

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present : The Hon'ble Justice Indrajit Chatterjee

C.R.R. No. 809 of 2015

Arijit Sarkar

-vs-

Monosree Sarkar & Ors.

For the Petitioner : **Mr. Debasish Roy,
Mr. Siladitya Sanyal,
Mr. Sandipan Ganguly,
Mr. Somopriyo Chowdhury,
Mr. Rajiv Lochan Chakraborty,
Ms. Vaswati Chakraborty,
Mr. Debapratim Guha,
Mr. Priyanjit Kundu.**

For the Opposite Party No.7 : **Mr. Partha Pratim Das**

For the Opposite Party Nos. 1 to 6: **Mr. Dipanjan Chatterjee,
Mr. Anirban Dutta.**

Heard on : **23-12-2016 & 24-12-2016**

Judgment on : **09-01-2017**

Indrajit Chatterjee, J.:- This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 where this petitioner has assailed the order dated 18-12-2014 passed by the learned Additional Sessions Judge, 2nd Court, Barasat, North 24-Pargnas in Criminal Appeal No. 23 of 2013 and thereby affirmed the order dated 27-08-2013 passed by the learned Chief

Judicial Magistrate, North 24-Parganas in C. Case No. 1553 of 2013 by virtue of which the application under Section 195(1)(b)(i) read with Section 340 of the Code of Criminal Procedure, (hereinafter called as the said Code) was rejected.

The fact relevant to adjudicate the matter can be stated, in brief, thus :

That Barasat P.S. Case No. 1946 dated 10-10-2011 was started at the behest of the brother of the present petitioner under Sections 341/323/330/379 etc. of the Indian Penal Code in which the opposite party nos. 1 to 6 were made accused.

The matter was investigated by one S.I., Danesh Ali Dafadar (opposite party no. 7) who was then attached to Madhyamgram Investigation Centre under Barasat Police Station, North 24-Parganas. As per report submitted by the said Investigating Officer dated 31-03-2012, the said Investigating Officer submitted NCR No. 89 of 2012 under Section 506 against the accused persons being the opposite party nos. 1 to 6 to face trial.

One paragraph was used in that report in final form which runs thus :

“Excepting accused Arijit Sarkar all the above noted accused of both the cases surrendered in the ld. Court but accused Arijit Sarkar fled away to Brazil. But with the help of interpol the accused brought to India in the ld. Barasat Court and released on bail”.

This report of the Investigating Officer which shows that this petitioner fled away to Brazil and could be brought to India with the help of Interpol is the main

issue before this Court. As per this petitioner, this assertion made by the Investigating Officer is palpably false.

One application was filed by the present petitioner before the learned Chief Judicial Magistrate, North 24-Parganas at Barasat, wherein this petitioner prayed for before the said Court to initiate an inquiry as contemplated under Section 340 read with Section 195 of the Code as against the opposite party nos. 1 to 7 before this Court and it was further prayed to lodge complaint on that score and to forward the same to the competent Magistrate for trial of the accused, i.e. the Investigating Officer of that Barasat P. S. Case, referred to above.

The copy of this application as handed over by Mr. Roy, learned Advocate appearing on behalf of the petitioner, is taken on record.

The said application was disposed of by the said learned Chief Judicial Magistrate as per order dated 27-08-2012 (running page no. 31, annexure P-2). It may be mentioned here that W.P. No. 8051(W) of 2012 has already been disposed of by this Court. The server copy of the order dated 16-12-2016 as passed in that writ petition is also taken on record as supplied by Mr. Roy.

The said petition, referred to above, Section 195 read with Section 340 of the Code was rejected at that stage by the learned Trial Court on the ground that Section 195(1)(b)(i) of the Code cannot apply as the alleged offence under Section 211 of the I.P.C. was not committed in relation to a proceeding in any Court. The learned Trial Court further observed that such offence was not committed as because no evidence was taken and no document was produced before the court.

One appeal was preferred before the learned Sessions Judge, Barasat, which was registered as Criminal Appeal No. 23 of 2013 and that was disposed of by the learned Additional Sessions Judge, 2nd Court, Barasat, North 24-Parganas, on 17-12-2014 and that is the impugned order before this Court. The learned Appellate Court endorsed the views of the learned Trial Court and dismissed the appeal. The opposite party nos. 1 to 7 are contesting this revisional application.

It is the submission of Mr. Roy, learned Advocate appearing on behalf of the petitioner, that both the learned Trial Court and the learned First Appellate Court erred in interpreting Section 195 of the Code as submission of a police report under Section 173 is within the purview of a proceeding. He took me to Section 195 of the Code and also the definition of judicial proceeding as is there in Section 2(i) which has given an inclusive definition of judicial proceeding which may include any proceeding in the course of which evidence is or may be legally taken on oath. He also took me to Section 3 of the Indian Evidence Act to establish his claim that evidence means and includes all documents including electronic records produced for the inspection of the Court and such documents are called documentary evidence. Thus, Mr. Roy concluded his argument by saying that the report as submitted under Section 173 may be treated as a document submitted in a proceeding and as such, the learned Trial Court and the learned First Appellate Court came to a wrong decision in rejecting the application filed by his client under Section 195 read with Section 340 of the Code.

On behalf of the opposite party nos. 1 to 6, it is submitted by Mr. Chatterjee, learned Advocate, that his clients had no role in the matter as whatever report was submitted to Court, was submitted by the Investigating Officer. He also took me to Section 211 of the I.P.C. to convince this Court that the said paragraph cannot made any offence under that section.

On behalf of the opposite party no.7, the Investigating Officer of that Barasat P.S, it is submitted by Mr. Das, learned Advocate, there is a history behind this revisional application. That two brothers, namely, this petitioner and Prasenjit Sarkar married two daughter of Sukamal Khan respectively being Gitosree Sarkar and Monosree Sarkar (opposite party nos. 1 and 2). He further submitted that both the two wives were driven out and two separate cases were filed under Section 498A etc. of the I.P.C. by these two sisters/wives being Barasat P.S. Case No. 1014 dated 22-05-2010 and Barasat P.S. Case No. 1015 dated 22-05-2010. Both the investigations resulted in submission of charge sheet.

Mr. Das further submitted that his clients had no role in issuance of 'look out notice' as it was taken up by the Superintendent of Police, North 24-Parganas and FRRO (Foreigners Regional Registration Officer) is the only authority to issue such 'look out notice'. He claimed that when this petitioner came from Brazil, he has intercepted in Delhi Airport and he had to take transit bail from Delhi Court and later on, he got bail from Barasat Court. Mr. Das further contended that recitals of the said paragraph in question are all true and no mis-statement was made. He supplemented his argument by saying that this report of opposite party

no. 7 cannot be treated neither as a document and nor as evidence and as such, there cannot be any inquiry under Section 195 of the Code vis-à-vis Section 340 of the said Code. He reiterated his argument by saying that this paragraph as used by the Investigating Officer cannot be the basis of the subject matter of a case under Section 211 of the I.P.C. He further contended that no FRT was submitted by the Investigating Officer but only NCR was submitted for trial under Section 506 of the I.P.C.

In reply, Mr. Roy took me to page no.10 of the application under Section 195 etc. of the Code to say that in paragraph no. 14 not only Section 211 has been put but there are other sections like Sections 193/209/499 and 120B of the I.P.C. He also contended that the benefit of the report submitted under Section 173 has gone in favour of the opposite party nos. 1 to 6.

Thus, the question to be decided by this Court in this revisional application will be as follows :

- 1) whether a report submitted under Section 173 of the Code can be treated as a document or evidence;
 - 2) whether under Section 195 of the Code can be pressed into action in such a situation;
 - 3) whether in view of Section 3 of the Indian Evidence Act, this report under Section 173 of the Code can be treated as documentary evidence;
- and

4) whether the submission of a proceeding under Section 173 of the code can be treated to have been submitted before a judicial proceeding or proceeding in view of Section 195(1)(b)(i) of the Code.

Before I proceed further, I like to quote Section 2(i), the heading of Section 195 including the Clause (1)(b)(i) of the Code and the word 'Evidence' as defined in Section 3 of the Indian Evidence Act, which runs thus:

“2(i) “judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath”.

“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(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 and 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”.

“Evidence”. – *“Evidence” means and includes –*

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

Such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court,

Such documents are called documentary evidence”.

I like to discuss the point no.4 earlier before discussing point nos.1, 2 & 3 for the brevity of discussion.

Regarding point no.4: The question I am to answer as to whether the submissions of a challan before the Magistrate having jurisdiction under Section 173 of the Code can be treated as a part of judicial proceedings. Here in the instant case before this court this opposite party no.7 submitted challan before the Chief Judicial Magistrate, North 24 Parganas at Barasat under Section 173 of the Code wherein he made a disputed remark about which I have already stated. On this point this court can rely upon the single bench decision of the Madhya Pradesh High Court as reported in 1993 CriLJ 495 (Shrichand vs. State of Madhya Pradesh) wherein the single judge interpreted the expression "Judicial Proceeding" as defined in clause (i) of Section 2 of Criminal Procedure Code. The relevant portion of the judgment is quoted below:

“Para 8 The definition is that judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath. It is obvious that it is not necessary that the Judge or Magistrate concerned must be actually recording evidence in order to amount to judicial proceeding. In fact, occasion to record evidence may not actually arise

and still the proceeding may amount to judicial proceeding. The test is whether in the course of those proceedings evidence may be legally taken on oath or not. In my view presenting of challan is the first step in the judicial proceeding wherein occasion may subsequently arise to record evidence on oath. On receiving challan the Magistrate has to decide judicially whether to take cognizance of the offence thereon or not. The law does not prescribe any particular method of presentation of challan, namely, that it should be presented by any particular police official. It is clear to me that when the challan was being presented before the learned Civil Judge, who was acting as a Judicial Magistrate at that time, the first step in the judicial proceeding was taking place and hence the Judge was sitting in judicial proceeding. There is thus no force in the second point raised by the learned counsel.”

Thus, this point no.4 is answered in the affirmative and I say that reports submitted under Section 173 of the Code was perfectly submitted in a judicial proceeding within the meaning of Section 2 (i) and Section 195 (1) (b) (i). It may also be mentioned that sub-section (b) (i) of Section 195 of the Code has contemplated not only judicial proceeding but also in relation to any proceeding in any court. In the instant case before the floor of this Court the proceeding is being continued before the Chief Judicial Magistrate, North 24 Parganas at Barasat and I reiterate that the said proceeding is perfectly a judicial proceeding.

Regarding point no.1: In view of Section 3 of the Indian Evidence Act this court is satisfied that the reports submitted before the court is no doubt a

document but it cannot be treated as evidence unless it is proved by adducing oral evidence. Thus, this point no.1 is answered accordingly.

Regarding point no.2: Section 195 of the Code is in Chapter XIV of the Code. This Chapter deals with condition requisite for initiation of a proceeding. It is true that Section 195 deals with offences against the public justice also. Section 340 of the Code has laid down a procedure what the court will do where administration of justice has been affected. It has prescribed a procedure for tackling such a situation after making such preliminary inquiry. This is one procedural law which has supplemented Section 195 of the Code. In view of the decision of this court while answering point no.4 this court is satisfied that in the situation as stated while discussing the fact certainly Section 195 of the Code can be pressed into action along with Section 340 of the Code.

The trial court will decide after making preliminary inquiry as to whether the recital in the report submitted by the opposite party no.7 as pointed out by Mr. Roy and duly noted by me in Page no.2 of this judgment is based on facts or not and whether any criminal prosecution can be initiated. Thus, this point no.2 is answered accordingly.

Regarding point no.3: It is needless to say that the reports submitted under Section 173 of the Code are perfectly a document within the meaning of Section 3 of the Indian Evidence Act. Thus, this court is not at one with the learned trial court and also the First Appellate Court that unless evidence is recorded in a proceeding there cannot be any application of Section 195 and 340 of the Code. However, the learned trial court will be free to assess whether the

paragraph I repeat “*Excepting accused Arijit Sarkar all the above noted accused of both the cases surrendered in the ld. Court but accused Arijit Sarkar fled away to Brazil. But with the help of Interpol the accused brought to India in the ld. Barasat Court and released on bail*” can constitute an offence punishable under Section 209/211/193/499 read with Section 34 of the Indian Penal Code and 120 B of the said Code and whether there was any criminal conspiracy or common intention was played while committing such offence.

Thus, in view of discussion so long made the impugned order passed by the learned Additional Sessions Judge, 2nd Court, North 24 Parganas at Barasat in Criminal Appeal No.23 of 2013 dated 27.08.2013 is hereby set aside along with the order passed by the Chief Judicial Magistrate. The matter be heard by the Chief Judicial Magistrate, North 24 Parganas afresh as to the application filed by this petitioner under Section 195 (1) (b) (i) and 340 of the Code without being influenced by any observation made by this court or of the First Appellate Court.

This criminal revisional application is hereby allowed on contest. There will be no order as to costs.

Office is directed to communicate this order to the learned trial court that is the Chief Judicial Magistrate, North 24 Parganas at Barasat in C. Case No.1553 of 2013 and also to the First Appellate Court being the Additional Sessions Judge, 2nd Court, North 24 Parganas at Barasat in connection with Criminal Appeal No.23 of 2013.

Certified copy of this judgment, if applied for, be given to the parties as per rules.

(Indrajit Chatterjee, J.)