wrong doing was committed in the course of proceedings in C.S.No.652 of 2004 before this Court, the order of the Court below dismissing the complaint suffers no error.

5. In the course of submissions, learned Government Advocate [Crl.side] placed before us the decision of the Supreme Court in ***Perumal vs. Janaki [2014 (5) SCC 377]*** to submit that therein the Supreme Court has informed the duty of this Court to exercise powers u/s.195 Cr.P.C. when a Court subordinate fails to so act. While there can be no quarrel with the proposition that in a proper case this Court should exercise powers u/s.195 Cr.P.C., we deem it our duty to dwell upon the case cited to inform the correct legal position so that the judgment of the Supreme Court wrongly will not be cited as a precedent leading to the general detriment of law. ***Perumal vs. Janaki [2014 (5) SCC 377]*** was one where prosecution was sought against a Sub-

Inspector on the allegation that in the face of a medical certificate informing that a girl was not pregnant such Sub-Inspector filed a charge sheet informing that she indeed was so, owing to which the accused Perumal unnecessarily was put to prosecution for offence u/s.417 and 506(i) IPC. After his acquittal, Perumal preferred a complaint for prosecution for offence u/s.193 IPC. Such complaint was dismissed by learned Judicial Magistrate II, Pollachi. There against, a revision was preferred before this Court. In dismissing the revision, this Court has observed thus:

> *"3. ... This Court is in agreement with the conclusion of the Court below in dismissing the complaint. The complaint provided very little to take action upon, particularly, where this Court finds that the respondent had not in any manner tampered with the medical record so as to mulct the petitioner with criminal liability. The wording in the final report informing of the de facto complainant having been pregnant can in the facts and circumstances of the case, be seen only as a mistake."*

Perumal pursued the matter before the Supreme Court by way of Special Leave Petition No.1221 of 2012. In allowing such petition, the Supreme Court had informed as unfortunate the manner in which the matter was dealt with by this Court and observed 'As was pointed earlier by this Court in a different context "there is no rule of law that common sense should be put in cold storage"'. The Supreme Court was of the view that in the facts of the case offence u/s.211 IPC i.e., offence of making a false charge stood attracted and therefore, the provisions of Section 195 Cr.P.C. apply.

6. It is our duty to point out that the alleged offence of the Sub-Inspector informing in the charge sheet the pregnancy of the girl concerned despite her medical certificate informing otherwise, would not and cannot fall within the definition of Section 211 IPC. It also is to be seen that Perumal had faced prosecution pursuant to a Magistrate taking cognizance. Fortunately, offence of making a false charge does not stand attracted as otherwise, it would be unfair to prosecute the Sub-Inspector who filed the charge sheet, while not doing so, the Judicial Magistrate who took cognizance thereon. As explained by the Supreme Court in ***Santokh Singh vs Izhar Hussain And Anr [1973 (2) SCC 406]***, 'the essential ingredient of an offence under section 211 IPC is to institute or cause, to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. Now, the expression "falsely charges" in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. "To falsely charge" must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making

deposition in support of the charge framed in that trial. The words "falsely charges" have to be, read along with the expression "institution of criminal proceeding". Both these expressions, being susceptible of analogous meaning should be understood to have been. used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. *The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be' embodied either in a complaint or in a report of a cognizable offence to the police officer or to an officer having authority over the person against whom the allegations are made.* The statement in order to constitute the "charges" should be made with the intention and object of setting criminal law in motion.' The offence on the facts under discussion would be one u/s.218 IPC, which reads thus:

> *"218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punish-ment, or with intent to save, or knowing that he is likely thereby*

to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

7. Be it noted that offence u/s.218 IPC is not one within the ambit of Section 195 Cr.P.C. We trust that we have clarified the matter towards avoiding the judgment in ***Perumal vs. Janaki [2014 (5) SCC 377]*** being cited as a wrong precedent.

This Criminal Revision shall stand dismissed.

22.12.2015

Index: Yes/No
Internet: Yes
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To

The Special Judge (TNPID cases),
Coimbatore.

C.T.SELVAM, J.

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