

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Misc. Criminal Case No.4309 of 2016****Pooran Singh Jatav****-Vs-****State of M.P.**

Shri R.S. Bansal, counsel for the applicant.

Ms. Sudha Shrivastava, Panel Lawyer for the respondent/State.

J U D G M E N T
(08/12/2016)

This petition under Section 482 of CrPC has been filed by the applicant challenging the correctness and validity of the order dated 17.12.2015 passed by IInd Additional Sessions Judge, Dabra, District Gwalior in Special Sessions Trial No.623/2011. By the impugned order, the Trial Court, in exercise of powers under Section 216 of CrPC, has modified the charges and has also framed additional charges under Sections 186, 353 & 506 Part II of IPC.

2. The necessary facts for the disposal of the present petition in short are that on 03.05.2008 at about 12:30, the complainant Narayan Prasad lodged a FIR against the applicant Pooran Singh Jatav alleging that on 02.05.2008 in Ramgarh, Ward No.3, necessary repairing works were being done in order to avoid theft of electricity and at that time the applicant obstructed the employees from performing their official duties and extended threat to life to one of the employee namely Narayan Prasad and also said that either he

would get him murdered or he would get him falsely implicated in the offence under Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Today, on 3.5.2008, when the complainant along with other witnesses were carrying on the inspection then it was found that the applicant Pooran Singh was committing theft of electricity by taking direct connection from L.T. Line. A *panchnama* on the spot was prepared. The wires were seized. Accordingly, FIR was lodged for obstructing the employees in discharge of their official duties and for extending threat to life and threat to falsely implicate in the case as well as the theft of electricity. The police after completing the investigation filed the charge-sheet.

3. Initially, the Trial Court framed charge under Section 135 of Electricity Act, 2003. However, by order dated 17.12.2015, the Trial Court, while exercising powers under Section 216 of CrPC, modified the charges and also framed the charges under Sections 186, 353 & 506 Part II of IPC.

4. It is contended by the counsel for the applicant that the incident is alleged to have taken place on two different days and, therefore, two different FIRs should have been lodged and for the offence committed on 2.5.2008 charges cannot be framed in this case. Further, it was submitted by the counsel for the applicant that in view of Section 195 of CrPC, the Court cannot take cognizance of any offence punishable under Section 172 to 188 (both inclusive) of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. It was further submitted by the counsel for the applicant that trial of offence under Sections 186, 153 & 506 Part II of IPC without special complaint as required under Section 195 (1)(a)(i) of IPC is bad. To buttress his contention, the counsel for the applicant relied upon a judgment of

coordinate Bench of this Court passed in the case of **Ashok & Ors. v. State** reported in **1987 CrLJ 1950**.

5. Per contra, the counsel for the State submitted that where the offences are committed in same transaction then two different FIRs are not permissible and secondly since the offence under Sections 186 & 353 of IPC are two distinct offences, therefore, even if the facts of the case are mainly based on the same allegation, the prosecution of the applicant under Section 353 of IPC is not invalid.

6. Considered the arguments of the learned counsel for the parties.

7. So far as the first contention of the learned counsel for the applicant that the Court cannot take cognizance of the offence which was committed on 2.5.2008 is concerned, suffice it to say that the incidents taken place on 2.5.2008 and 3.5.2008 can be safely said to be committed in one transaction. On 02.05.2008, the allegation is that while the complainant party was carrying repairing works in order to stop the theft of the electricity then the applicant had extended the threat to life and had also obstructed in discharge of official duties of the complainant and other employees. On 3.5.2008, when the officers of M.P.E.B. went for inspection then they found that the applicant was committing theft of electricity by taking direct connection from L.T. Line. Thus, it is held that as the incident took place on 2.5.2008 and 3.5.2008 are inter-connected and, therefore, both the incidents had taken place in one transaction.

8. Accordingly, it is held that two different FIRs for the offence committed in one transaction are not permissible, therefore, the Trial Court did not commit any illegality in framing the charges on the basis of the alleged offence committed by the applicant on 2.5.2008.

9. So far as the contention of the learned counsel for the

applicant that the Court cannot take cognizance of offence punishable under Section 186 of IPC except on the complaint made by the public servant concerned, is concerned, it is liable to be upheld.

10. Section 195 (1)(a)(i) of CrPC reads as under:-

“195. (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, or 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;

11. Thus, in view of the specific bar created by Section 195 (1) (a) (i) of CrPC, it is held that the Trial Court should not have taken cognizance of offence under Section 186 of IPC without there being any complaint by the concerned public servant, therefore, the Trial Court should not have framed the charge under Section 186 of IPC.

12. The next question for consideration is that whether in view of provision of Section 195 of CrPC, even the charges under Section 353 & 506 Part II of IPC can be framed by the Trial Court or not?

13. It may be profitable to refer to the judgment of the Supreme Court passed in the case of **Durgacharan Naik and others v. State of Orissa** reported in **AIR 1966 SC 1775**.

The Supreme Court has held as under:-

“5. We pass on to consider the next contention of the appellants that the conviction of the appellants under s. 353, I.P.C. is illegal because there is a contravention of s.195(1) of the Cr.P.C. which requires a complaint in writing by the process server or the A.S.I. It was submitted that the charge under s. 353, I.P.C. is based upon the same facts as the charge under s. 186, I.P.C. and no

cognizance could be taken of the offence under S. 186, I.P.C. unless there was a complaint in writing as required by s. 195(1) of the Cr.P.C. It was argued that the conviction under s. 353, I.P.C. is tantamount, in the circumstances of this case, to a circumvention of the requirement of s. 195(1) of the Cr.P.C. and the conviction of the appellants under S. 353, I.P.C. by the High Court was, therefore, vitiated in law. We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under s. 353, I.P.C. is based are the same as those constituting the charge under s. 186, I.P.C. but it cannot be ignored that ss. 186 and 353, I.P.C. relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, I.P.C. is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under s. 353, I.P.C. the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempts of the lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well-established that s. 195 of the Cr.P.C. does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. In *Satish Chandra Chakravarti v. Ram Dayal De*, 24 Cal WN 982 : (AIR 1921 Cal 1) it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under s. 211, I.P.C., which is an offence against public justice, and the other an offence under S. 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made non-

compoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the court under S. 195, Cr.P.C., while in the other, cognizance can be taken of the offence on the complaint of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of ss. 195 to 199 of the Cr.P.C. The decision of the Calcutta case has been quoted with approval by this Court in *Basir-ul-Huq and Others v. The State of West Bengal*, 1953 SCR 836 : (AIR 1953 SC 293) in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not debarred by the provisions of s. 195, Cr.P.C., from seeking redress for the offence committed against him.

6. In the present case, therefore, we are of the opinion that S. 195, Cr.P.C. does not bar the trial of the appellants for the distinct offence under s. 353 of the I.P.C., though it is practically based on the same facts as for the prosecution under s. 186, I.P.C.”

14. Thus, it is clear that the offences under Sections 186 & 353 of IPC are distinct offences and although the allegation upon which the charge under Sections 353 & 506 Part II of IPC have been framed are the same as those constituted under Section 186 of IPC but since the ingredients of two offences i.e., Section 186 and 353 of IPC are distinct, therefore, the Court can take cognizance of offence under Section 353 of IPC. So far as the contention of the learned counsel for the applicants that in absence of complaint filed by the public servant is concerned, the Court cannot take cognizance, it is held that the Trial Court still on the same allegation can try the offence under Section 353 of IPC.

15. Accordingly, the impugned order dated 17.12.2015 is

modified. The charge under Section 186 of IPC is set-aside. The Trial Court shall now proceed with the case for charges under Sections 353, 506 Part II of IPC and Section 135 of Electricity Act, 203.

16. With the aforesaid observations, this application filed under Section 482 of CrPC is partly allowed to the extent mentioned above.

(G.S. AHLUWALIA)
Judge
(08.12.2016)

(ra)