HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**M.Cr.C.No. 38669 / 2019**
Parties Name	***Vinod Raghuvanshi*** ***vs.*** ***State of M.P. & another***
Date of Order	**04 / 08/ 2020**
Bench Constituted	**Justice B.K. Shrivastava**
Order passed by	**Justice B.K. Shrivastava**
Whether approved for reporting	**Yes**
Name of counsel for parties	**For Petitioner :** Shri Ravinandan Singh, Sr. Advocate, with Shri Swapnil Ganguly, Advocate **For Respondent No.1/State:** Shri Naveen Shukla, Government Advocate **For Respondent no.2 :** Shri Kishore Shrivastava, Sr. Advocate, with Shri Rahul Diwakar, Advocate
Law laid down	**As per para 23**
Significant paragraph numbers	**23, 30, 31 & 32.**

O R D E R
(04.08.2020)

1. This order shall govern the disposal of **Interim application No. 1181 of 2020** filed by Respondent No. 2 Shri Ajay Arora [Referred as "Respondent"] **U/s 340 r/w 195 of Cr.P.C.** on 17.01.2020 for the following relief :-

> "*It is therefore prayed that this Honorable Court, may kindly be pleased to allow the instant application and conduct a detailed enquiry with respect to the Sections 205, 206, 209, 463, 465 and 471 of the Indian Penal Code, 1860, against the Applicant and thereafter proceed as per the provisions of Section 340 of the Code of Criminal Procedure, 1973 in the interest of Justice.*"

2. Petitioner Shri Vinod Raghuwanshi (refereed as **"Petitioner"**) has filed the instant petition No. 38669 of 2019 on 12.09.2019 under section 482 of the Code of Criminal Procedure 1973 being aggrieved by the order dated 18/07/2019 passed by learned Judicial Magistrate First Class, Bhopal in RT No.5442 of 2008 whereby the court has prima facie found that offence under section 420 and 120-B are made out against the Petitioner and passed the order to frame the charges accordingly. The Petitioner has further assailed order dated 29/08/2019 passed by First Additional Judge to the Court of First Additional Sessions Judge, Bhopal passed in Criminal Revision No.374 of 2019 whereby the order dated 18/07/2019 passed by the learned Judicial Magistrate First Class, Bhopal has been upheld.

3. It will be useful to mention the entire **background of the case** :-

[i]. Respondent No.2 filed a private complaint before the court of learned Judicial Magistrate First Class, Bhopal on 02.02.2008, under Section 200 of the Code of Criminal Procedure, 1973, against the Petitioner and others for taking cognizance of the offences under Section 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860. The learned Court below took cognizance for the aforesaid offences under sections 420 and 120-B of the Indian Penal Code by its order dated 10/04/2008 and registered the Criminal Case No. No.5442 of 2008.

[ii]. Petitioner being aggrieved by the aforesaid order dated 10/04/2008 taking cognizance, preferred a Criminal Revision No.195/2008 before the Sessions Judge. The Respondent No.2 also, preferred Criminal Revision No.216 / 2008 against the same order whereby cognizance under section 420 and 120-B of the Indian Penal Code was taken but cognizance for other offences under sections 467, 468 and section 471 of the Indian Penal Code, was not taken. The 8th Additional Sessions Judge, Bhopal by its common order dated 13/05/2008 dismissed the Criminal Revision No.195/2008 filed by the Petitioner and allowed the Criminal Revision No.216/2008 filed by the Respondent No.2 and directed the court below to reconsider the cognizance for remaining offences.

[iii]. Being aggrieved by the aforesaid order dated 13/05/2008 passed by the learned Eighth Additional Sessions Judge, Bhopal, the Petitioner preferred MCRC No.5521/2008 under section 482 of the Code of Criminal Procedure, 1973, before the High Court. The Court dismiss the aforesaid application by order dated 11/11/2008.

[iv]. Petitioner assailed the aforesaid order dated 11/11/2008 passed by this Court, before the Hon'ble Supreme Court by preferring Special Leave Petition which was registered as Criminal Appeal No.1477/2013. The Hon'ble Supreme Court by its order dated 23/09/2013, dismiss the appeal being devoid of merits and sans substance.

[v]. Thereafter, the Petitioner preferred another application under section 482 of the Code of Criminal Procedure before this High Court which was registered as MCRC No.14715/2013. The said MCRC No.14715/2013 was withdrawn on 16/01/2014 with liberty to file an application under section 197 of the Code of Criminal Procedure. But Petitioner again filed an application before High Court under section 482 of the Code of Criminal Procedure being registered as MCRC No.3020/2014 and sought modification of order dated 16/01/2014 passed in MCRC No.14715/2013. The said order dated 16/01/2014 was recalled by order dated 26/02/2015.

[vi]. Petitioner preferred an application under section 197(1) of the Code of Criminal Procedure before the learned Trial Court on the ground that the case has been instituted against the Petitioner without obtaining sanction from the State Government. The said application under section 197 Cr.P.C. was dismissed by the learned Judicial Magistrate First Class, Bhopal by its order dated 08/07/2015.

[vii]. The Petitioner assailed the said order dated 08/07/2015 before the High Court by filing MCRC No.12365/2015 under section 482 of the Code of Criminal Procedure. The said MCRC No.12365/2015 was dismissed by a detailed order dated 17/09/2018 passed by Hon’ble Shri Justice "X" .

[viii]. Magistrate recorded the statement with cross examination of Complainant / Respondent in RT No.5442 of 2008 on 29.04.2018 / 05.12.2018 in "evidence before charge". Thereafter, J.M.F.C. heard the arguments upon charge and prima-facie found that offence under section 420 and 120-B are made out against the Petitioner, therefore passed the order on 18.07.2019 to frame the charges under section 420 and 120-B of IPC.

[ix] The Petitioner assailed order dated 18/07/2019 passed by J.M.F.C. Bhopal, before the First Additional Judge to the Court of First Additional Sessions Judge, Bhopal in Criminal Revision No.374 of 2019. The aforesaid court by its order dated 29/08/2019 dismissed the Criminal Revision No.374 of 2019 and upheld the order dated 18/07/2019 passed by the learned Judicial Magistrate First Class, Bhopal. Being aggrieved by the aforesaid orders dated 18/07/2019 and 29/08/2019, the Petitioner has filed the instant application under section 482 of the Code of Criminal Procedure, 1973.

4. **It is submitted by Respondent that** :-

(a) The application under Section 482, MCRC No.12365/2015 was filed through counsel viz. Shri Swapnil Ganguly, Shri Aishwarya Singh and Shri Akshay Pawar. As per the Rules and Listing Scheme / Policy in-vogue in the High Court in criminal matters, if a particular case pertaining to one crime number / regular trial number / Sessions trial number has been decided by a particular bench then all applications and petitions pertaining to the same crime number / regular trial number / Sessions trial number are to be listed before the same bench which has decided the earlier matter. As per the aforesaid Rule/ Scheme/ Policy since the earlier application under Section 482 of the Code of Criminal Procedure MCRC No.12365/2015 filed by the instant Petitioner arising of the same R.T. No.5442/2008, was decided on merits by Hon'ble Shri Justice "X", the instant application under Section 482 of the Code of Criminal Procedure MCRC No.38669/2019 again filed by the Petitioner arising of the same R.T. No.5442/2008 was supposed to be listed before Hon'ble Shri Justice "X".

(b) Since the instant Petitioner did not get a favorable order in MCRC No.12365 /2015, the Petitioner in order to avoid the instant matter being heard by Hon'ble Shri Justice "X" got the instant application filed through his previous counsel **Shri Swapnil Ganguli** who also appeared in MCRC No.12365/2015, but in addition also got the vakalatnama signed by one **Shri Sanjay Shukla** who normally practices in Gwalior and happens to be a distant relative of Hon'ble Shri Justice "X". The vakalatnama was also signed by Shri Aditya Gutpa, K.V.S. Sunil Rao and Ayur Jain Advocates with Shri Sanjay Shukla Advocate.

(c) The instant Petition was filed on 12/09/2019 and as per the prevalent listing scheme the matter was listed for the first time before Hon'ble Shri Justice "X" on 20/09/2019. The matter did not reach on 20/09/2019 and remained Not-Reached in the list. The next computer-generated date in the instant matter was 23/09/2019 but the matter was not listed on 23/09/2019. The Petitioner filed application I.A. No.18023/2019 for appropriate directions on 23/09/2019 with a prayer that since the matter is to be argued by Shri Sanjay Shukla, Advocate, there would be conflict of interest if the matter is heard by Hon'ble Shri Justice "X" and hence the Petitioner prayed for necessary orders / directions to the registry of this Honorable

Court for listing the matter before appropriate bench.

(d) The sole intention of the Petitioner in engaging Shri Sanjay Shukla, Advocate and further filing the aforesaid application for appropriate directions was to get the case transferred from the bench of Hon'ble Shri Justice "X". The said submission is further fortified by the fact that on 23/09/2019 itself an application I.A. No.18068/2019 for withdrawal of vakalatnama was filed by Shri Sanjay Shukla. If the application for withdrawal of vakalatnama was to be filed then for what reason application for appropriate directions to list the matter before appropriate bench was filed, is perceivable.

(e) Matter was listed on 24/09/2019 before Hon'ble Shri Justice "X" but again the matter did not reach op to hearing on 24/09/2019 and the matter remained Not- Reached in the list. Then matter was again listed on 27/09/2019 before Hon'ble Shri Justice "X". When the matter was called for hearing, no one was appeared for the Petitioner. The counsel for the Respondent No.2 vehemently raised objection to the conduct of the Petitioner in trying to avoid the bench and opposed the application **I.A. No.18023/2019**. Hon'ble Shri Justice "X" expressed that on one hand the counsel for the Respondent No.2 is opposing I.A. No.18023/2019 for appropriate orders but on the other hand the Respondent No.2 has written letter dated 20/09/2019 to the Honorable Chief Justice for transferring the matter to another bench. When the counsel for the Respondent No.2 denied that any such letter was written by the Respondent No.2, Hon'ble Shri Justice "X" handed over the letter dated 20/09/2019 addressed to The Hon'ble Chief Justice of M.P. and purportedly signed by **"Ajay Arora".** The counsel for the Respondent No.2 sought a copy of the said letter dated 20/09/2019 in order to verify its veracity from Respondent No.2. On such request the Court asked the Court Reader to give a copy of the said letter dated 20/09/2019 to the counsel for the Respondent No.2. Accordingly, a photocopy of letter dated 20/09/2019 was given to the counsel for the Respondent No.2. The Honorable Court was pleased to grant time to file reply to I.A. No.18023/2019 for appropriate orders and fix the matter for 30/09/2019. Reply to the I.A. No.18023/2019 was filed by the Respondent No.2 on 27/09/2019 and a prayer for initiating contempt proceedings against the Petitioner was also made.

(f) Respondent No.2 was shocked to see copy of the letter dated 20/09/2019 wherein the said letter was written in his name but does not bear his signatures. The Respondent No.2 specifically states that the said letter dated 20/09/2019 has not been written, has not been signed and has not been sent to the Honourable Chief Justice of Madhya Pradesh. Therefore, Respondent No.2 immediately sent the clarification dated 29/09/2019 along with a detailed affidavit dated 29/09/2019 specifically stating the fact that the said letter dated 20/09/2019 was neither written nor signed by the Respondent No.2 and also prayed for an enquiry in the instant matter.

(g) The matter was listed on 30/09/2019 before Hon'ble Shri Justice "X" and the Hon'ble Court deemed it proper to direct the office to list the matter before another bench.

(h) Then matter was listed on 16/10/2019 before Another Bench. Since the Respondent No.2 had clarified that he had not written, signed and sent the letter dated 20/09/2019 and had also sworn an affidavit in this regard, the counsel for

the Respondent No.2 made a request to call the said letter regarding objection for hearing the petition before another bench. The said request was not opposed and hence the Hon'ble Court pleased to direct the matter to be listed along with the said letter in week commencing 04/11/2019.

5. It is also submitted by Respondent No.2 that from the aforesaid it is clear that the letter dated 20/09/2019 was prepared and sent to the office of the Chief Justice of Madhya Pradesh to avoid hearing of the instant matter by bench of Hon'ble Shri Justice "X". The said letter dated 20/09/2019 was not prepared and sent by the Respondent No.2 as the Respondent No.2 has no apprehension with respect to the matter being heard by Hon'ble Shri Justice "X" as most of the issued in the instant Petition has already been answered by Hon'ble Shri Justice "X" in earlier round of litigation. Further the only beneficiary of the aforesaid letter dated 20/09/2019 is the Petitioner as the Petitioner himself wanted the hearing of the instant application before another bench and for the same purpose the Petitioner had engaged Shri Sanjay Shukla and had also filed an application for appropriate directions to list the matter before another bench. By fabricating the letter dated 20/09/2019, the Petitioner has committed an offence as defined and punishable under Sections 205, 209, 463, 465 and 471 of the Indian Penal Code. Further since the original letter dated 20/09/2019 is not traceable as per the report of the Registrar (Judicial), further offence under section 206 of the Indian Penal Code is made out against the Petitioner. For the reasons stated above, it is expedient in the interest of justice to conduct a detailed enquiry with respect to the offences mentioned herein above and proceed as per the provisions of Section 340 of the Code of Criminal Procedure, 1973.

6. Respondent placed reliance upon :-

[i] Patel Laljibhai Somabhai Appellant v. The State of Gujarat, AIR 1971 S.C. 1935 = 1971 Cr.L.J. 1437 =1971(2) SCC 376 (Three Judges),

[ii] K. Karunakaran Appellant Vs. T. V. Eachara Warrier and another, AIR 1978 S.C. 290 = 1978 Cr.L.J. 339,

[iii] Sachida Nand Singh and another Vs. State of Bihar and another, (1998) 2 SCC 493,

[iv] Laxminarayan Deepak Ranjan Das Appellant Vs. K. K. Jha and others,1999 CRI. L. J. 4200,

[v] Pritish Vs. State of Maharashtra and others, AIR 2002 S.C. 236 = 2002 Cr.L.J. 548 = (2002) 1 SCC 253,

[vi] Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another, 2005 CRI. L. J. 2161 = (2005) 4 SCC 370.

[vii] Sh. Narendra Kumar Srivastava v. State of Bihar and Ors. 2019 CRI. L. J. 3310 = (2019)3 SCC 318 = AIR 2019 SC 2679.

7. The petitioner filed the reply of aforementioned I.A. on 10.02.2010 and prayed that the present application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. filed by respondent no.2 is liable to be dismissed with costs because :-

(a) Baseless, false and frivolous allegation made by respondent no.2 against the present petitioner. No credibility could be attached to the allegations made therein because respondent no.2 has track record of filing false and frivolous petitions, which will be evident from judgment / order dated 21.11.2013 (Annexure A-9) passed in W.P. No.20284/2013 filed by respondent no.2 against present petitioner, in which this Hon'ble Court has dismissed the aforementioned writ petition by

imposing cost of Rs.25,000/- for concealing vital facts thereby not approaching the court with clean hands.

(b) Application has been filed by respondent no.2 with ulterior motive to delay and obstruct the petitioner from arguing on admission, which will be evident from the record of the case. The present petition was filed on 12.09.2019 and the respondent no.2 entered appearance by filing there Vakalatnama on 25.09.2019 without there being notice to them and thereafter continuously obstructing the argument on admission till date. The petitioner submits that the main aim of the respondent no.2 is to make the present petition infectious as the trial is going on the trial court.

(c) Respondent no.2 is making false allegation of getting bench changed and allegations with respect to offences described in section 205, 206, 209, 463, 465 and Section 471 of the I.P.C. The allegations made in the present application are not only false but without any basis moreover based on his assumption. Allegation made in the present application is not only absurd, false but also illogical and self contradictory as the respondent no.2 on one hand is contending that Shri Sanjay Shukla Advocate is engaged and I.A. no.18023/2019 for appropriate direction was filed by petitioner to get the bench changed whereas on the other hand is also alleging that the alleged letter dated 20.09.2019 was fabricated and sent to get the bench changed.

(d) Petitioner has bonafidly filed I.A. no.18023/2019 disclosing all the facts as soon as it came to the knowledge of the petitioner. Thus, there was no good reason that the present petitioner may submit such alleged letter in the name of respondent no.2 that too in the Office of the Chief Justice. Order sheet dated 27.09.2019 does not disclose any such interaction between the Hon'ble Judge and the counsel for respondent no.2 as alleged in paragraph 19 of the present application. It also does not disclose the existence of any such letter dated 20.09.2019 (Document-3) or the factum of direction of Hon'ble Court directing court master to hand over a photocopy of the alleged letter dated 20.09.2019 to the counsel of the respondent no.2. The order sheet dated 27.09.2019 (Document-3) only discloses that respondent no.2 sought time to file reply to I.A. no.18023/2019. Similarly, the order sheet dated 30.09.2019 (by which the Hon'ble Justice "X" has directed to list the matter before another bench), also does not discloses any factum of any such letter dated 20.09.2019.

(e) For the sake of argument without admitting even if it is believed that the interaction as alleged in para 19 has transpired even then it can't be said that petitioner is the author of the alleged letter dated 20.09.2019. On bare perusal of the letter dated 20.09.2019 it appears that respondent no.2 is the real author of the letter dated 20.09.2019 and after being confronted by the learned Judge then he may have no other choice but to disown the factum of such letter being sent by him and shift the blame on the petitioner.

(f) Even if as per the report of the Registrar Judicial if any letter dated 20.09.2019 was received in the Office of Hon'ble Chief Justice and if the same is not traceable even then petitioner cannot be assumed to be the author of the said letter and petitioner cannot be blamed if it is not traceable. Since, the respondent no.2 is the author of the letter dated 20.09.2019 it is therefore he is sure that it is

the same letter dated 20.09.2019 which was received in the Office of Hon'ble Chief Justice. It appears from the report of the Registrar (Judicial) that he has neither seen the letter dated 20.09.2019 which was received in the Office of Hon'ble Chief Justice nor he has verified that the letter dated 20.09.2019 received in the office of Hon'ble Chief Justice is the same letter dated 20.09.2019 by the respondent no.2. The Respondent in a very reckless manner in order to hide his own mischievous conduct has not only attributed motives to the petitioner but has also made baseless allegations of fabricating letter and in doing so has also indirectly leveled allegations against officials of the Office of Hon'ble Chief Justice as he has alleged in para 30 of the application that "since the original letter dated 20.09.2019 is not traceable as per the report of the Registrar (Judicial), further offence under Section 206 of the Indian Penal Code is made out against the petitioner". The Respondent no.2 should be prosecuted for contempt of court for making allegations without any basis.

8. The petitioner further submits that it appears that the present application under Section 340 of the Criminal Procedure Code has been filed in ignorance of law and the same is not maintainable in the facts and scenario of the case. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence :-

(a) upon receiving a complaint of the 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 of Cr.P.C. The petitioner submits that the scope of the preliminary enquiry envisaged in Section 340(1) of the code is to ascertain whether any offence, referred to in Clause (b) of sub-section (1) of Section 195 Cr.P.C., affecting administration of justice has been committed in or in relation to a proceeding in that Court or in respect of a document produced in court or given in evidence in a proceeding in that court. In other words, the offence should have been committed during the time when the document was in custodia legis. The petitioner submits and same can be verified from the record of the case that no such letter dated 20.09.2019 has been filed by the petitioner in the present case. Thus, the letter dated 20.09.2019 was never part of the proceedings or record until it was brought on record by the respondent no.2 along with the present application. Thus, the allegation with respect to commission of offence mentioned in Section 195(1)(b)(i) with respect to any proceeding or document is not only baseless but also preposterous. Similarly, Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offence 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. It is nobody's case that any offence as enumerated in Section 195(1)(b) was committed in respect to the said alleged letter dated 20.09.2019 (Document-3) after it had been produced or filed in the present case i.e. MCRC no.38669/2019 before this Hon'ble court. In view of the above submission, the present application under Section 340 Cr.P.C. read with Section 195 of the Cr.P.C. is liable to be dismissed at the threshold as the same is not maintainable.

9. Petitioner placed reliance upon :-

[i] Sardul Singh Vs. State of Hariyana, 1992 Cr.L.J. 354 (P & H),

[ii] Kamalvasini Radheshyam Agrawal Vs. R.D. Agrawal, 2002 Cri.L.J. 4370 (M.P.),and,

also upon Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another, 2005 CRI. L. J. 2161 = (2005) 4 SCC 370 cited by Respondent.

10. As **Section 340** of the Cr.P.C. has an interlinl with Section 195 (1) (b) it will be useful to refer to that provision in the present context. The said section reads as follows :-

"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 interest 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.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195."

11. In **Patel Laljibhai Somabhai Appellant v. The State of Gujarat, AIR 1971 S.C. 1935 = 1971 Cr.L.J. 1437 =1971(2) SCC 376 (Three Judges)** it has been said that prohibition contained in S. 195 (1) (c) is confined to those cases in which offenees specified therein were committed by a party to the proceeding in the character as such party. The purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in Section 195 (1) (b) and (c) is both to save the accused person from vexatious or baseless prosecutions. Court said in para 7 :-

"7. The underlying purpose of enacting S. 195 (1) (b) and (c) and S. 476 seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offences and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to

> consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by S. 190 Cr. P. C. of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that Court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in Section 195 (1) (c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party. It may be recalled that the superior Court is equally competent under Section 476-A Cr. P. C. to consider the question of expediency of prosecution and to complain and there is also a right of appeal conferred by Section 476-B on a person on whose application the Court has refused to make a complaint under Section 476 or Section 476-A or against whom such a complaint has been made. The appellate Court is empowered after hearing the parties to direct the withdrawal of the complaint or as the case may be, itself to make the complaint. All these sections read together indicate that the legislature could not have intended to extend the prohibition contained in Section 195 (1) (c) Cr. P. C. to the offences mentioned therein when committed by a party to a proceeding in that Court prior to his becoming such party. It is no doubt true that quite often-if not almost invariably-the documents are forged for being used or produced in evidence in Court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents forged long before the commencement of a proceeding in which they may happen to be actually used or produced in evidence, years later by some other party would also be subject to Ss. 195 and 476 Cr. P. C. This in our opinion would unreasonably restrict the right possessed by a person and recognized by S. 190 Cr. P. C. without promoting the real purpose and object underlying these two sections. The Court in such a case may not be in a position to satisfactorily determine the question of expediency of making a complaint."

12. In **K. Karunakaran Appellant v. T. V. Eachara Warrier and another, AIR 1978 S.C. 290 = 1978 Cr.L.J. 339** the Apex court said that at such an enquiry irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action. The party may choose to place all its materials before the court at that stage, but if it does not, it will not be stopped from doing so later in the trial, in case prosecution is sanctioned by the Court.in para 21 and 22 :-

> **"21.** At an enquiry held by the court under Section 340 (1), Cr. P. C. irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.
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> **22.** The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court."

13. In **Sardul Singh Petitioner v. State of Haryana, 1992 CRI. L. J. 354**, the Punjab & Haryana High Court observed that A **Full Bench** of aforesaid Court comprising of three Judges in **Harbans Singh v. State, AIR 1987 Punj and Hary 19: (1986 Cri LJ 1834)** after elaborate discussion had held that the bar enacted in S. 195 of the Criminal P.C. is applicable to those documents only which are tampered with or fabricated after their production in the Court and not concerning those documents which were fabricated outside the Court but tendered in evidence later on. But the court also

said that the ratio of the decision of the above referred Full Bench is under assail before a larger Full Bench of this Court in Registrar, High Court v. Madan Lal Sharma, (Criminal Misc. No. 1342-M of 1985). in para 10 the court found that continuance of the present investigation is a clear abuse of the process of the Court and futile exercise as no Court can take cognizance of the above referred offences except on the complaint in writing of the civil Court where such offences were committed. Therefore court queshed the proceeding.

14. In **Sachida Nand Singh and another Vs. State of Bihar and another, (1998) 2 SCC 493,** it has been said that no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting procedural requirements. Forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records. Court said :-

> **"10.** The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195(1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. It has to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the Chapter appellate. So the offences envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.
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> **11.** The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.
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> **12.** It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records."

15. In reference to S.340 of Cr.P.C., the D.B. of Orrisa High Court in **Laxminarayan Deepak Ranjan Das Appellant v. K. K. Jha and others, 1999 CRI. L. J. 4200** [Orissa High Court] said in para 3 that :-

> "**3.** The object of the Legislature in enacting Section 340 of the Code was to sweep away the cloud of rulings which threatened to smoother the original enactment (i.e., Section 476(1) and Section 476-A of the 1898 Code) and to lay down a simplified procedure on the lines of the existing procedure as to complaints. There has been complete overhauling of the old provisions, though law substantially remains the same. Section 340 of the Code incorporates following principles :
>
> **(i)** Only cases where Courts, on objective consideration of the facts and circumstances are of honest belief and opinion that interests of justice require the laying of a complaint, should form subject of an enquiry.
>
> **(ii)** Conducting preliminary enquiry or dispensing with it is not mandatory, but is discretionary.
>
> **(iii)** A proceeding under the provision is an independent and different proceeding from that of the original sessions case.
>
> **(iv)** The proceeding being penal in nature, in accordance with principles of natural justice the accused should be issued show cause notice to afford a reasonable opportunity to establish by adducing oral and documentary evidence that it is not

expedient in the interest of justice to prosecute him.

(v) As a condition precedent to filing a complaint; the Court should record a finding that it is expedient in the interests of justice that an enquiry should be made.

(vi) The provision to record a finding is not merely discretionary but is mandatory, for, an appeal lies against the order of the Court.

(vii) The order recording such a finding must be a speaking one supported by valid and justifiable grounds to enable the appellate Court to know the material on which the Court formed the opinion that it was expedient in the interest of justice to launch a prosecution.

(viii) The language recording the finding as contemplated under the provision must be such that it leaves no doubt that it was a fit and proper case.

(ix) It is incumbent on the Court to give a specific finding before making a complaint.

(x) The omission or failure to record a finding that it is expedient in the interests of justice to enquire into the offence is not a mere irregularity curable under Sections 464 and 465 of the Code as it goes to the root of the matter, and the Court will have no jurisdiction to file a complaint without recording such a finding."

16. Further in para 11 of the aforementioned case, the D.B. said that language of the Section means that the offence can be in relation to a proceeding in that Court and which can also be a proceeding under Section 340 of the Code itself and it is discretionary for Court to make a preliminary inquiry and it would depend upon the facts and circumstances of each case whether any preliminary inquiry is to be held or not before making an order :-

"11. There is no restriction contained in the words used "in relation to a proceeding in that Court" so as to relate it to a proceeding otherwise than a proceeding under Section 340 of the Code. The plain and simple language of the Section means that the offence can be in relation to a proceeding in that Court and which can also be a proceeding under Section 340 of the Code itself. It is discretionary for such Court to make a preliminary inquiry and it would depend upon the facts and circumstances of each case whether any preliminary inquiry is to be held or not before making an order. As indicated above, before exercising its discretion to lay a complaint, the Court should find first that it is in the interests of public justice that a complaint should be made and, secondly, that there is a reasonable probability of a conviction resulting from the complaint. In regard to the first point although no time-limit for the institution of such prosecution is laid down in the section yet prompt action is desirable and delay on the part of a party in making his application to move the Court to lay a complaint may, if unexplained be, fatal to the application. When the application is delayed and the delay is not satisfactorily explained, evidence called in support thereof naturally comes under suspicion and the inference arises that the interests of public justice are less likely to be served than the interest of the applicant by the laying of a complaint. Moreover a party, who has been unsuccessful in a case should not remain indefinitely under the threat that an application for his prosecution may be filed, such a weapon is likely to be used for improper purposes. These considerations apply with more force when the application is not founded on materials to be founded on the record of the trial, but on evidence of the additional facts which the applicant alleges to be available. In such cases, strict explanation of the reasons for the delay in making the application is necessary; otherwise it cannot be held that it is in the interest of justice to make a complaint. Although an enquiry under Section 340 of the Code is a preliminary inquiry, the Court may find it necessary to consider and discuss the entire evidence for the purpose of coming to a finding whether the alleged offence was committed or not and may then decide whether it would be expedient in the interest of justice to launch prosecution."

17. A **Three Judges Bench** of Apex Court in **Pritish v. State of Maharashtra and others, AIR 2002 S.C. 236 = 2002 Cr.L.J. 548 = (2002) 1 SCC 253** said in reference to Preliminary inquiry before filing the complaint that opportunity of hearing to would be accused, is not required to be given. Court is under no obligation to afford an

opportunity of hearing to accused before filing complaint before Magistrate for initiating prosecution proceedings. Court observed in para 9 :-

> **"9.** Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.**"**

18. In **Smt. Kamalvasini Agarwal Vs. R. D. Agarwal, 2002 CRI. L. J. 4370 = 2002(3) MPLJ 220,** the suit was filed by landlord for eviction of tenant on ground of bona fide requirements of suit premises. In the Deposition , the tenants witness told regarding availability of alternative accommodation upon the basis of recital in lease deed and map annexed thereto indicating availability of alternative accommodation. The Court said that it cannot be said that the statement has been given without any basis . The Court observed that the witness has given a proper explanation and the ground for his earlier statement. The recital in the lease deed and the map annexed thereto is the basis of his oral evidence indicating alternative accommodation available with the plaintiff. Therefore, his version cannot be said to be without any basis. It cannot be said even, remotely that he has intentionally given any false evidence. Court observed as under :-

> **5...**.....It is well settled that a party cannot be permitted to vindicate personal vendetta or to settle his private score. Provision in Section 340 of the Code cannot be allowed to be used for self-aggrandisement. The prosecution for perjury can be directed in the larger interest of the administration of justice. The Court must form an opinion that the prosecution is "expedient in the interest of justice". This is sine qua non for proceeding to launch a prosecution for perjury. The expression "It is expedient in the interest of justice" involves a careful balancing of many factors. It is only in suitable and glaring cases of deliberate falsehood that such a prosecution should be launched.
>
> **6.** The Supreme Court has cautioned long back in **Chajoo Ram v. Radhey Shyam, AIR 1971 SC 1367 : (1971 Cri LJ 1096)**, that indiscriminate prosecutions under Section 193, I.P.C. resulting in failure are likely to defeat the very object of such prosecution. It has been laid down that the prosecution for perjury should be sanctioned by Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. .....Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge. Following this decision the Supreme Court has again observed in **M. S. Ahlawat v. State of Haryana, (2000) 1 SCC 278 : (2000 Cri LJ 388)** : "It is settled law that every incorrect or false statement does not make it incumbent upon the Court to

order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice". Recently the Supreme Court in **Pritish v. State of Maharashtra, (2002) 1 SCC 253 : (2002 Cri LJ 548)** has again observed that the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into.

7. It has also been observed in **K.T.M.S. Mohd. v. Union of India, AIR 1992 SC 1831 : (1992 Cri LJ 2781)** that it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice. It was earlier observed by a three-Judge Bench of the Supreme Court in **Chandrapal Singh v. Maharaj Singh, AIR 1982 SC 1238 : (1982 Cri LJ 1731),** that day in and day out in Courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under S. 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be in abuse of the process of the Court."

19. In view of the conflict of language between two decisions of Apex Court each rendered by a Bench of three learned Judges in **Sachida Nand Singh and Anr. v. State of Bihar and Anr. [AIR 1998 SC 1121= 1998 AIR SCW 932] and Surjit Singh and Ors. v. Balbir Singh [1996 (3) SCC 533 = 1996 AIR SCW 1850]**, regarding interpretation of Section 195(1)(b)(ii) Cr.P.C. the matter was placed before a **five-judge Bench in Iqbal Singh Marwah v. Meenakshi Marwah, 2005 CRI. L. J. 2161 = (2005) 4 SCC 370 = 2005 AIR SCW 1929,.** After referring to the provisions contained in Sections 190, 195(1)(b)(ii) and 340 Cr.P.C. it was held that the decision in Sachida Nand's case (supra) correctly decided and the view taken 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. Court also said that S. 195 is not penal provision therefore rule of strict contruction does not apply. 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. Court observed in para 18, 19 and 20 (of CRI. L. J.) that :-

"18. In view of the language used in Section 340, Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

19. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340, Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a

complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

20. 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 be highly detrimental to the interest of society at large."

20. In **Shyam Kumar & Ors. Vs. State Of M.P. , ILR 2015 M.P. 1099** the court explain the distinction between Sections 340 & 344 and said Section 344 applies to judicial proceedings only whereas section 340 applies to proceedings other than judicial proceedings also. The Court observed :-

"8. ..... On bare perusal of both these provisions, it is clear that Section 340 of the Code is general provisions which deals with the procedure to be followed in respect of variety of offence affecting the administration of justice which are specified in clause (b) of Section 195(1) of IPC but Section 344 of the Code is restricted in scope of offence falling under Section 193 to 195 of IPC. Similarly, Section 344 of the Code applies only to the judicial proceedings while Section 340 of the Code has wide scope in that it applies to the proceedings other than judicial also. The only qualification being that proceeding must be in relation to the Court.

9. Similarly, under Section 340(1) of the Code, the Court has to held a preliminary enquiry before making the complaint while under Section 344 of the Code, Court can try the offender summarily by taking cognizance of the offence provided it gives a reasonable opportunity of showing cause why he should not be punished. For purposes Section 344 of the Code it is necessary for the Court to express an opinion in the judgment or final order itself that the person appearing before it as a witness has initially given false evidence or has intentionally fabricated false evidence. In absence of that, no action can be taken under Section 344 of the Code but the fact establishing falseness of the evidence or brought to the notice of the Court after delivery of judgment or order Section 344 of the Code cannot be applied and it would be open to the Court to take proceeding under Section 340 of the Code. Similarly under Section 340 of the Code, Court may proceed suo motu or on an application while under Section 344 of the Code no application is contemplated. 10. Under Section 344(3) of the Code powers of the Court to make complaint under Section 340 of the Code in respect of cases falling under Section 344 of the Code is not at all affected if the Court does not choose to proceed under Section 344 of the Code. ....."

21. In **Prem Sagar Manocha v. State (NCT of Delhi), AIR 2016 S.C. 290** the Apex Court said that **Har Gobind v. State of Haryana[(1979) 4 SCC 482 = AIR 1979 SC**

1760 was a case falling on the interpretation of the pre-amended provision of the CrPC. Court placed reliance on three-Judge Bench case **Pritish v. State of Maharashtra[(2002) 1 SCC 253 = AIR 2002 SC 236]** and said that as per present section 340 of Cr.P.C., it is not mandatory for court to record finding, after preliminary enquiry, regarding commission of offence of perjury. Court observed as under :-

> "12. Section 340 of CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre-amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression 'shall' has been substituted by 'may' meaning thereby that under 1973 Code, it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence 'which appears to have been committed', as to whether the same should be duly inquired into. We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be quashed on the only ground that there is no finding recorded by the court on the commission of the offence. Reliance placed on **Har Gobind v. State of Haryana[(1979) 4 SCC 482 = AIR 1979 SC 1760]** is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of the CrPC. A three-Judge Bench of this Court in **Pritish v. State of Maharashtra, (2002) 1 SCC 253 = AIR 2002 SC 236]** has even gone to the extent of holding that the proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

22. In **Sh. Narendra Kumar Srivastava v. State of Bihar and Ors. 2019 CRI. L. J. 3310 = (2019)3 SCC 318 = AIR 2019 SC 2679** the apex court said in para 16 (of CRI.L.J) that The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced. Court said :-

> **"16.** Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted."

23. Therefore it is the **settelled position of law about Section 340 of Cr.P.C.** that :-

[i] It is not peremptory that such preliminary inquiry should be held. **'Conducting preliminary enquiry'** or **'dispensing with'** it is not mandatory, but **is discretionary.** It is **discretionary for Court to make a preliminary inquiry** and it would depend upon the facts and circumstances of each case whether any preliminary inquiry is to be held or not before making an order. Even proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry. The court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. **Absence of any such preliminary inquiry would not vitiate** a finding reached by the court regarding its opinion.

[ii] What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too,

opinion on an offence **'which appears to have been committed'**, as to whether the same should be duly inquired into. Since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

[iii] It is important to notice that even when the court forms such an opinion it **is not mandatory that the court should make a complaint**.

[iv] Prohibition contained in S. 195 (1) (c) is confined to those cases in which offenees specified therein were committed by a "**party to the proceeding"** in the character as such party.

[v] The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by S. 190 Cr. P. C. of the aggrieved parties directly initiating the criminal proceedings.

[vi] At an enquiry held by the court under Section 340 (1) of Cr. P. C. irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

[vii] The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court.

[viii] Forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

[ix] Only cases where Courts, on objective consideration of the facts and circumstances are of honest belief and opinion that interests of justice require the laying of a complaint, should form subject of an enquiry.

[x] As a condition precedent to filing a complaint; the Court should record a finding that it is expedient in the interests of justice that an enquiry should be made. The provision to record a finding is not merely discretionary but is mandatory, for, an appeal lies against the order of the Court.

[xi] The order recording such a finding must be a speaking one supported by valid and justifiable grounds to enable the appellate Court to know the material on which the Court formed the opinion that it was expedient in the interest of justice to launch a prosecution.

[xii] It is incumbent on the Court to give a specific finding before making a complaint. Court should find first that it is in the interests of public justice that a

complaint should be made and, secondly, that there is a reasonable probability of a conviction resulting from the complaint.

[xiii] It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

[xiv] The prosecution for perjury can be directed in the larger interest of the administration of justice. The Court must form an opinion that the prosecution is "expedient in the interest of justice".

24. Photo copy of the disputed letter dated 20.09.2019 has been filed by Respondent No. 2 which is as under : -

"***To,***
The Hon'ble Chief Justice of M.P.
High Court of M.P.
Jabalpur (M.P.)

Subject: *Serious Conflict of Interest of Hon'ble Justice "X", posted at M.P. High Court, Main Seat at Jabalpur in hearing MCRC No. 38669/2019; Vinod Raghuvanshi Vs. State of M.P. and one another listed before him on 20.10.2019 at item no.176.*

Respected Sir,

My name is Ajay Arora and I am respondent no.2 in MCRC no.38669/2019: Vinod Raghuvanshi Vs. State of M.P. and one another filed before the Hon'ble High Court of M.P., Main Seat at Jabalpur. I wish to bring to your notice that Shri. Vinod Raghuvanshi, petitioner in above referred MCRC u/s 482 Cr.P.C. has engaged one counsel namely Shri Sanjay Shukla : Enrolment no.3203/2004: R/o 3, Jhansi Road, Opp F.C.I. Godown, Gwalior. Shri Sanjay Shukla, Advocate normally practices at Gwalior Bench of M.P. High Court. Shri Sanjay Shukla, Advocate is real brother-in-law (saala) of Hon'ble Justice "X" posted at M.P. High Court, Main seat at Jabalpur. Shri. Vinod Raghuvanshi has engaged Shri. Sanjay Shukla, Advocate and the matter was listed before Hon'ble Justice "X" on 20.10.2019 at item no.176 in order to influence Hon'ble Justice "X" to get a favorable order. It appears that either registry has deliberately listed above matter before Justice "X", knowing well that Shri Sanjay Shukla, Advocate is real brother-in-law of Hon'ble Justice or Shri Justice "X" has deliberately concealed this material information from the registry of this Hon'ble Court for some ulterior motive best known to him. Infact, it was also the duty of Shri. Sanjay Shukla, Advocate for placing the request before registry for not listing the above matter before Hon'ble Justice "X" disclosing his close relations with Hon'ble Justice. The most shocking part is that Shri Sanjay Shukla, Advocate has also appeared before him at 10:30 AM on 20.10.2019 for mentioning for out of turn hearing at item no.176. Neither Shri Sanjay Shukla prayed for listing of above matter before another bench due to conflict of interest nor Hon'ble Justice "X" recused himself from the matter. Hon'ble Justice Shri "X" has infact agreed to take up item no.176

after bail matters, but fortunately Hon'ble Justice "X" was not able to finish bail matters till 1:30 pm and could not take up item no.176, as he sat for hearing matters in Special Division Bench V & VII from 2:30 PM. This conduct of Hon'ble Justice "X" and Shri. Sanjay Shukla has led to suspicion that something is fishy. The above act amounts to misconduct by Sanjay Shukla Advocate as well as by Hon'ble Justice "X". I am also sending this complaint to State Bar Council of M.P. for taking appropriate disciplinary action against Sanjay Shukla, Advocate for breach of conduct rules. I therefore request your lordship to inquire into the matter and list the above matter MCRC no.38669/2019:Vinod Raghuvanshi Vs. State of M.P. and Others before another Single Bench (Other than Justice "X") of this Hon'ble High Court, Main Seat at Jabalpur, in the interest of justice and fairplay and to avoid serious conflict of interest.

Thanking you, in anticipation

Date: 20-09-2019 *Your's faithfully*

Sd/-

Ajay Arora

23 Zone II, M.P. Nagar, Bhopal

(Respondent no.2: MCRC no.38669/2019: Vinod Raghuvanshi Vs. State of M.P. & Others)"

25. As per Respondent, after getting the photocopy of aforesaid letter he submits a letter of clarification to the letter dated 20.09.2019 with his affidavit which is as under :-

"***To,***
Hon'ble the Acting Chief Justice
High Court of Madhya Pradesh
Principal Seat at Jabalpur (M.P.)

Through: *The Registrar General High Court of Madhya Pradesh.*
Subject: *Clarification to the letter dated 20.09.2019.*

Sir,
I am in receipt of the letter dated 20.09.2019 through the Court on the same date itself i.e. 27.09.2019 when the matter was listed. I submit that the said letter has neither been written nor signed by me. I am submitting a detailed affidavit so that an enquiry be conducted.
An affidavit is annexed herewith.

Sd/-
Ajay Arora.

AFFIDAVIT

*I, **Ajay Arora** S/o Late M.L. Arora, A/a 60 years, Office at 23, Zone II, M.P. Nagar, Bhopal do make on oath and state as under :-*

1. *I submit that I'am the respondent no.2 in MCRC 38669 of 2019. During the course of hearing of the said MCRC 38669 of 2019 my counsel has handed over to me a copy of the letter dated 20.09.2019 said to have been signed by me.*
2. *I specifically state that the said application has neither been submitted by me to the Acting Chief Justice nor the same has been signed by me.*
3. *I specifically state that the said application has been fabricated on my behalf containing my forges signatures.*

4. I further state that the I have gone through the contents of the said letter and on going through the same it is revealed that it is dated 20.09.2019 whereas on the 1st page of application it is stated that the matter was listed before the Hon'ble Shri Justice R.K. Dubey on 20.10.2019 at Sr. No. 176.

5. I submit that it should be enquired as to how the letter reached the Hon'ble Acting Chief Justice on 20.09.2019 whereas the matter was listed on the said date itself on 20.09.2019 at Sr. No. 176.

6. I submit that the listing date of 20.10.2019 mentioned on the 1st page of the application is erroneous.

7. I further submit that I have not raised any doubts about the credibility of Hon'ble Shri Justice R.K. Dubey and I express my faith and confidence in the Hon'ble Judge.

8. I apprehend that the entire mischief appears to have been done by Mr. Vinod Raghuwanshi who is the petitioner in MCRC 38669 of 2019 so that the matter may be listed before some other bench. According to the practice prevailing the present matter deserves to be heard by Hon'ble Shri Justice R.K. Dubey as in the earlier round of litigation another petition bearing MCRC No.12365 of 2015 arising out of the same case which was filed by the same petitioner has been decided by the same Judge.

9. I submit that such tactics are being commonly adopted by writing letter like the present one which should not be permitted.

10. I submit that a complete enquiry be conducted so as to ascertain the truthfulness of my signatures and the contents of the application.

Sd/-

DEPONENT

VERIFICATION

I, Ajay Arora the above named deponent, do hereby verify that the contents of above paras 1 to 10 have been drafted by me and the same true and correct to my personal knowledge and belief.

Verified and signed on this 29th day of September 2019 at Bhopal.

Sd/-

DEPONENT"

26. It is transpired from record that when the matter was listed on 30/09/2019 before Hon'ble Shri Justice "X", the Hon'ble Court deemed it proper to direct the office to list the matter before another bench. Then matter was listed on 16/10/2019 before Another Bench. The counsel for the Respondent No.2 made a request to call the disputed letter. The said request was not opposed by petitioner, hence the Court directed to the Registry to list the matter along with the said letter in week commencing 04/11/2019.

27. Thereafter, matter was listed on 08/11/2019 before this court. In compliance of the earlier order dated 04/11/2019, a note dated 07/11/2019 was written by Dealing Assistant-3 that no such letter dated 16/10/2019 has been received in the Registry. The said note was not verified by the Registrar (Judicial). Therefore, Court by its order dated 08/11/2019 directed the Registrar (Judicial) to trace out the said letter and also collect information from the Registrar General Office and place the letter dated 20/09/2019 along with record on the next date. The Registrar (Judicial) was also directed to place on record the original letter dated 29/09/2019 submitted by Ajay Arora / Respondent No.2 before the Registry. The matter was directed to be listed in the week commencing 18/11/2019. Then a report dated 21.11.2019 was submitted by the Registrar (Judicial) verifying the factum of receipt of letter dated 20/09/2019 from the office of the Chief

Justice. After perusal of the report, the Registrar (Judicial) again directed on 22.11.2019 to trace out the said letters and place the same with record on the next date i.e. 03/12/2019. Forwarding the information dated 13.11.2019 and 19.11.2019 received from PPS of Hon'ble the C.J., a report was submitted by the Registrar (Judicial) that the letter dated 20/09/2019 is not traceable. Information was received as under :-

> *"Letter dated 29/9/2019 from Shri Ajay Arora of Bhopal was received in the office of undersigned and the same was marked to R (J-II) for necessary action.*
>
> *So far as letter dated 20/9/2019 of Shri Arora is concerned, it does not appear to have been received in this office as the same could not be traced.*
>
> *Sd/-*
>
> ***13/11/2019"***
>
> *"**19/11/2019***
>
> *With reference to note of receipt Section dated 18/11/2019 stating that letter dated 20/9/2019 was sent to the Secy. of Hon. CJ on 27/9/2019, it is submitted that it is shown to have been received in this office but is not traceable. Or, it is possible that after going through the same it was destroyed on being found worthless, or illegible or anonymous, it being ordinary post dak.*
>
> *Sd/-*
>
> ***19/11/2019"***

28. It is also appeared from the record that at the time of filing the petition, joint vakalatnama of Shri Swapnil Ganguly and Shri Amit Singh was filed. Thereafter, during pendency of petition another joint Vakalatnama of Shri Swapnil Ganguli, Shri Sanjay Shukla, Shri Aditya Gupta, Shri K.V.S. Sunil Rao and Shri Ayur Jain Advocates was filed. On **23.09.2019** an **I.A. No. 18068/2019** was filed by Shri Sanjay Shukla Advocate **for withdrawal of his Vakalatnama,** stated in **"*I Sanjay Shulkla is appearing on behalf of the petitioner and further wishes to withdraw my vakalatnama from the aforesaid case with the leave of the Hon'ble Court*"**. Any reason for withdrawal of vakalatnama was not mentioned in the aforesaid application. On the same date i.e. **23.09.2019** another **I.A. No. 18023/2109** was also filed by Shri K.V.S. Sunil Rao advocate on behalf of Petitioner Vinod Raghuwanshi for **"Appropriate direction".** Paras 3, 4 and 5 with the prayer clause are important, which are :-

> **"3.** The petitioner submits that neither petitioner nor Shri Sanjay Shukla Advocate were aware on the date of filing of the present petition that the present matter will only be listed before Hon'ble Justice **"X".**
>
> **4.** The petitioner submits that when his counsel Shri Sanjay Shukla Advocate got to know from cause list that the present matter is listed before Hon'ble Justice **"X".** on 20.10.2019 then Shri Sanjay Shukla, Advocate disclosed to the petitioner that he is having close family relations with Hon'ble Justice **"X".**, therefore, as per Rules (i.e. Rules of Professional Standers mentioned in Chapter II, Part VI of the Bar Council of India Rules) framed under Section 49(1) (c) of the Advocates Act, 1961, he cannot appear and plead before Hon'ble Justice **"X".**
>
> **5.** The petitioner submits that since Shri Sanjay Shukla, Advocate has already entered appearance by filing Vakalatnama, acted and filed present petition on behalf of petitioner before this Hon'ble High Court, therefore, if his (Shri Sanjay Shukla Advocate) appearance in the present case before Hon'ble Justice **"X".** is likely to cause any conflict of interest then this Hon'ble Court may kindly pass necessary orders for placing the matter before appropriate bench of this Hon'ble Court."

29. Now we shall consider whether the preliminary inquiry is required or not in this case? As per the established law stated above, the preliminary inquiry is not mandatory

but if the circumstances are required, then before filing the complaint the preliminary inquiry can be made. In this case, the main dispute is attached with a letter dated 20.09.2019 alleged to be written by respondent. While the contention of respondent is that he had not written the aforesaid letter. The petitioner himself sent the aforesaid letter under his signature. If the letter has been sent by the petitioner, then definitely he committed offence stated above and the private complaint may be filed against him.

30. It is an admitted position that Petitioner preferred an application under section 197(1) of the Code of Criminal Procedure before the learned Trial Court on the ground that the case has been instituted against the Petitioner without obtaining sanction from the State Government. The said application under section 197 Cr.P.C. was dismissed by the learned Judicial Magistrate First Class, Bhopal by its order dated 08/07/2015. Against the aforesaid order Petitioner filed MCRC No.12365/2015 under section 482 of the Code of Criminal Procedure which was dismissed on merit by order dated 17/09/2018 by Hon'ble Shri Justice **"X".** It is submitted by the counsel for Respondent that because Hon'ble Shri Justice **"X"** earlier dismissed the **M.Cr.C. No.12365/2015** filed by petitioner by order dated 17.09.2018, therefore, the petitioner was under apprehension that the present petition which has been filed against the order of framing charges, will not be decided in his favour by the aforesaid Bench. During arguments, the respondent draw attention towards Paras 24, 26, 34 and 35 of the aforesaid order, which are as under:-

> "**24.** It appears from the record that learned CJM on the basis of evidence produced by the respondent No.2 in support of his complaint found that other accused persons prepared forged partnership deed dated 06.03.2003 and original partnership deed dated 05.03.2002 was replaced with the forged partnership deed and that forged partnership deed was placed in the Excise office's record and in that act of other co-accused applicant and other co-accused O.P. Sharma and R.K. Goyal were also involved because without the help of applicant and O.P. Sharma and R.K. Goyal, the documents could not have been replaced.
>
> **26.** Thus, it clearly appears that learned Apex Court prima-facie found that either applicant manipulated the Government record for providing undue benefits to the partner of the firm and causing loss to the complainant by replacing the original partnership deed dated 05.03.2002 from the forged partnership deed dated 06.03.2003 in official record which was kept in the Excise office or involved in conspiracy of that crime and facilitated others to do so and this act of the applicant is amounting to misconduct.
>
> **34**. From the judgements of Apex Court as discussed above it transpires that there cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. Question whether a particular act done by a public servant is in discharge of his official duty or not, substantially depends on the facts and circumstances of each case. There must be a coherent nexus between the act complained of as an offence and the discharge of official duty. The act must fall within the scope and range of official duties of the public servant concerned. Where an act is totally unconnected with the official duty of the public servant, there can be no protection under Section 197. The protection under Section 197 can be claimed only when the act of applicant is either within the scope of official duty or in excess of the official duty. The offence must be directly and reasonably connected with official duty. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duty or it was so integrally connected with or attached to his office as to be inseparable from it.
>
> **35.** In this case, the official duty of the applicant was to keep the tender document safe as it was produced by the bidder while applicant acted contrary to this by manipulating that official record, so this act of applicant cannot be said to be done in execution of his official duty or in

> excess of the official duty. The alleged act of applicant to manipulate the Government record for providing undue benefits to other partners of the firm and causing loss to the respondent no.2 by replacing the original partnership deed dated 05.03.2002 from the forged partnership deed dated 06.03.2003 in official record was totally contrary to his official duties and comes under misconduct and misconduct can never be the part of the official duty. Protection under Section 197 of Cr.P.C. only available to a government when the act of him is either within the scope of official duty or in excess of the official duty. While the alleged act of applicant is totally unconnected with his official duty."

31. Looking to the aforesaid observation of the Court, it can be said that the arguments advanced by respondent having some substance. This petition has been filed against the order of framing of charges. The Court of Hon'ble Shri Justice "X" in Para 24, 26, 34 and 35 of the order dated 17.9.2018 passed in M.Cr.C. No.12365/2015 observed the position of the case. Therefore, this argument having some force that petitioner was under apprehension that the present petition will not be decided in his favour. In the aforementioned situation the petitioner was having the cause to file Vakalatnama of relative advocate of the Judge or to file the forged letter in the name of respondent.

32. It cannot be disputed that the petitioner was having the knowledge that this petition will be listed before the same Judge, who decided earlier petition **M.Cr.C. No.12365/2015** filed by the petitioner. Normally it may be presumed that when a party engages an advocate, at that time the party gives the entire record and information regarding the case, previous history and the Bench before whom the matter is required to be listed or pending. Therefore, it can be said that the Advocate Sanjay Shukla was aware of the fact that the case has been listed before the Bench presided by Hon'ble Shri Justice "X". It is surprising that on 23.09.2019 the aforesaid advocate filed I.A. No.18068/2019 for permission to withdraw his Vakalatnama and on the same date, petitioner filed another application for appropriate direction. If, the application was filed for appropriate direction then the second application for withdrawal of Vakalatnama was not necessary. Both applications have been filed on the same date, therefore, it creates a suspicion.

33. In the aforesaid situation, it will be proper to direct Principal Registrar (Judicial) to make an inquiry to ascertain the fact that who is the author of the aforesaid letter dated **20.9.2019**. Thereafter, the question of filing the private complaint may be considered by this Court.

34. Therefore, the application is **allowed.** Principal Registrar (Judicial) is directed to make an inquiry to ascertain the name of author, who wrote the letter dated **20.09.2019.** Principal Registrar (Judicial) is also directed to make sufficient efforts to trace out the original copy of letter. The Registrar may take the help of handwriting expert and also use the admitted signature of petitioner and respondent available in the record of this case or the previous cases between the parties. Principal Registrar (Judicial) is also directed to submit the aforesaid inquiry report as far as possible within Six months from the order of this Court.

(B.K.SHRIVASTAVA)
JUDGE