

HIGH COURT OF MADHYA PRADESH: BENCH AT

INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.636/2014

Kailashchandra Parihar

Vs.

Court of J.M.F.C. Jaora

Shri Manish Manana, learned counsel for the applicant.

Shri Mukesh Kumawat, learned Panel Lawyer for respondent/State.

ORDER

(Passed on 26/02/2015)

This criminal revision is directed against the order passed by the learned First Additional Sessions Judge, Jaora, District Ratlam in Session Trial No.281/2013 dated 04.03.2014 whereby the learned Additional Sessions Judge while dealing with an application filed by the present applicant Kailashchandra Parihar under section 227 Cr.P.C.

held that prima-facie there are sufficient ground present in the case for framing of charges under sections 120-B, 205, 419, 467, 468 and 471 of IPC.

2. The factual background behind this revision is that one Nagu S/o Amra, R/o Village Khejankheda, Tehsil Jaora, District Ratlam City stood surety for accused Gurmelsingh in Criminal Case No.291/1994 before the learned Judicial Magistrate First Class, Jaora. The present applicant was a practicing advocate at Jaora whose clerk was Dheeraj Kumar, the co-accused in the present case. On 01.03.1996, the accused Gurmelsingh remained absent before the learned Magistrate and, therefore, his bail and bonds were forfeited and non-bailable warrant was issued against him and also a show cause notice was issued to the person who stood surety for his attendance before the Court. In response to the notice issued to the surety, a person whose name was Nagu S/o Amra came before the Court and he informed the Court that Nagu S/o Amra whose papers were filed before the Court as surety was a resident of Village Khejankheda, however, he died about 8 – 10 years back and the person whose photograph is on the bail papers was Shankarlal S/o

the said person Nagu S/o Amra.

3. Subsequent to this, the learned Magistrate issued a letter to station incharge, Police Station Badawada asking him to present said Shankarlal S/o Nagu before him on 22.04.1996. The said Shankarlal was produced before the Court and thereafter, on 22.04.1996, the learned Magistrate wrote a letter to Police Station, Jaora City on which Crime No.109/1996 was registered against the five accused under sections 419, 420, 467, 468, 471 and 205 IPC. After this, the Magistrate also sent a complaint to Chief Judicial Magistrate, Ratlam requesting him to take action against the five accused persons under the aforesaid sections. This complaint case was made over by the learned Chief Judicial Magistrate, Ratlam to Judicial Magistrate First Class, Jaora. Meanwhile, the police filed a charge-sheet in Crime No.109/1996 which was registered on information given by the learned Magistrate and that was registered as Criminal Case No.291/1994. However, after due efforts only three persons including the present applicant appeared before the learned Magistrate and, therefore, the case was committed to the Court of Sessions in respect of three persons in

compliance of direction issued by the Hon'ble Apex Court in Cri. Appeal No.353/2013 **Ramesh Soni Vs. State of Madhya Pradesh**. The present applicant filed an application under section 227 Cr.P.C. which was disposed of by the learned Magistrate by the impugned order. The present applicant raised, inter-alia, on following grounds before the learned Magistrate.

(i) Under section 195(1)(b)(ii) and for any offence described in section 463 or sections 471, 475 and 477 cognizance by a Magistrate can already taken on a complaint filed by the Court or by such officer of the Court as that Court may authorize in writing in this behalf. When such offence is committed in respect of the document produced or given any offence in a proceeding in any Court.

(ii) In light of the bar created by section 195 Cr.P.C., the Magistrate was not empowered to take cognizance on charge-sheet filed by Police Station – Jaora City in Crime No.109/1996.

4. In the present case, however, in para 3 of the impugned order, the learned Additional Sessions Judge

observed that Police Station Jaora City filed a charge-sheet in Crime No.109/1996 which was registered by the learned Magistrate, and thereafter, he filed a complaint against the five accused before the Court of Chief Judicial Magistrate, Jaora. What transpires from para 3 of the impugned order is that it was only after taking cognizance on charge-sheet filed by the Police Station Jaora City, the Magistrate filed a complaint before the Court of Chief Judicial Magistrate. Even in para 5, the learned Additional Sessions Judge observed that the Magistrate wrote a letter on 22.04.1996 to Police Station Jaora City for taking action under the section as stated above, and thereafter, he prepared a complaint against the five accused and transferred the same to the Court of Chief Judicial Magistrate for taking action against them. From what is stated in these paragraphs, it appears that the learned Magistrate resorted to different procedure prescribed by the Criminal Procedure Code simultaneously.

5. Finally in para 7 of the impugned judgment, the learned Judge observed that the objection taken by the present applicant before him was not tenable at the stage of framing of charge, as the objection in respect of bar created by section

195 Cr.P.C. is only a technical objection which could be decided at final stage.

6. After going through the impugned order as well as the copies of the charge-sheet filed by the applicant, I am of the view that the learned Additional Sessions Judge erred in his finding that ground for proceeding against the present applicant under sections 120-B, 205, 419, 467, 468 and 471 of IPC are present in the case.

7. There is no dispute between parties that section 195(1)(b)(ii) creates a bar on taking cognizance by the Magistrate of an offence described under section 463 IPC and also under section 470, 471 etc. of IPC. However, the learned Additional Sessions Judge opined that (i) if any bar is created by section 195, as stated above, the same is taken care of by the Magistrate as he filed a complaint case also in the matter and then as observed above he opined that (ii) any such objection on technical ground could be decided only at final stage and such objection cannot be taken at the stage of framing of charges.

8. Such a stand taken by the learned Additional Sessions Judge appears improper as the question whether any bar is

created by the provision by section 195 Cr.P.C. can be decided by the Court at the preliminary stage when he consider whether any charge is made out or not, because it goes to the root of the matter whether the Magistrate is entitled to take cognizance if he is not, then framing of charge does not arise.

9. This apart, section 210 of Cr.P.C. does not bar filing of a private complaint against the same offence, however, it prescribes the procedure to be followed when such an eventuality arises. It is not clear whether such procedure has been followed by the Magistrate or whether he took the fact that a private complaint is also pending in this matter into consideration. In this view of the matter, it is clear that the learned Additional Sessions Judge erred while passing the impugned order, this impugned order is liable to be set aside.

10. Accordingly, this revision is allowed. The impugned order is set aside. The matter is remanded back to the learned Magistrate with direction to decide the objection raised by the present applicant taking provisions of section 195(1)(b)(ii) and section 210 of Cr.P.C. into consideration and then pass a reasoned order.

11. With that observation and direction, the revision stands disposed of.

**(ALOK VERMA)
JUDGE**