

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 1322/2023

Dev Narayan Gurjar S/o Sh. Jai Singh Gurjar, Aged About 25 Years, Resident Of Village Dubli, Post Madhogarh, Tehsil Bassi, Distt. Jaipur.

----Petitioner

Versus

1. State of Rajasthan, through Public Prosecutor.
2. Station House Officer, Police Station Jyoti Nagar, Jaipur (South), Jaipur.

----Respondents

For Petitioner(s) : Mr.Nishant Sharma
Mr.Dinesh Kumar

For Respondent(s) : Mr.Amit Punia, PP

JUSTICE ANOOP KUMAR DHAND

Order

27/11/2025

Reportable

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 24.10.2016, passed by the Additional Chief Judicial Magistrate No.8, Jaipur, District Jaipur so also the proceedings, arising out of the criminal case No.708/2016 pending against the petitioner before the said Court, wherein cognizance has been taken against the petitioner under Section 211 IPC.
2. Learned counsel for the petitioner submits that the petitioner had filed a criminal complaint against certain accused officials posted at the Jaipur Vidyut Vitran Nigam Limited with regard to certain irregularities committed by him while conducting examination, wherein the answer sheets/ OMR sheet of the petitioner was exchanged by committing forgery upon him.



3. Counsel submits that the said complaint was sent for investigation by the learned Magistrate to the Police Station Jyoti Nagar Jaipur (South) wherein after investigation, the concerned Investigating Officer submitted final report 'Negative' and the same was accepted by the learned Magistrate, but going a step further, the SHO of the Police Station Jyoti Nagar has filed a complaint against the petitioner under Section 211 IPC levelling allegations against the petitioner that he has filed a false complaint before the Court to harass the alleged accused wherein after investigation, the allegations levelled by the petitioner were found to be false. The learned Magistrate, without applying his judicious mind and without passing a reasoned and speaking order, straightaway took cognizance against the petitioner under Section 211 IPC. Counsel submits that the offence under Section 211 IPC is a non-cognizable offence and as per the provisions contained under Section 195(1)(b)(i) Cr.P.C., the Court cannot take cognizance of an offence which is punishable under Section 211 IPC unless a complaint is made by the Court concerned and herein the instant case, no such complaint was made by the concerned Court, hence, under these circumstances, the impugned proceedings arising out of the complaint, submitted by the Investigating Officer, are not tenable and are liable to be quashed and set-aside.

4. In support of his contentions, counsel for the petitioner has placed reliance upon a judgment passed by the Jharkhand High Court in the case of **Prashant Kumar Singh Vs. State of Jharkhand** reported in **(2013) SCC OnLine Jhar 287**.



5. *Per contra*, learned Public Prosecutor opposed the submissions made by counsel for the petitioner, but he is not in a position to controvert the submissions made by him.

6. Heard and considered the submissions made at the Bar and perused the material available on record.

7. Perusal of the record indicates that the petitioner filed a criminal complaint under Section 424, 467, 468, 471 & 120-B IPC against certain officials of the Jaipur Vidyut Vitran Nigam Limited, wherein it was alleged by the petitioner that some manipulation was done with his answer sheet/ OMR sheet and treating such an act as an offence, the aforesaid complaint was filed and after going through the same, the learned Magistrate thought it is proper to send the matter for investigation to the Police Station Jyoti Nagar, Jaipur (South) whereupon the F.I.R. No.249/2015 was registered under Sections 240, 467, 468, 471 & 120-B IPC and after investigation, the Investigating Officer submitted final report 'Negative' stating that no offence was found to be made out and the complaint was submitted by the petitioner with an intention to harass the accused persons.

8. The aforesaid final report was accepted by the learned Magistrate vide order dated 19.07.2016. Thereafter, a complaint was filed against the petitioner by the SHO of the Police Station Jyoti Nagar, Jaipur (South) under Section 211 IPC with the allegations that in the initial complaint submitted by the petitioner, against the accused persons before the Court of Additional Chief Judicial Magistrate, the allegations levelled therein were found to be false, therefore, such act of the petitioner constitutes an offence under Section 211 IPC.



9. Now, the question which remains for consideration of this Court is as to whether under these circumstances, the Police can submit a complaint under Section 211 IPC against the petitioner, when no such direction has been issued by the Court concerned wherein initial complaint was submitted by the petitioner?

10. Section 195 (1)(b) Cr.P.C., being relevant for disposal of the instant petition, is extracted as under:

"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—

(a) *****

(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

(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),

1 [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) ****
- (3) ****
- (4) ****"

11. By a plain reading of the aforesaid provisions, it appears that if an offence is alleged to have been committed in, or in relation to, any proceeding in any Court, the cognizance is barred, except on the complaint in writing of that Court, or by such Officer of the Court as that Court may authorize, or of some other Court to which that Court is subordinate. Thus, it is apparent that if an offence under Section 211 IPC is alleged to have been committed in relation to any proceeding in any Court, the bar under Section 195 (1)(b)(i) Cr.P.C. will come into picture and operate.

12. This Court in the case of **Ramdeo Vs. The State** reported in **1960 SCC OnLine Raj 84** has interpreted Section 195 Cr.P.C. along-with Sections 211 & 186 IPC in paras 11 to 16 of the judgment, which are reproduced hereunder, being relevant for the present purpose:-

"11. The definition of 'investigation' suggests that the primary function of the police is to collect evidence and not to determine the truth or falsity of facts. The police further is required to submit report to the Magistrate at various stages. Under sec. 157 Cr. P.C. a police officer is required to submit a report to the Magistrate if he reasonably suspects the commission of offence which he is empowered to investigate. Under sec. 173 Cr. P.C. he is required to report to the Magistrate the result of the investigation. These reports are made with a view that the Magistrate may remain informed and may take cognizance of offence if he so desires. A proper appreciation of the above mentioned facts and the relevant provision of the Criminal Procedure Code warrants an inference that the Code contemplates continuity in the proceedings

before the police for the prosecution of the offender and the subsequent proceedings taken in Court. In fact investigation, inquiry and trial denote three different stages of the prosecution. In this back ground it will be quite fair and reasonable to treat the lodging of the information by the person of the police and subsequent filing of complaint to the Magistrate as one transaction on account of the proximity of the purpose and to further hold that the offences committed in the transaction should be deemed in relation to the proceedings before a court. It follows that an offence under sec. 211 IPC in connection with a false charge made before the police is an offence committed in relation to proceedings in a court contemplated at the time of lodging information with the police and actually instituted later.

12. Now taking up the question of offence under sec. 182 IPC after the actual institution of proceedings in a court I may point out that the cases can be divided in two categories:—

(1) Cases where the false information lodged with the police may from the very inception be a case of definite charge against a defined person or persons. In these cases the offence from the very beginning will not only be a minor one under sec. 182 IPC but will also come within the definition of the graver one under sec. 211 IPC.

(2) Cases where the false information to the police at the initial stage may be vague not amounting to definite charge against definite person or persons. The offence initially falls u/s. 182 IPC only; But as soon as the informant files a complaint in court on the basis of the information lodged with the police amplifying or supplementing it, the entire transaction results in bringing about an offence under sec. 211 IPC. The original offence under sec. 182 IPC merges into the graver and aggravated offence under sec. 211 IPC and does not retain its separate identity. So understood the offence will be clearly one committed in relation to proceedings in court. In either of these cases the ultimate position is identical. The question then which requires to be considered is whether the police should be permitted to emphasize the contempt committed against it and to split the transaction and to claim a right to prosecute the informant irrespective of the facts that a charge was subsequently preferred before a Court and the Court acquired jurisdiction, after judicial investigation, to direct or to omit to direct prosecution in respect of false charge under sec. 211 IPC. In view of the nature and limited scope of the police functions the police officers can hardly be permitted to treat their

opinion about falsity of information as final irrespective of the pendency of proceedings before courts or finding of the courts and their opinion regarding the desirability and necessity of such prosecutions. It will be proper to examine the position in this connection in a detailed manner. The police may file a complaint for prosecution under sec. 182 for giving false information during the pendency of a complaint by the informant on the basis of the police information. It will then clearly amount to assertion by the police of right to prejudge the matter before judicial determination and may on a liberal interpretation amount to contempt of court.

13. If the police files a complaint after a Court has decided the informant's complaint the following situations are bound to arise:

- (1) If the court has found the complaint true, it will be absurd to recognise the right of the police to treat the information given to it false and to launch prosecution.
- (2) If the Court has found the complaint false and has launched prosecution u/s. 211 IPC, it will be not only necessary but incompetent for the police to launch prosecution for an offence under S. 182 IPC. In my opinion, it will amount to ignoring the continuity of the police proceedings and court proceedings and permitting double prosecutions on the same facts and allegations.
- (3) If the court has found the complaint false but has refused or omitted to launch prosecution, a question does arise as to why the police should be prevented to vindicate its position and prosecute a person who committed contempt against its lawful authority. The question does present some difficulty, but in view of the continuity of the police and court proceedings and the merger of the former in the latter and the necessity of due regard and respect for the opinions and actions of courts and finally the object and purpose of sec. 195, the police cannot be permitted to launch prosecution.

14. Sec. 195 has been enacted mainly to regulate and control prosecutions in respect of offences against administration of justice and contempt of lawful authority. Necessarily therefore when a matter is being judicially investigated or considered by a Court or after it has been so investigated or considered, it will be an evasion of the provision of sec. 195 Cr. P.C. if a prosecution for offences against administration of justice or even contempt of lawful

authority arising out of or connected with such matter can be permitted except on the complaint of the court.

15. I am quite clear that both on the weight of authorities as also on a consideration of the general principles it is not competent to a police officer to prosecute an informant for an offence under sec. 182 IPC after he has filed a complaint before a Magistrate in pursuance of the information lodged with the police and the question formulated above must be answered in the negative. In the present case the complaint by the police having been filed after the complainant had preferred a complaint before the Magistrate the proceedings for prosecution of the petitioner under sec. 211 IPC or 182 on the police complaint are incompetent and deserves to be quashed.)

16. I accordingly accept the reference, quash the charge framed against the petitioner Ramdeo and all proceedings taken in the court of Magistrate."

13. The Hon'ble Apex Court in the case of **M. S. Ahlawat Vs. State of Harayana & Anr.** reported in **(2000) 1 SCC 278** has also observed as under:-

"Chapter XI of IPC deals with "false evidence and offences against public justice" and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. 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. It is settled law that every incorrect or

false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice."

14. Hence, from perusal of Section 195(1)(b)(i) Cr.P.C., it is explicitly clear that for prosecution under Section 211 IPC, proceedings are to be initiated upon a complaint in writing by the Court in relation to which the said offence was committed. The offence under Section 211 IPC is a non-cognizable, bailable and non-compoundable one. Hence, to invoke Section 211 IPC, a complaint is required to be presented before the Court.

15. In the instant case, no such complaint has been submitted by the Court concerned, hence, under these circumstances, the S.H.O. was not having any authority to file the impugned complaint against the petitioner, under Section 211 IPC and the learned Magistrate was not having any jurisdiction to take cognizance against the petitioner in view of the bar contained under Section 195 (1)(b)(i) Cr.P.C. On this count alone, the impugned order and the entire proceedings arising out of the complaint are not sustainable in the eyes of law and the same are liable to be and are hereby quashed and set-aside.

16. Accordingly, the instant criminal misc. petition stands allowed. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J