REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.2090-2093 OF 2011
(Arising out of SLP (Crl.) Nos.4161-4164 of 2008

Abdul Rehman & Ors. …Appellants

Versus

K.M. Anees-ul-Haq …Respondent

SUPREME COURT OF INDIA

J U D G E M E N T

T.S. THAKUR, J.

JUDGMENT

1. Leave granted.

2. The short question that arises for determination in these appeals is whether the complaint filed by the respondent-complainant against the appellants, alleging commission of offences punishable under Sections 211, 500, 109, and 114 read with Section 34 of Indian Penal Code, 1860 was barred by the provisions of Section 195 of

the Code of Criminal Procedure, 1973. The High Court of Delhi has, while dismissing the petition under Section 482 of the Cr.P.C. filed by the appellants held that the complaint in question is not barred and that the Metropolitan Magistrate, Delhi, committed no error of law or jurisdiction in taking cognizance of the offence punishable under Sections 211 and 500 IPC. The appellants who happen to be the accused persons in the complaint aforementioned have assailed the said finding in the present appeal by special leave. The appellants contend that the bar contained in Section 195 Cr.P.C. was attracted to the complaint filed by the respondent inasmuch as the offence allegedly committed by them was "in relation to the proceedings" in the court which the Respondent-complainant had approached, for the grant of bail and in which the court concerned had granted the bail prayed for by him. What is the true purport of the expression "in relation to any proceedings in any Court" appearing in Section 195(1)(b)(i) of the Code of Criminal Procedure, 1973 and in particular whether the grant of bail to the respondent in connection with the FIR registered against

SUPREME COURT OF INDIA
JUDGMENT

him would attract the bar contained in Section 195 Cr.P.C is all that falls for determination. Before we advert to the provisions of Section 195 of the Cr.P.C., we may briefly set out the facts in the backdrop.

3. Appellant-Abdul Rehman lodged a complaint with the Crime against Women (CAW) Cell, Nanakpura, Moti Bagh, New Delhi, accusing the Respondent-K.M. Anees-Ul-Haq and four others of commission of an offence punishable under Section 406 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The complainant's case is that the accusations made by the appellant in the report lodged with the Women Cell were totally false and fabricated. In particular, allegations regarding demand of dowry as a condition precedent for performance of *Nikah* between the complainant's nephew and Ms Aliya-appellant No.3 in this appeal were also false and unfounded. It was on that premise that the respondent filed a complaint alleging that the appellants had instituted criminal proceedings against him without any basis and falsely charged him with commission of offences knowing that there was no just or lawful ground for such proceedings or

charge and thereby committed offences punishable under Sections 211 and 500 read with Sections 109, 114 and 34 IPC.

4. The Metropolitan Magistrate entertained the complaint, recorded statements of three witnesses produced by the respondent and came to the conclusion that there was sufficient material to show commission of offences punishable under Sections 211 and 500 IPC. While doing so, the Magistrate placed reliance upon a decision of this Court in ***M.L. Sethi*** *v.* ***R.P. Kapur*** [AIR 1967 SC 528] to hold that a complaint for commission of an offence punishable under Section 211 IPC is maintainable even at the stage of investigation into a First Information Report.

5. Aggrieved by the order passed by the Metropolitan Magistrate, the appellant preferred a Criminal Revision before the Additional Sessions Judge, New Delhi, who dismissed the same as barred by limitation. The appellant then preferred a petition under Section 482 Cr.P.C. before the High Court of Delhi for quashing complaint No.180/1 of 2002 pending before the Metropolitan Magistrate and all

proceedings consequent thereto. The High Court has, as mentioned above, dismissed the said petition holding that since no judicial proceedings were pending in any Court at the time when the complaint under Sections 211 and 500 IPC was filed by the respondent-complainant, the bar contained in Section 195 Cr.P.C. was not attracted nor was there any illegality in the order passed by the Metropolitan Magistrate summoning the appellants to face trial.

6. We have heard learned counsel for the parties at considerable length and perused the order under challenge. Section 195 of the Cr.P.C. to the extent the same is relevant for our purposes may be extracted at this stage:

> ***"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.*** *– (1) No Court shall take cognizance –*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> *(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), 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*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx"*

7. A plain reading of the above would show that there is a legal bar to any Court taking cognizance of offences punishable under 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 except on a complaint in writing, of that Court or by such officer of the Court as may be authorised in that behalf, or by some other Court to which that Court is subordinate. That a complaint alleging commission of an offence punishable under Section 211 IPC, "in or in relation to any proceedings in any Court", is maintainable only at the instance of that Court or by an officer of that Court authorized in writing for that purpose or some other Court to which that Court is subordinate, is abundantly clear from the language employed in the provision. It is common ground that the offence in the present case is not alleged to have been committed "in any proceedings in any Court". That being so, the question is whether the offence alleged against the appellants can be

SUPREME COURT OF INDIA
JUDGMENT

said to have been committed "in relation to any proceedings in any Court".

8. It is not in dispute that upon the filing of the complaint by the appellants with the CAW Cell the respondent-complainant had sought an order of anticipatory bail from the Additional Sessions Judge, Karkardooma, Delhi, nor is it disputed that an order granting bail was indeed passed in favour of the respondent. It is also not in dispute that on completion of the investigation into the case lodged by the appellants under Section 406 read with Sections 3 and 4 of Dowry Prohibition Act, a charge sheet under Section 173 Cr.P.C. has already been filed before the Court competent to try the said offences in which the respondents have been released on regular bail on a sum of rupees ten thousand with one surety of the like amount. The filing of the charge sheet, however, being an event subsequent to the taking of cognizance by the Metropolitan Magistrate on the complaint filed by the respondent-complainant, the same can have no relevance for determining whether cognizance was properly taken. The question all the same would be whether the grant of anticipatory bail to the respondent by the

Additional Sessions Judge, Karkardooma Court, Delhi, would constitute judicial proceedings and, if so, whether the offence allegedly committed by the appellants could be said to have been committed in relation to any such proceedings.

9. The question whether grant of bail would attract the bar contained in Section 195(1)(b)(i) Cr.P.C. is no longer *res integra*. In ***Badri*** *v.* ***State*** [ILR (1963) 2 All 359] an offence punishable under Section 211 IPC was alleged to have been committed by the person making a false report against the complainant and others to the police. It was held that the said offence was committed in relation to the remand proceedings and the bail proceedings which were subsequently taken before the Magistrate in connection with that report to the police and, therefore, the case was governed by Section 195(1)(b) Cr.P.C. and no cognizance could be taken except on a complaint by the Magistrate under Section 195 read with Section 340 of the Cr.P.C. The said decision came up for consideration before a three-Judge Bench of this Court in ***M.L. Sethi*** *v.* ***R.P. Kapur*** [AIR 1967 SC 528], but this Court left open the question

whether remand and bail proceedings before a Magistrate would constitute proceedings in a Court. This Court observed:

> *"We do not consider it necessary to express any opinion whether the remand and bail proceedings before the Magistrate could be held to be proceedings in a Court, nor need we consider the question whether the charge of making of the false report could be rightly held to be in relation to those proceedings. That aspect need not detain us, because, in the case before us, the facts are different."*

10. The legal position regarding maintainability of a complaint under Section 211 IPC by reference to a false complaint lodged before the police was nevertheless stated in the following words:

> *"Consequently, until some occasion arises for a Magistrate to make a judicial order in connection with an investigation of a cognizable offence by the police no question can arise of the Magistrate having the power of filing a complaint under Section 195(1)(b), Cr.P.C. In such circumstances, if a private person, aggrieved by the information given to the police, files a complaint for commission of an offence under Section 211, IPC, at any stage before a judicial order has been made by a Magistrate, there can be no question, on the date on which cognizance of that complaint is taken by the Court, of the provisions of Section 195(1)(b) being attracted, because, on that date, there would be no proceeding in any Court in existence in relation to which Section 211, IPC can be said to have been committed. The mere fact that on a report being made to the police of a cognizable offence, the proceedings must, at some later stage, and in a judicial order by a Magistrate, cannot therefore, stand in the way of a*

private complaint being filed and of cognizance being taken by the Court on its basis."

11. The question regarding bail proceedings before the Court being proceedings in a Court within the meaning of Section 195(1)(b)(i) once again fell for consideration before this Court in ***Kamlapati Trivedi*** *v.* ***State of West Bengal*** [1980 (2) SCC 91]. Kamlapati Trivedi had in that case filed a complaint under Sections 147, 448 and 379 IPC against six persons including one Satya Narayan Pathak. Warrants were issued for the arrest of the accused, all of whom surrendered before the Court of Sub-Divisional Judicial Magistrate, Howrah, who passed an order releasing them on bail. In due course the police completed the investigation and submitted a final report under Section 173 Cr.P.C. stating that the complaint filed by Shri Trivedi was false. The Magistrate agreed with the report and passed an order discharging the accused. Sometime after the discharge order made by the Magistrate, Mr. Pathak, who was one of the accused persons of committing the offence, filed a complaint before the SDJM accusing Kamalapati Trivedi of the commission of offences

punishable under Sections 211 and 182 IPC by reasons of the latter having lodged with the police a false complaint. Trivedi filed a petition before the High Court praying for quashing of the proceedings before the Magistrate in view of the bar contained in Section 195(1)(b)(i) of the Code. That prayer was declined by the High Court who took the view that criminal proceedings before the Court became a criminal proceeding only when cognizance was taken and not before and since no proceeding was pending before the Court, the provisions of Section 195(1)(b)(i) were not attracted. In appeal, this Court formulated the following two questions:

> ***"33.*** *The points requiring determination therefore are:*
>
> *"(a) Whether the SDJM acted as a Court when he passed the orders dated May 6, 1970 and July 31, 1970 or any of them?*
>
> *(b) If the answer to question (a) is in the affirmative, whether the offence under Section 211 of the Indian Penal Code attributed to Trivedi could be regarded as having been committed in relation to the proceedings culminating in either or both of the said orders?"*

12. Answering the questions in the affirmative this Court observed:

> ***"60.*** *As the order releasing Trivedi on bail and the one ultimately discharging him of the offence complained of amount to proceedings before a Court, all that remains to be seen is whether the offence under Section 211 of the Indian Penal Code which is the subject-matter of the complaint against Trivedi can be said to have been committed "in relation to" those proceedings. Both the orders resulted directly from the information lodged by Trivedi with the police against Pathak and in this situation there is no getting out of the conclusion that the said offence must be regarded as one committed in relation to those proceedings. This requirement of clause (b) aforementioned is also therefore fully satisfied.*
>
> ***61.*** *For the reasons stated, I hold that the complaint against Trivedi is in respect of an offence alleged to have been committed in relation to a proceeding in Court and that in taking cognizance of it the SDJM acted in contravention of the bar contained in the said clause (b), as there was no complaint in writing either of the SDJM or of a superior Court. In the result, therefore, I accept the appeal and, setting aside the order of the High Court, quash the proceedings taken by the SDJM against Trivedi."*

13. The above view was reiterated by this Court in ***State of Maharashtra*** *v.* ***SK. Bannu and Shankar*** *[*(1980) 4 SCC 286]. The question in that case was whether prosecution for an offence punishable under Section 476 IPC could be lodged at the instance of a transferee Court in a case where the offence was committed in the other Court which was earlier dealing with a different stage of the said proceedings. Answering the question in the affirmative this Court held that the two proceedings namely one in which

the offence was committed and the other in which the final order is made are, in substance, different stages of the same integrated judicial process and that the offence committed in the earlier of the said proceedings can be said to be an offence committed in relation to the proceedings before the Court to whom the case was subsequently transferred or the Court which finally tried the case. It was further held that bail proceedings before the Magistrate were judicial proceedings even though such proceedings had taken place at a stage when the offence against the accused, who were bailed out, was under police investigation. This Court observed:-

> *"16……..This being the real position, the bail proceedings before Shri Deshpande, and the subsequent proceedings before Shri Karandikar commencing with the presentation of the challan by the police for the prosecution of Deolal Kishan, could not be viewed as distinct and different proceedings but as stages in and parts of the same judicial process. Neither the time-lag between the order of bail and the challan, nor the fact that on presentation of the challan, the case was not marked to Shri Deshpande but was transferred under Section 192 of the Code, to Shri Karandikar, would make any difference to the earlier and subsequent proceedings being parts or stages of the same integral whole. Indeed, the commission of the offences under Sections 205, 419, 465, 467 and 471 of the Penal Code, came to light only when Shri Karandikar, on the basis of the forged surety bond in question, attempted to procure the attendance of the accused. If the earlier proceedings before Shri*

Deshpande and the subsequent proceedings before Shri Karandikar were stages in or parts of the one and the same process — as we hold they were — then it logically follows that the aforesaid offences could be said to have been committed "in or in relation to" the proceedings in the Court of Shri Karandikar, also, for the purpose of taking action under Section 476 of the Code.

21. In the instant case, it cannot be disputed that the bail proceedings before Shri Deshpande were judicial proceedings before a court, although such proceedings took place at a stage when the offence against the accused, who was bailed out, was under police investigation. Thus, the facts in Nirmaljit Singh case (1973) 3 SCC 753 were materially different. The ratio of that decision, therefore, has no application to the case before us.

14. Applying the above principles to the case at hand, there is no gainsaying that the bail proceedings conducted by the Court of Additional Sessions Judge, Karkardooma, Delhi, in connection with the case which the appellants had lodged with CAW Cell were judicial proceedings and the offence punishable under Section 211 IPC alleged to have been committed by the appellants related to the said proceedings. Such being the case the bar contained in Section 195 of the Cr.P.C. was clearly attracted to the complaint filed by the respondent. The Metropolitan Magistrate and the High Court had both failed to notice the decision of this Court in ***Kamlapati Trivedi's*** *and* ***SK.***

Bannu's cases (supra) and thereby fallen in error in holding that the complaint filed by the respondent was maintainable. The High Court appears to have also failed to appreciate that the real question that fell for consideration before it was whether the bail proceedings were tantamount to judicial proceedings. That question had been left open by this Court in **M.L Sethi's** case (supra) but was squarely answered in **Kamalapati Trivedi's** case (supra). Once it is held that bail proceedings amounted to judicial proceedings the same being anterior in point of time to the taking of cognizance by the Metropolitan Magistrate, there is no escape from the conclusion that any offence punishable under Section 211 IPC could be taken cognizance of only at the instance of the Court in relation to whose proceedings the same was committed or who finally dealt with that case.

15. As noticed above, a charge-sheet has already been filed against the respondent by the CAW Cell before the Competent Court. The respondent would, therefore, have a right to move the said Court for filing a complaint against the appellants for an offence punishable under Section 211

IPC or any other offence committed in or in relation to the said proceedings at the appropriate stage. It goes without saying that if an application is indeed made by the respondent to the Court concerned, it is expected to pass appropriate orders on the same having regard to the provisions of Section 340 of the Code. So long as the said proceedings are pending before the competent Court it would neither be just nor proper nor even legally permissible to allow parallel proceedings for prosecution of the appellants for the alleged commission of offence punishable under Section 211 IPC.

16. It was next argued by learned counsel for the respondent that while an offence under Section 211 IPC cannot be taken cognizance of, there was no room for interfering with the proceedings in so far as the same related to the commission of an offence punishable under Section 500, since the bar of Section 195 Cr.P.C. was not attracted to the proceedings under Section 500 IPC. The argument though attractive does not stand closer scrutiny. The substance of the case set up by the respondent is that the allegations made in the complaint lodged with CAW Cell

accusing him of an offence punishable under Section 406 and Sections 3 and 4 of the Dowry Prohibition Act were false which according to the respondent tantamounts to commission of an offence punishable under Section 211 IPC apart from an offence punishable under Section 500 IPC. The factual matrix for both the offences is however one and the same. Allowing the respondents to continue with the prosecution against the appellants for the offence punishable under Section 500 IPC would not, in our opinion, subserve the ends of justice and may result in the appellants getting vexed twice on the same facts. We are doubtless conscious of the fact that any complaint under Section 500 IPC may become time barred if the complaint already lodged is quashed. That is not an insurmountable difficult; and can be taken care of by moulding the relief suitably. It would, in our opinion, be appropriate if the orders passed by the Metropolitan Magistrate and that passed by the High Court are set aside and the complaint filed by the respondent directed to be transferred to the Court dealing with the charge sheet filed against the respondent. The said court shall treat the complaint as an

SUPREME COURT OF INDIA
JUDGMENT

application for filing of a complaint under Section 211 of the IPC to be considered and disposed of at the final conclusion of the trial; having regard to the provisions of Section 340 of IPC and the finding regarding guilt or innocence of the respondent as the case may be recorded against him. The respondent shall also have the liberty to proceed with the complaint in so far as the same relates to commission of the offence punishable under Section 500 of the IPC depending upon whether there is any room for doing so in the light of the findings which the court may record at the conclusion of the trial against the respondent.

17. In the result these appeals are allowed, and order dated 3rd February, 2003 passed by the Metropolitan Magistrate and that passed by the High Court dated 26th February, 2008 are quashed. Criminal complaint No.180/1 of 2002 filed by the respondent shall stand transferred to the Court of competent jurisdiction seized of the charge-sheet filed against the respondents, for such orders as the Court may deem fit at the conclusion of the trial of the respondent having regard to the observations made above.

.....J.
(CYRIAC JOSEPH)

.....J.
(T.S. THAKUR)

New Delhi
November 14, 2011

SUPREME COURT OF INDIA
JUDGMENT