2025 INSC 1009

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 12373 OF 2025

DEVENDRA KUMAR **...PETITIONER(S)**

VERSUS

THE STATE (NCT OF DELHI) & ANR. **...RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided in the following parts: -

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1. This petition arises from the judgment and order passed by the High Court of Delhi dated 12th September 2024 in Writ Petition (Criminal) No. 2047 of 2013 and connected Criminal Miscellaneous Application No. 18861 of 2013 by which the writ petition along with the connected application came to be rejected, thereby affirming the order dated 28.11.2018 passed by the Chief Metropolitan Magistrate directing registration of the FIR against the petitioner-herein for the offence punishable under Sections 186 and 341 respectively of the Indian Penal Code, 1860 (for short, "**I.P.C**").

A. BRIEF FACTUAL MATRIX

2. It appears from the materials on record that the respondent no. 2 herein at the relevant point of time was serving as a Process Server, Nazarat Branch, Shahdara. He was assigned the duty to serve warrants and, in this connection, he had to visit the Nand Giri police station on 03.10.2013. It is the case of the respondent no. 2 that few police officials, more particularly, the petitioner-herein misbehaved with him when he insisted for a receipt of the summons. According to him, he was detained in the police station till 4:30 PM. It is only after the arrival of the Head Constable that the warrants were accepted.

3. The respondent no. 2 brought the alleged misconduct on part of the petitioner to the notice of the District and Sessions Judge of Shahdara in the form of voluntary obstruction said to have been caused in the discharge of his public functions. The District and Sessions Judge assigned the complaint to the Administrative Civil Judge who in turn lodged a private complaint in the court of the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi.

4. The Chief Metropolitan Magistrate *vide* order dated 28.11.2013 directed the registration of FIR under Sections 186 and 341 respectively of the I.P.C. The order passed by CMM, Shahdara, Delhi dated 28.11.2013 reads thus:

> *"The* present *complaint case was filed u/s. 195 Cr.P.C. by Ld. ACJ, Shahdara.*
>
> *Allegations of Shri Ravi Dutt Sharma (Process Server) are that one warrant issued by the court of Shri Sharad Gupta, Ld. MM and one summon issued by the court of Shri Arvind Kumar, Ld. AD) were assigned to him to be served to SHO PS Nand Nagri. On 3.10.2013 he reached PS Nand Nagri at about 12.30 P.M. One Ct Sanjay Kumar Sharma was present in the room of 5-8. The said constable received the processes but signed as HC Brahmjeet. Process Server Ravi Dutt asked him not to do so. Upon this Ct. Sanjay cut the signatures made by him in the name of HC Brahmjeet and took the processes to the Reader of SHO who also refused to receive the processes. The process server went to duty officer who also refused to take the processes.*
>
> *The process server went to SHO Insp. Devender Kumar and told him all the facts. The said SHO kept the processes and abused the process server badly. SHO asked process server to stand there raising his hands and wait till the Havaldar/Head Constable comes.*

For about half an hour process server stood there, raising his hands as a punishment. He was also made to sit on the floor for about 3-4 hours as punishment. The process server begged SHO to allow him to go as he had to serve other processes also and told him that, he would come after serving other processes. The SHO, however, did not allow the process server to go. At about 4.30 p.m. one head constable come who took the processes and gave receipt.

From these allegations offence U/s. 106, 341 and 342 IPC are clearly made out. The conduct of the SHD PS Nand Nagri cannot be tolerated. This case carrot be taken lightly.

Hence, U/s. 156(3) Cr.P.C., it is ordered that FIR be registered against SHO P.S. Nangi for the above said offence. The FIR be registered at PS Nand Negri itself as the offence took place within the premises of PS Nand Nagri itself. Investigation be conducted by Officer of the rank of ACP and under direct supervision of Addl. CP concerned.

Copy of this order be sent to CCP and Addl. CP concerned for immediate compliance. Put up for status report on 14.12.2023."

(Emphasis supplied)

5. The aforesaid order came to be challenged by the petitioner-herein in the court of the Sessions Judge, Karkardooma Courts, Delhi by filing Criminal Revision Application No. 174 of 2013. The revision application came to be rejected *vide* order dated 03.12.2013. The order reads thus:

"10. A perusal of the record reveals that the Process Server Mr. Ravi Dutt Sharma posted at Nazarat Branch, Karkardooma Court, Delhi has submitted his complaint dated 10/10/13, to Ld. District & Sessions Judge, Shahdara, Delhi. Ld. District & Sessions Judge, Shahdara had made an endorsement dated 14/10/13 assigning the said complaint to Ld. Administrative Civil Judge, Shahdara to deal with the matter. Shri Neeraj Qaur, Ld. Administrative Civil Judge, Shahdara District. Karkardooma Court, Delhi, thereafter made a

complaint dated 15/10/13 U/s 195 Cr.P.C to the Ld. Chief Metropolitan Magistrate, Shahdara District, Karkardooma Courts, Delhi enclosing, the original complaint made by the Process Server. In the said complaint he had observed that allegations made in the complaint prima facie constitute offences U/s 186 IPC and U/s 341 IPC.

11. Ld. CMM on receipt of the complaint had issued notice to the DCP for 29/10/13 vide order dated 17/10/13. On 29/10/13, ACP Seemapuri had appeared and sought adjournment for filing the report and the matter was adjourned for 13/11/13. On that day, further time was sought by ACP and matter was adjourned to 28/11/13. On 28/11/13, report was filed on behalf of Addl. DCP vide letter No. 179/13 dated 27/11/l3 submitting that inquiry into the matter was got conducted by ACP Seemapuri wherein fault on the part of the Inspector Devender Kumar, SHO, PS Nand Nagri was established. In the impugned order, Ld. Trial Court has reproduced the contents of the complaint wherein allegations were made against the SHO concerned and the staff and after considering the complaint, Ld. Trial court had observed: that from the allegations made in the complaint offences U/s 186, 341 and 342 IPC are clearly made out. Therefore, Ld. Trial court has substantially compiled with the guidelines issued by Hon'ble High Court in authority: reported as Subhash Manchanda v State & Anr., 2013 II AD (Delhi) 277 and Subhkaran Luharuka and Shree Ram Mills Ltd. v State (Govt of NCT of Delhi) and Utility Premises Pvt Ltd. It Is pertinent to mention here that in the present case, the complainant is a Process Server posted at Karkardooma Court who had gone to PS Nand Nagri to serve the summons issued from the court of Shri Arvind Kumar, Ld. ADJ and warrants-issued from the court-of Shri Sharad Gupta, Ld. MM but he faced the difficulty in execution of the process at police station. He has narrated the entire episode in his complaint which reflects that in VB Room, one person disclosed his identity as Ct. Sanjay Kumar, who received the processes and signed as HC Brhamjeet and on protest by the complainant, he struck off the signatures made by him and took the complainant to Reader of SHC and then to Duty Officer who both refused to receive the processes. He was thereafter, produced before the revisionist to whom facts were disclosed, whereupon he started misbehaving by remarking whatever has" been done by Ct. Sanjay, Reader and Duty

Officer was correctly done and that he would, teach complainant how to do service; that complainant is below a Constable and he being fourth class employee was nobody to teach them work and made him to stand up for half an hour with hands up and was made to sit on floor for 3-4 hours as punishment. He also asked his staff to bring DD register and remarked that complainant should be confined (band karo) and then he would see as to what the Judge of complainant would do and that he (complainant) should make the revisionist talk on phone with the Judge then he would see as to what a Judge can do as Judge is also an officer so is revisionist. Despite request of complainant to let him go and come back after executing the court work, complainant was not allowed. Complainant has placed on record the photocopies of the process bearing the cuttings allegedly done by the Constable who had put the signatures of other Head Constable and subsequently the signatures were struck off. The original or copy of the process was not delivered to the Process Server but he was provided only photocopy, thereof. He was allegedly illtreated, wrongly confined, punished by making him stand hands-up and was also allegedly asked to sit on the floor for about 3-4 hours, He has made the complaint against the SHO concerned, the revisionist herein. Under the circumstances, he could not have been expected to have first approached the revisionist against whom he had the grievance and therefore the contention that he could not have made the complaint directly to the court has no merit.

12. The contention raised by Ld. Counsel for the revisionist that the complaint U/s 195 Cr.P.C by Ld. ACJ to the court of Ld. CMM could only be filed subsequent to holding an inquiry U/s 340 Cr.P.C is not tenable because the question of holding an inquiry U/s 340 Cr.P.C would arise only when the offence referred to falls in clause (b) of Sub-section (1) of Section 195 Cr.P.C 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. The complainant Process Server Ravi Dutt Sharma is a public servant and being employee in the court he was administratively subordinate to Ld. Administrative Civil Judge, who had made the complaint U/s 195 Cr.P.C and therefore in the complaint he had formed a view after considering the contents of the complaint that from the allegations made therein prima facie

offence U/s 186 IRC and U/s 341 IPC are constituted and therefore there was no illegality in the complaint. The question of obtaining sanction against the offender being a police officer, is to be appreciated at the time of taking cognizance of offence or filing of chargesheet and contention in this regard is pre-mature at this juncture.

13. The impugned order has been passed by Ld. CMM, Shahdara and PS Nand Nagri falls in the territorial jurisdiction of District Shahdara, Delhi and therefore Ld. Trial Court was competent and had territorial jurisdiction to pass the impugned order.

14. The contention that Ld. Trial court has completely failed to appreciate the distinction between Chapters XV and XXVI has no merit. In authority reported as Baru Ram v State of Haryana 1990 Cr.L.J NOC 153, it was held that if cognizance of offence has not been taken by the Magistrate U/s 190(1)(a) Cr.P.C on receipt of complaint, he can direct investigation U/s 156(3) Cr.P.C after registration of the case. In authority reported as ***Minu Kumari & Anr v State of Bihar and Ors (2006) 4 Supreme Court Cases 359,*** *It was held that the Magistrate is not bound to follow the procedure laid down in sections 200 and 202 of the Code for taking cognizance of a case U/s 190(1)(i)(a) Cr.P.C.*

15. It cannot be said that -the complaint made by Ld. Administrative Civil Judge to Ld. CMM U/s 195 Cr.P.C accompanied with the complaint of Process Server is abuse of court process or of provisions of law. The contention that allegations made by the Process Server are improbable and absurd cannot be outrightly rejected or disbelieved rather the photocopies of the warrant and summons placed by him on record prima facie support his allegations. The letter No. 179/13 dated 27/11/13 submitted by Mr. Rajender Singh Sagar, Additional DCP, N/E District, Delhi also supports the complainant as it has been reported that in the inquiry conducted by ACP Seemapuri fault on the part of Inspector Devender Kumar SHO, PS Nand Nagri was established.

16. There is no doubt that a Magistrate cannot direct investigation to be conducted by an officer of a particular rank. However, in the present case the complainant had made the allegations against the

SHO, PS Nand Nagri, (the revisionist herein) and therefore an order directing investigation to be conducted by an Officer of the rank of ACP cannot be said to be illegal because investigation by a superior officer alone can serve the purpose of inquiry or investigation.

17. In my considered view there appears no illegality, irregularity or impropriety in the Impugned order. The revision is therefore dismissed. Copy of order alongwith trial court record be sent to the Ld. Trial Court. Revision file be consigned to Record Room."

(Emphasis supplied)

B. IMPUGNED ORDER

6. The aforesaid order passed by the Additional Sessions Judge came to be challenged before the High Court. The High Court declined to interfere and rejected the writ petition. The impugned order passed by the High Court reads thus:

"31. Prima facie; it is established that there was indeed an obstruction/delay caused by the Police Officials of P.S. Nand Nagri in execution of the court duties of the Complainant in the service of the summon/warrants.

32. The first plea of the Petitioner that the Ld. CMM could not be specifically directed registration of FIR u/s 186/341/342 IPC, 1860 is not tenable for the simple reason that the observations are that these offences are prima facie made put, but it does not curtail the investigations to be confined only to these offences. The I.O. is obligated, to conduct investigations fair and the submit the final report on the offences if any, are established on the basis of the investigations.

33. The second ground taken is that direct registration of FIR in non-cognizable offences u/s 186 IPC, 1860 in the absence of any complaint by the Court, is in contravention of S.195 Cr.P.C. This

argument is totally fallacious for the simple reason that firstly, the complainant/Process Server who is a public servant and as an employee of the court, is administratively subordinate to the Learned Administrative Civil Judge, who filed the complaint under Section 195 of the Cr.P.C. to the Ld. CMM who in turn forwarded it by endorsing the prima facie commission of the offences and directing the investigations. Secondly, the alleged misconduct of the Petitioner, by no stretch of imagination, can be termed as acts in discharge of his official duties. Thirdly, the Complaint under S.195 Cr.P.C. is required for taking cognizance on the charge sheet; the issue of obtaining sanction is premature at this stage. Thus, the Ld.ASJ has rightly observed that there is no illegality in the complaint and the need for sanction against the accused, a police officer, should be addressed when taking cognizance or filing the chargesheet.

34. The Third challenge is to the directions by the Ld. CMM for the investigations to be conducted by officers of Rank of ACP. Considering that the complainant has made allegations against the SHO of PS Nand Nagri, it has been rightly ordered that the investigation be carried out by an officer of the rank of ACP. Such directions cannot be held illegal, as only an investigation conducted by a higher-ranking officer can effectively serve the purpose of a proper inquiry or investigation.

35. Fourth ground to challenge the Impugned Order was that a Preliminary Enquiry should have been conducted before directing registration of an FIR against a government servant. However, the holding of an inquiry u/s. 340 Cr.P.C. does not arise in the present case as the Ld. CMM had filed a complaint u/s. 195(1)(a)(i) Cr.P.C. along with the complaint of the respondent no. 2 for the offence under s. 186 IPC. The Ld. ASJ has rightly observed that the question of Preliminary enquiry under s. 340 Cr.P.C. would have arisen only when the offence referred falls within s. 195(1)(b) Cr.P.C. and does not pertain to the offence under s.186 IPC.

36. The Fifth contention raised by the Petitioner that the Ld. ASJ has failed to discuss the Enquiry Report dated 25.11.2013 of ACP, is completely misplaced as the Ld. ASJ has not only discussed and referred to the Inquiry report dated 25.11.2013 but has concluded

that the same clearly establishes the fault of the Petitioner: The reliance of the Petitioner on this Report self-destructive as the same clearly highlights the misconduct of the Petitioner who used harsh words against the process server on being provoked.

37. In light of the foregoing discussion, it is held that there is no infirmity in the Order dated 28.11.2018 of the Ld. CMM, directing registration of the FIR against the concerned police officials which is upheld by the Ld. ASJ vide the Order dated 03.12.2013 and the same warrant no inference by this Court.

38. The Petition, along with pending application(s) if any, are hereby dismissed."

(Emphasis supplied)

7. In such circumstances referred to above, the petitioner is here before this Court with the present petition.

C. SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Mr. Nikilesh Ramachandran, the learned counsel appearing for the petitioner vehemently submitted that even if the entire case put up in the FIR is believed to be true or accepted to be true, none of the ingredients to constitute the offence punishable under Section 186 of the I.P.C. could be said to be disclosed. In other words, the counsel contends that the whole of the complaint even if taken to be true does not reveal the commission of any offence by the petitioner-herein. He would submit that the contents of the complaint even if read together as true would not attract Section 186 of the I.P.C. far from Section 341 of the I.P.C.

According to the learned counsel for the petitioner, mere obstruction is not enough unless it is accompanied by use of some criminal force.

9. The learned counsel vehemently submitted that no order could have been passed in exercise of powers under Section 156(3) of the Cr.P.C. for the registration of an offence under Section 186 of the I.P.C. as the same is encompassed within Section 195(1)(a) of the Cr.P.C. and cognizance of the offence punishable under Section 186 of the I.P.C. can only be taken upon a complaint as defined under Section 2(d) of the Cr.P.C.

10. In such circumstances referred to above, it was prayed that there being merit in this petition, the same may be allowed and the First Information Report be quashed.

D. ANALYSIS

11. We could have disposed of the present petition by just observing that the petitioner may avail appropriate legal remedy before an appropriate forum in accordance with law if at all at the end of the investigation a chargesheet is filed. However, there is one issue which needs a little clarification at our end.

12. It is not in dispute that the Administrative Civil Judge upon instructions from the District and Sessions Judge, Shahdara lodged a private complaint in the court of the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi. This was in tune with the procedure prescribed under Section 195(1)(a) of the Cr.P.C. that it is either the public servant concerned or some other public servant to whom he is administratively subordinate, who would be allowed to file a complaint in writing. To the extent of filing a private complaint everything proceeded in accordance with law. However, the Chief Metropolitan Magistrate should have straightaway taken cognizance upon the said complaint and issued process to the petitioner-herein. Asking the police to investigate the complaint under Section 156(3) of the Cr.P.C. was a very serious error that the Chief Metropolitan Magistrate could be said to have committed. What was the need to involve the police in a complaint lodged by a Civil Judge for the offence punishable under Sections 186 and 341 respectively of the I.P.C.?

13. If an accused person, in situations such as the present, obstructs a public servant in the discharge of his public function, the accused person commits two offences. One offence committed by him is the alleged obstruction which comes within Section 186 I.P.C. and the other offence committed by him is the offence of having been guilty of undermining the authority of the court. In our view,

therefore, if an accused is alleged to have committed an offence within Section 186, he would seem to have committed also an offence of contempt of court.

14. In the facts of the present case, the right thing to do for the Chief Metropolitan Magistrate should have been to take cognizance and issue process under Section 204 of the Cr.P.C. In the present case, there is no other serious offence or any offence figuring under Section 195(1)(b)(ii) of the Cr.P.C. that perhaps would have required the assistance of the police. In the case in hand, the dignity of the court was at stake. There is lot of sanctity attached to a complaint lodged by none other than a civil judge. In a complaint lodged by a public servant, even verification of the contents of the complaint on oath is not required. In such circumstances, we do not approve of the order of police investigation under Section 156(3) of the Cr.P.C.

15. It would be argued that as the FIR was registered for non-cognizable offences; Section(s) 186 and 341 of the I.P.C., respectively, and even if Section 341 of the I.P.C. is to be treated as a distinct offence being not covered under Section 195 of the Cr.P.C., the police report if at all filed in future, insofar as the offence under Section 186 of the I.P.C. is concerned, may be treated as a "complaint" in

view of the explanation to Section 2(d) of the Cr.P.C. Section 2(d) Cr.P.C. reads as follows:

> *"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*
> *Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"*
>
> (Emphasis supplied)

16. As per the explanation appended to the definition clause, a police report disclosing a non-cognizable offence (Sections 186 and 341 I.P.C. respectively in the present case) shall be deemed to be a complaint and the police offer shall be deemed to be the complainant. Even then, the legal embargo under Section 195 Cr.P.C., so far as Section 186 of the I.P.C. is concerned is not dispelled as the legal fiction deems the police officer and not the aggrieved public servant as the complainant. **[See: *Umashankar Yadav and Another v. State of U.P.,* 2025 SCC OnLine SC 1066]**

17. The entire trial would have been over within a period of three months from the date of filing of the complaint in writing, had the CMM taken cognizance on the very first day and issued process under Section 204 of the Cr.P.C. Having not

done so at the right time and in the right manner, it has been now twelve years that this litigation is still pending.

18. Look at the mess created by one and all over a period of twelve years. We are talking about upholding and maintaining the dignity of court. This entire prosecution for the alleged offence is to uphold the dignity of court. However, it has been twelve years but no one has been able to uphold the dignity of the court by proceeding in the right direction.

i. <u>Section 186 of the I.P.C</u>.

19. Before proceeding further to discuss as to whether mere obstruction itself would be enough or the act of obstruction is to be accompanied by use of some criminal force, it may be necessary to notice one particular allegation made against the petitioner herein in the complaint. In the complaint the allegations are:

> "*one warrant issued by the court of Shri Sharad Gupta, Ld. MM and one summons issued by the court of Shri Arvind Kumar, Ld. AD) were assigned to him to be served to SHO PS Nand Nagri. On 3.10.2013 he reached PS Nand Nagri at about 12.30 P.M. One Ct Sanjay Kumar Sharma was present in the room of 5-8. The said constable received the processes but signed as HC Brahmjeet. Process Server Ravi Dutt asked him not to do so. Upon this Ct. Sanjay cut the signatures made by him in the name of HC Brahmjeet and took the processes to the Reader of SHO who also refused to receive the processes. The process server went to duty officer who also refused to take the processes.*

The process server went to SHO Insp. Devender Kumar and told him all the facts. The said SHO kept the processes and abused the process server badly. SHO asked process server to stand there raising his hands and wait till the Havaldar/Head Constable comes. For about half an hour process server stood there, raising his hands as a punishment. He was also made to sit on the floor for about 3-4 hours as punishment. The process server begged SHO to allow him to go as he had to serve other processes also and told him that, he would come after serving other processes. The SHO, however, did not allow the process server to go. At about 4.30 p.m. one head constable come who took the processes and gave receipt."

20. In ***Nishi Kanta Pal*** **v.** ***Emperor*** reported in **AIR 1917 Calcutta 180,** the accused who were not parties to a suit in which a public right of way was claimed, did not allow a Munsif, in whose Court the suit was pending, to pass in a boat through a ditch which was their private property, when the Munsif wanted to pass through it for the purpose of making a local inspection in connection with the suit. The Calcutta High Court held that the accused did not commit any offence under Section 186 of the I.P.C. The Court took the view that there was no right of way as such and to pass through it for the purpose of making a local inspection and therefore, the accused are right in obstructing the Munsif from passing through their lands.

21. In ***Jaswant Singh*** **v.** ***King Emperor*** reported in **AIR 1925 Lahore 139**, the Lahore High Court held that the use of the word voluntarily in Section 186 of

I.P.C. indicates that the Legislature contemplated the commission of some overt act of obstruction, and did not intend to render penal mere passive conduct. The Allahabad High Court in ***Phudki* v. *State*** reported in **AIR 1955 All. 104**, held that the word obstruction in Section 186 connotes some overt act in the nature of violence or show of violence. It cannot be said that a man obstructed another if that man runs away from arrest or if he does not actually submit to the arrest. The Patna High Court in ***Janki Prasad Tibrewal* v. *The State of Bihar*** reported in **1975 Crl. L.J. 575 (Patna)** while construing the expression 'obstruct' used in Section 186 observed that the expression obstruct envisages actual resistance and obstacle in the way of public servant and it implies the use of criminal force. However, the Patna High Court in ***Diljam Sahu* v. *Emperor*** reported in **AIR 1937 Patna 633** observed that sufficient indication that any attempt to effect attachment by a public servant having warrant of attachment would be resisted by force is quite enough to constitute obstruction within the meaning of Section 186 of the Act. Mere resistance of warrant of attachment by a public servant would be an offence punishable under Section 186 of I.P.C.

22. The Bombay High Court in ***Emperor* v. *Sideman Abba*** reported in **AIR 1935 Bom. 24** also took the similar view that mere obstruction or prevention of discharge of duties may be enough to constitute an offence under Section 186 of

the I.P.C. A Division Bench of Bombay High Court in ***State* v. *Babulal Gaurishanker Misar*** reported in **AIR 1957 Bombay 10** held that to constitute 'obstruction' within Section 186 of the I.P.C., it is not necessary that there should be actual criminal force. It is sufficient if there is either a show of force or threat or any act preventing the execution of the process of the civil Court. It was held by the Court that if an accused obstructs a public servant in the discharge of his public function (execution of a warrant of possession) he commits two offences. One offence committed by him is the alleged obstruction which comes within Section 186 and the other offence committed by him is the offence of having been guilty of undermining the authority of the Court.

23. "Obstructing" the police is not confined to physical obstruction. **[See: *Sykes* v. *Director of Public Prosecutions*, 1962 A.C. 528]**

24. The word 'obstruction' in Section 186 of the I.P.C is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to an obstruction of the public servant.

25. In ***Santosh Kumar Jain* v. *The State*** reported in **1951 SCC 190**, the General Manager of the Jagdishpur Zamindary Co. who were the lessees of a sugar

factory, was prosecuted for obstructing the District Magistrate and the Special Officer of Rationing, Patna, in the discharge of their official functions when they went to the factory on 06.12.1947 to remove, 5,000 maunds of sugar which had been seized out of the stock held by the Company pursuant to an order of the Government of Bihar dated 05.12.1947. The named officers went to the Factory on 06.12.1947 to carry out the order of the Government. The Officers were told by the accused General Manager that he would do everything possible to obstruct the removal of the sugar and accordingly it was found that the sugar godowns had been locked and the road leading to them blocked by heaps of coal, firewood and tins placed across, so as to make vehicular traffic impossible. As a result of such obstruction, the officers had to seek the aid of armed police to break open the locks, repair the railway line and clear the road block before the sugar could be removed from the factory. The main defense of the accused was that on a proper construction of Section 3 of the Essential Supplies (Temporary powers) Act, 1946 it was not competent for the Government to pass the order dated 05.12.1947, which was consequently illegal and void and that obstruction to the execution of that order could not constitute an offence under Section 186 I.P.C. The contention was rejected by the Court below and the accused was convicted and sentenced to imprisonment for a term of three weeks under Section 186 of I.P.C. The Patna High Court confirmed the conviction and the sentence. The

revision came up before this Court. This Court observed that the seizure of the Company's sugar must therefore be regarded as duly authorized and lawful and the accused by obstructing its removal committed an offence under Section 186 of I.P.C.

26. In ***Collector of Customs and Central Excise*** **v.** ***Paradip Port Trust*** reported in **(1990) 4 SCC 250**, this Court while construing the expression obstruction' used in Section 133 of the Customs Act, 1962 observed that:

> *"On the authority of* ***Hinchliffe v. Sheldon [(1955) 1 WLR 1207],*** *it can be said that obstruction is not confined to physical obstruction and it includes anything which makes it more difficult for the police or public servant to carry out their duties."*
>
> (Emphasis supplied)

27. It may be necessary to have a look at Section 133 of the Customs Act, 1962 which is analogous to Section 186 of the I.P.C. Section 133 reads thus: -

> *"**133. Obstruction of officer of customs**. —*
> *If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."*

28. Now let us compare Section 133 of the Customs Act, 1962 with Section 186 of the I.P.C. Section 186 of I.P.C. reads:

> ***"186. Obstructing public servant in discharge of public functions.—***

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extent to three months, or with fine which may extend to five hundred rupees, or with both".

29. Under Section 186, the expression "*whoever voluntarily obstructs any public servant in the discharge of his public functions*" is used and whereas in Section 133 of the Customs Act, 1962 the expression "*if any person intentionally obstructs any officer of customs*" is used. In our considered opinion, the expression 'intentionally' used in Section 133 of the Customs Act and the expression 'voluntarily' used in Section 186 of I.P.C. connote the same meaning. The decision of this Court in ***Collector of Customs*** (supra) concludes and decides the issue. Therefore, we hold that the expression 'obstruction' used in Section 186 of the I.P.C. is not confined to physical obstruction. It need not necessarily be an act of use of criminal force. The act need not be a violent one. It is enough if the act complained of results in preventing a public servant in discharge of his lawful duties. Any act of causing impediment by unlawfully preventing public servant in discharge of his functions would be enough to attract Section 186 of the I.P.C. Any other interpretation would be to encourage people to take the law into their hands, frustrate the investigation of the crimes and thwart public justice. Such an interpretation cannot be commended by the Courts.

30. We have already noticed the averments made in the complaint against the petitioner herein and others. Their acts *prima facie*, in our considered opinion, amount to obstructing the public servant in the discharge of their public functions. Therefore, the complaint itself, in our considered opinion does not suffer from any legal infirmity.

31. It is entirely a different matter altogether that the allegations levelled against the petitioner may be true or not. The same has to be enquired into by the trial court, in accordance with law, uninfluenced by the observations relating to the acts themselves, as this Court has not expressed any opinion whatsoever on the merits of the case. But if the allegations are true and established as is required in law, they would certainly constitute an offence punishable under Section 186 of the I.P.C.

32. The aforesaid is one view of the matter. The courts should be mindful of the position of law that we have explained as aforesaid.

33. We now proceed to consider the matter from a different angle with a view to decide whether we should interfere with the impugned judgment passed by the High Court or not.

ii. Section 195 of the Cr.P.C.

34. Section 195 of the Cr.P.C. reads thus:

> ***"195. Prosecution for contempt of lawful authority of public servant, for offences against public justice and for offences relating to documents given in evidence.–***
>
> *(1) No Court shall take cognizance -*
>
> *(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, 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;*
>
> *(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
>
> *(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
>
> *(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),*

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

35. As a general rule, any person, having knowledge of commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. There are exceptions to this general rule, as evident from Sections 195 and 196 respectively of the Cr.P.C. Section 195 is one of those sections, which prohibits a court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person. The other sections, with similar prescriptions, are sections 196 to 199 of the Cr.P.C. respectively. Section 195 of the Cr.P.C. has been enacted as a safeguard against the irresponsible and reckless prosecutions by the private individuals in respect of the offences, which relate to the administration of justice and contempt of lawful authority.

36. It is true that Section 195 of the Cr.P.C. does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. Section 195 also does not provide further that if in the course of the commission of that offence, other distinct offences are committed, the court concerned is debarred from taking cognizance in respect of those offences as well. However, having said so, if the perusal of the first information report makes it clear that the offence under Section 186 of the I.P.C. is closely interconnected with another distinct offence(s), which in this case is Section 341 of the I.P.C. and it cannot

be split up, then in such circumstances, the bar of Section 195 of the Cr.P.C. will apply to such other distinct offence also.

37. In the aforesaid context, we may refer to the following decisions of this Court;

(i) In the case of ***State of U.P. v. Suresh Chandra Srivastava & Ors.,*** reported in **AIR 1984 SC 1108** a three-judge bench very succinctly explained the provisions of Section 195 of the Cr.P.C. and stated that if the other distinct offences form an integral part of the offences as enumerated under Section 195 Cr.P.C so as to fall under the same transaction, then those distinct offences would also be covered under the ambit of Section 195 Cr.P.C. The relevant observations are as under: -

> *"6. In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under Sections 467, 471 and 120-B IPC are committed, the complaint could proceed or not. The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in section 195, section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of sec. 195 of the Code."*
>
> (Emphasis supplied)

(ii) In the case of ***State of Karnataka vs. Hemareddy & Anr.*** reported in **AIR 1981 SC 1417**, this Court held that in the cases where in the course of the same transaction, an offence, for which, no complaint by a

court is necessary under Section 195(1)(b) of the Cr.P.C., and an offence, for which, a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b), Cr.P.C. should be upheld. We may quote the observation as contained in para 8. The same reads as under: -

> *"8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under s. 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in s. 195(1)(b) of the Code of Criminal Procedure should be upheld."*
>
> (Emphasis supplied)

(iii) In the case of ***Saloni Arora vs. State of NCT of Delhi,*** [**Criminal Appeal No.64 of 2017]**, decided on 10.01.2017, this Court explained the object of Section 195 of the Cr.P.C., observing as under: -

> *"10. As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of Daulat Ram vs. State of Punjab, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.*

11. It is apposite to reproduce the law laid down by this Court in the case of Daulat Ram (supra) which reads as under:

There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 Cr.P.C. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned.

The trial under S.182 without the Tehsildars complaint in writing is, therefore, without jurisdiction ab initio.

12. It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of Daulat Ram (supra) quoted above."

(Emphasis supplied)

38. Thus, what is discernible from the decisions referred to above is that if in truth and substance, an offence falls in the category of Section 195, it is not open to

the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences. This would depend on the facts of each case. However it cannot be laid as a straitjacket formula that the Court cannot undertake the exercise of splitting up. It would depend upon the nature of the allegations and the materials on record.

39. In ***Basir-ul-huq and others v. State of West Bengal*** reported in **(1953) 1 SCC 637**, a three-judge bench of this Court held that the magistrate would not be debarred from taking cognizance of the distinct offences not falling within the ambit of Section 195(1)(a), thereby, effectively stating that the offences falling under Section 195(1)(a) and those not falling under Section 195(1)(a) can be split up. Therein, one of the appellants had lodged an information at the police station that one D had beaten and throttled his mother to death. While the funeral pyre was in flames, the appellants therein along with the police arrived at the cremation ground, extinguished the fire and sent the body of the deceased for post-mortem examination. However, no injury was found on the body of the deceased. Upon investigation, the sub-inspector reached the conclusion that a false complaint had been made against D. Therefore, an offence under Section 182 I.P.C. was made out. However, D had separately instituted a complaint against the appellants and they stood convicted for having committed the offence

under Sections 297 and 500 of the I.P.C. respectively. It was in such a circumstance that this Court stated that the Magistrate could take cognizance of the distinct offences i.e., Sections 297 and 500 of the I.P.C. respectively despite the facts also disclosing the commission of an offence under Section 182 I.P.C. for which a complaint by the proper authority under Section 195 Cr.P.C would be a pre-requisite. Opining so, it was observed as follows:

> *"12. Section 195 CrPC, on which the question raised is grounded, provides, inter alia, that no court shall take cognizance of an offence punishable under Sections 172 to 188IPC, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under Section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well. The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the cognizance by the Magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made. It was however argued that if on the same facts an offence of which no cognizance can be taken under the provisions of Section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of the section and prosecution for that other offence is taken cognizance of without the requirements of Section 195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code.*

13. In our judgment, the contention raised by the learned counsel for the appellants is without any substance so far as the present case is concerned. The charge for the offence under Section 297IPC, could in no circumstance, as pointed out by the High Court, be described as falling within the purview of Section 195 CrPC. The act of trespass was alleged to have been committed subsequent to the making of the false report and all the ingredients of the offence that have been held to have been established on the evidence concern the conduct of the appellants during the post-report period. In these circumstances, no serious contention could be raised that the provisions of Section 195 would stand defeated by the Magistrate having taken cognizance of the offence under that section.

14. As regards the charge under Section 500IPC, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provisions of Section 195 from seeking redress for the offence committed against him. Section 499IPC, which mentions the ingredients of the offence of defamation gives within defined limits immunity to persons making depositions in court, but it is now well settled that that immunity is a qualified one and is not absolute as it is in English law. Under Section 198CrPC, 1898, a complaint in respect of an offence under Section 499IPC, can only be initiated at the instance of the person defamed, in like manner as cognizance for an offence under Section 182 cannot be taken except at the complaint of the public servant concerned. In view of these provisions there does not seem in principle any warrant for the proposition that a complaint under Section 499 in such a situation cannot be taken cognizance of unless two persons join in making it i.e. it can only be considered if both the public servant and the person defamed join in making it, otherwise the person defamed is without any redress. The statute has prescribed distinct procedure for the making of the complaints under these two provisions of the Penal Code and when the prescribed procedure has been followed, the court is bound to take cognizance of the offence complained of."

(Emphasis supplied)

40. In ***Durgacharan Naik and Others v. State of Orissa*** reported in **AIR 1966 SC 1775,** a process server had to execute a writ of attachment against the judgment-debtors, however, there was some resistance when he reached their village. After the arrival of police, the judgment-debtors paid the decretal dues to the process server. However, when the process server and the police were leaving the village and were crossing a nearby river in a boat, the appellant along with 10-12 persons threatened to assault them if their money were not returned. The situation had de-escalated upon the intervention of some outsiders and subsequently, on the next morning, the ASI lodged an FIR against the appellants. While the trial court had acquitted the appellants, the High Court set aside the order of acquittal and convicted them for the offence under Section 353 I.P.C. As regards the charge under Section 186 I.P.C., the High Court observed that the prosecution was barred under Section 195 Cr.P.C. Finding no infirmity in the judgment of the High Court and allowing the offences to be split up, this Court observed as follows:

> "*5. We pass on to consider the next contention of the appellants that the conviction of the appellants under Section 353 of the Indian Penal Code is illegal because there is a contravention of Section 195(1) of the Criminal Procedure Code which requires a complaint in writing by the process server or the ASI It was submitted that the charge under Section 353 of the Indian Penal Code is based upon the same facts as the charge under Section 186 of the Indian Penal Code and no cognizance could be taken of the offence under Section 186 of the Indian Penal Code unless there was a complaint in writing as required by Section 195(1) of the Criminal Procedure Code. It was argued that the conviction under Section 353 of the Indian Penal Code is tantamount, in the circumstances of this case, to a circumvention of the*

requirement of Section 195(1) of the Criminal Procedure Code and the conviction of the appellants under Section 353 of the Indian Penal Code 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 Section 353 of the Indian Penal Code is based are the same as those constituting the charge under Section 186 of the Indian Penal Code but it cannot be ignored that Sections 186 and 353 of the Indian Penal Code 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 of the Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under Section 353 of the Indian Penal Code 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 Chapter X of the Indian Penal Code dealing with contempts of the lawful authority of public servants, while Section 353 occurs in Chapter XVI regarding the offences affecting the human body. It is well established that Section 195 of the Criminal Procedure Code 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. [...]

6. In the present case, therefore, we are of the opinion that Section 195 of the Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under Section 353 of the Indian Penal Code, though it is practically based on the same facts as for the prosecution under Section 186 of the Indian Penal Code."

(Emphasis supplied)

41. While deciding whether the distinct offences can be split up, courts must remain circumspect. It is agreed that, the law is not that once the facts of a given case disclose an offence falling within the scope of Section 195 Cr.P.C. and also other offences, prosecution can be launched regarding the latter only upon the

complaint of the court or the lawfully authority concerned. To hold otherwise would be to extend the scope of Section 195 Cr.P.C. to regions and horizons not contemplated by the legislature. The facts in a case may give rise to distinct offences including offences against the authority of public servants or against public justice, as also offences against private individuals; the bar under Section 195 of the Cr.P.C. cannot, in such circumstances, affect the offences other than those against public authority or public justice. Prosecution for such other offences does not require the instrumentality of the public authority or court. However, the position may be different when during the course of the same transaction offences falling within the two categories are committed. In such cases, it may not be possible to split up the transaction, and to hold that there can be valid prosecution for offences not mentioned in Section 195 of the Cr.P.C., without the written complaint of the public authority or the court, as the case may be. Courts must be able to see through any attempt to render Section 195 of the Cr.P.C. nugatory by hiding the real nature of the transaction by verbal jugglery. If in principle and substance the offence alleged falls within the categories mentioned in Section 195, the operation of the bar cannot be avoided; if in essence the alleged offence falls outside the categories, the bar would not operate. At the same time, if the facts give rise to distinct offences, some

attracting the operation of Section 195 and others not so, the bar can operate only regarding the former and not regarding the latter.

42. Therefore, the courts must ascertain whether during the course of a single transaction, the offences falling within both the categories are committed, in which case it would be difficult to split up the offences or, whether there are two different transactions which occur successively, nevertheless separately and distinctively, in which case the offences may be split up. One another aspect that may be looked into is whether, apart from the offences committed in contempt of lawful authority of public servants, or against public justice or, relating to documents given in evidence which fall under the scope of Section 195 Cr.P.C., the other distinct offences are of such a nature that private individuals are aggrieved. In such a scenario, it would not be reasonable to bar a private prosecution by the aggrieved individual for the reason that the public official or the court concerned has also not instituted a complaint.

43. Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of the offence punishable under Section 186 I.P.C., unless there is a written complaint by the public servant for voluntarily obstructing him from discharge of his public functions. The object of this provision is to provide for a particular procedure

in a case of voluntarily obstructing a public servant from discharging his public functions. The court lacks competence to automatically take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and also to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.P.C. that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.P.C. like sections 196 and 198 respectively do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. **[See: *Govind Mehta v. The State of Bihar*, AIR 1971 SC 1708; *Patel Laljibhai Somabhai v. The State of Gujarat*, AIR 1971 SC 1935**; ***Surjit Singh & Ors v. Balbir Singh*, (1996) 3 SCC 533; *State of Punjab v. Raj Singh & Anr.,* (1998) 2 SCC 391**; ***K. Vengadachalam v. K.C. Palanisamy & Ors.,* (2005) 7 SCC 352**; ***Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr*., AIR 2005 SC 2119]**

44. The test of whether there is evasion or non-compliance of Section 195 Cr.P.C. or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In ***Basir-ul-Haq & Ors.*** (supra) and ***Durgacharan Naik & Ors.*** (supra), this Court cautioned that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of I.P.C., though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.P.C. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

45. In ***M.S. Ahlawat v. State of Haryana & Anr.*** reported in **AIR 2000 SC 168**, this Court considered the matter at length and held as under: -

> *"[...] Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section."*
>
> (Emphasis supplied)

46. In ***Sachida Nand Singh & Anr. v. State of Bihar & Anr.*** reported in **(1998) 2 SCC 493**, this Court while dealing with this issue observed as under: -

> *"7. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well- recognised canon*

of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise."

(Emphasis supplied)

47. In ***Daulat Ram v. State of Punjab*** reported in **AIR 1962 SC 1206**, this Court considered the nature of the provisions of Section 195 of the Cr.P.C. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant i.e., the Tahsildar, had not filed any complaint. This Court held as follows: -

"The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."

(Emphasis supplied)

48. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant who was voluntarily obstructed in the discharge of his public functions. The complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot

assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be *void ab initio* being without jurisdiction.

49. The learned counsel appearing on behalf of the petitioner would submit that the bar of Section 195 of the Cr.P.C., so far as the offence punishable under Section 186 of the I.P.C. is concerned, is absolutely unlike Section 195 (1)(b) of the Cr.P.C. In other words, Section 195(1)(b) would apply provided certain conditions are fulfilled, and if those conditions are not applicable, then it is open for the police to carry out the investigation after registering an F.I.R.

50. The heading of Chapter XIV of the Code of Criminal Procedure is "*Conditions Requisite for Initiation of Proceedings*". The first provision in this Chapter is Section 190 and it deals with the power of the Magistrate to take cognizance of the offences. There are some other provisions in this Chapter which create an embargo on the power of the Court to take cognizance of offences committed by persons enumerated therein except on the complaint in writing of certain specified persons or with the previous sanction of certain specified authorities.

51. A plain reading of Section 195 of the Cr.P.C. would indicate that no Court can take cognizance of an offence punishable under Section 186 of the I.P.C., except upon a complaint in writing of the public servant concerned or of some other public servant

to whom he is administratively subordinate. The opening words of the Section are "*No Court shall take cognizance*", and consequently, the bar created by the provisions is against taking of cognizance by the Court. There is no bar against the registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of the investigation, as contemplated by Section 173 of the Cr.P.C.

52. This Court in ***Iqbal Singh Marwah v. Meenakshi Marwah*** reported in **AIR 2005 SC 2119**, while interpreting Section 195 Cr.P.C. has held as follows: -

> *"9. [...] This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court."*
>
> (Emphasis supplied)

53. This Court, referred to its earlier decision in ***Sachida Nand Singh*** (supra), wherein it had been held that Section 195 Cr.P.C. is invoked where the offences affected the administration of justice. It is for that reason, that only the concerned Court can take cognizance, and the procedure under Section 340 Cr.P.C. also empowers the same Court before whom the offence is committed in respect of documents produced or given in evidence before that Court. The reason why the jurisdiction to take cognizance of such an offence is restricted to the concerned Court is also noted by this Court and the same is culled out from the previous decision in ***Patel Lalji Bhai Samabhai*** (supra). The purpose underlying Section 195(1)(b) seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous, vexations 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 or the administration of public justice which is the direct and immediate object or the victim of these offences. 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 who might ultimately suffer can persuade the Civil Court to file the complaint.

54. In ***Iqbal Singh Marwah*** (supra), this Court took note of the legal position that in view of the language used in Section 340 of the Cr.P.C., the Court is not bound to make a complaint regarding commission of an offence referred to 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*". The concerned Court would file a complaint only if the interest of justice so requires and not in every case. Even before making the complaint, the Court would hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to Section 195(1)(b). This expediency would be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged documents, but having regard to the effect or impact that such commission of offence as upon administration of justice. It is possible that such forged documents or forgery may cause very serious or substantial injury to a person, inasmuch as, it may deprive him of very valuable property or status or the like. If it is held that in a case it would be the concerned Court alone, which would be entitled to lodge the complaint, it would render the victim of such forgery or forged documents remediless. This Court held that any interpretation which leads to such a situation where a victim of a crime is rendered remediless has to be discarded. This Court also took a

note of the fact that the holding of a preliminary inquiry under Section 340 of the Cr.P.C. by the concerned Court would normally get unduly delayed. This important aspect also dissuaded this Court from accepting the broad interpretation sought to be placed on Section 195(1)(b)(ii) of the Cr.P.C. to the effect that Section 195 is a bar to private prosecution. This Court held that 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. After preparing a forged document or committing an act of forgery, a person may manage to get the proceeding instituted in any civil, criminal or revenue Court either by himself or someone set up by him, or simply file the document in the said proceeding. If the broad interpretation to Section 195(1)(b)(ii) is accepted, he would be protected from prosecution either at the instance of a private party or the police, until the concerned Court, where the document is filed, itself chooses to file a complaint. Such an interpretation would be highly detrimental to the interest of the society at large. This Court also took notice of the fact that the Courts are generally reluctant in directing filing of a criminal complaint and such a course is rarely adopted. The Court held that it would not be fair and appropriate to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in

Clause (b)(ii) is not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Such a broad interpretation would also lead to impracticable results, which should be avoided.

55. In ***State of Punjab v. Raj Singh*** reported in **AIR 1998 SC 768,** this Court further stated that Section 195(1)(b)(ii) of the Cr.P.C. cannot be seen as prohibiting the entertainment of, and investigation into the offence(s) by the police. The bar comes into operation only when the Court intends to take cognizance of the offence under Section 190 Cr.P.C. In other words, the statutory power of the police to investigate under the Cr.P.C. is not in any way controlled or circumscribed by Section 195 Cr.P.C. The legal position was elaborated in the following words: -

> *"2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. Lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not*

in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) Cr. P.C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C. [...]"

(Emphasis supplied)

56. A more elaborate discussion is found in ***M. Narayandas v. State of Karnataka*** reported in **AIR 2004 SC 555**, wherein this Court has held as follows: -

"8. [...] The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh reported in 1998(2) SCC 391 [...] Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected.

xxx xxx xxx

10. The law on the point is clear. At the stage of investigation Section 195 has no application. We are therefore not concerned with the question whether Section 195 applies to documents forged/fabricated prior to their being produced in Court. That question only arises after the Court takes cognizance. At this stage

the only question is whether the investigation should be permitted to proceed or not. As stated above there is no ground or reason on which the complaint/FIR can be quashed."

(Emphasis supplied)

57. We may note that the decision of the Constitution Bench in ***Iqbal Singh Marwah*** (supra) does not in any way express its disagreement with the view in ***Raj Singh*** (supra) and ***M. Narayandas*** (supra). On the contrary, a perusal of ***Iqbal Singh Marwah*** (supra) shows that the Court has leaned in favour of giving an interpretation, which limits the scope of Section 195 of the Cr.P.C. There is no contradiction in invocation of Section 156(3) by the learned Magistrate, the registration of the F.I.R. and the conduct of the investigation by the police, with Section 195 read with Section 340 Cr.P.C. As noticed in ***M. Narayandas*** (supra) once the investigation is completed, then the embargo under Section 195 would come into play and the Court would not be competent to take cognizance. However, the concerned Court could then file the complaint for the offence mentioned in Section 195(1)(b)(ii) on the basis of the F.I.R. and the material collected during investigation and by following the procedure laid down in Section 340 Cr.P.C.

58. The procedure contemplated under sub-section (1) of Section 340 of the Cr.P.C. is limited to such cases, as are provided in clause (b) of sub-section (1) of

Section 195 of the Cr.P.C. only. Section 340 of the Cr.P.C. does not envisage a procedure with reference to an offence described in Section 195(1)(a) of the Cr.P.C. However, the observations made in ***Raj Singh*** (supra) and ***M. Narayandas*** (supra), more specifically that Section 195 Cr.P.C does not have any application at the stage of investigation holds good as regards both Section 195(1)(a) and 195(1)(b) of the Cr.P.C. respectively. The overall bar contemplated under Section 195 could be said to kick in only at the stage of cognizance.

E. CONCLUSION

59. We may summarize our final conclusion as under:

(i) Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting

them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr.P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and

secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all depend on the facts of each case.

(vi) Sections 195(1)(b)(i)(ii) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr.P.C. is followed.

60. In view of the aforesaid, we dispose of this petition leaving it open to the petitioner to raise the contention as regards the bar of Section 195 of the Cr.P.C. before the trial court if at all, at the end of the investigation, chargesheet is filed for the offences enumerated above in the FIR.

61. Registry shall circulate one copy each of this judgment to all the High Courts.

..... J.

(J.B. PARDIWALA)

..... J.

(R. MAHADEVAN)

New Delhi;
20th August, 2025