2025:DHC:9148

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on 7th August, 2025
Pronounced on: 14th October, 2025

\+ **CRL.M.C. 1458/2011 & CRL.M.A. 11194/2013, CRL.M.A. 26629/2022**

SUNAIR HOTEL LTD. .....Petitioner

Through: Mr. Tanveer Ahmed Mir, Senior Advocate with Mr. Gurpreet Singh, Mr. Jatin Sethi, Mr. Shwetank Tyagi and Mr. Chandra Shekhar Anand, Advocates.

versus

STATE & ANR. .....Respondents

Through: Ms. Rupali Bandhopadhya, ASC with Mr. Abhijeet Kumar, Advocate for the State. Insp. Sandeep Maan, PS: EOW. Mr. Bharat Chugh, Mr. Ashok Kumar Sharma, Mr. Maanish M. Choudhary, Mr. Jai Allagh and Ms. Anuna Tiwari, Advocates for R-2.

\+ **CRL.M.C. 1460/2011 & CRL.M.A. 11196/2013, CRL.M.A. 26576/2022**

KAVEEN GUPTA & ORS. .....Petitioners

Through: Mr. Tanveer Ahmed Mir, Senior Advocate with Mr. Gurpreet Singh, Mr. Jatin Sethi, Mr. Shwetank Tyagi and Mr. Chandra Shekhar Anand, Advocates.

versus

STATE & ANR. .....Respondents

Through: Ms. Rupali Bandhopadhya, ASC with

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Mr. Abhijeet Kumar, Advocate for the State. Insp. Sandeep Maan, PS: EOW. Mr. Bharat Chugh, Mr. Ashok Kumar Sharma, Mr. Maanish M. Choudhary, Mr. Jai Allagh and Ms. Anuna Tiwari, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. The present petitions under Section 482 read with Section 483 of the Code of Criminal procedure, 1973[1] seek quashing of Complaint Case No. 2513/01, titled ***"Harsh Allagh v. Sunair Hotels Ltd. & Others"*** filed by Respondent No. 2 against the Petitioners, as well as the summoning order dated 16th December, 2009 passed by the M.M., Patiala House Courts, New Delhi pursuant to the said complaint. By the impugned order, the Petitioners have been summoned for the offences under Sections 211/34/120-B of the Indian Penal Code, 1860.[2]

FACTUAL BACKGROUND

2. Brief facts leading to the filing of the present petitions are as follows:

History of litigation

2.1. VLS Finance Limited[3] entered into a Memorandum of Understanding dated 11th March, 1995 with Sunair Hotels Limited[4] (Petitioner in CRL.M.C. 1458/2011) for extending financial assistance to a five-star deluxe hotel project undertaken by Sunair. The Petitioners in CRL.M.C. 1460/2011 are the directors of Sunair.

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[1] "Cr.P.C."
[2] "IPC"
[3] "VLS"

2.2. Subsequent disputes between the parties gave rise to extensive litigation before multiple fora. Alleging fraud and misappropriation by Sunair and its officials, VLS lodged several complaints, including FIR No. 99/2002 and FIR No. 90/2000 at P.S. Connaught Place, and FIR No. 148/2002 at P.S. Defence Colony. Cognizance was taken, and summons were issued to the accused.

2.3. Sunair, in turn, filed complaints, including FIR No. 326/2004 and FIR No. 380/2005. In FIR No. 326/2004, allegations of cheating, fraud, and criminal breach of trust were levelled against the directors of VLS. Investigation in this FIR was stayed by this Court *vide* order dated 28th July, 2004.

2.4. Thereafter, Sunair lodged a complaint dated 21st March, 2005, followed by reminder dated 14th April, 2006 with the SHO, P.S. Malviya Nagar against the directors of VLS, alleging unlawful procurement of documents from the Income Tax Department and possession of stolen property. It was specifically alleged that the accused had committed the offence of theft under Section 378 IPC, thereby attracting offences under Sections 379, 380, 403, 408, 411, 414, 427, 447, and 120-B of the IPC. These complaints were subsequently closed after the Income Tax Department clarified that the documents in question had not been stolen and remained in official custody.

2.5. Further, Sunair filed W.P. (Crl.) 983/2006 before this Court seeking registration of an FIR under Sections 379, 411, and 120-B IPC. The writ petition was dismissed on 7th August, 2007 on the ground of maintainability, without adjudicating the merits of the allegations.

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[4] "Sunair"

Impugned Complaint Case and Summoning Order

2.6. Aggrieved by the filing of the aforesaid complaints, Respondent No. 2 (VLS) instituted Complaint Case No. 2513/01, alleging that the Petitioners had conspired to file frivolous and malicious complaints to pressurise VLS into withdrawing or compromising its claims. It was alleged that the Petitioners were aware, at the time of lodging the complaints, that no theft of departmental records had occurred, and that the complaints were filed with the intent to cause wrongful injury to VLS, thereby constituting offences punishable under Sections 211, 34, and 120-B IPC.

2.7. Sunair thereafter moved an application under Section 340 read with Section 195(1)(b) Cr.P.C. before the Magistrate, seeking initiation of an inquiry and filing of a complaint against Respondent No. 2 for suppressing material facts and filing a false complaint with intent to cause injury to the Petitioners.

2.8. After considering the evidence and examining witnesses, the Magistrate, by order dated 16th December, 2009, summoned the accused, including the Petitioners, for offences under Sections 211, 34, and 120-B IPC. By a separate order of the same date, the Magistrate dismissed Sunair's application under Section 340 Cr.P.C.

PETITIONER'S CASE

3. Aggrieved, the Petitioners have filed the present petitions assailing the impugned complaint and summoning order on the following grounds:

3.1. The impugned complaint is primarily based on the allegation that the complaints filed by the Petitioners against VLS were false. Even assuming, for the sake of argument, that the allegations are correct, the acts complained of would, at their highest, attract Section 182 IPC. In such circumstances, Section 195(1)(a)(i) Cr.P.C. operates as a clear bar to cognizance on the

basis of a private complaint. The law mandates that offences under Section 182 IPC can be taken cognizance of, only upon a written complaint by the concerned public servant, in this case, the police officer, and not at the instance of a private individual.

3.2. The allegations in the impugned complaint, even if accepted at their face value, do not *prima facie* constitute an offence under Section 211 IPC. In any case, cognizance of such an offence could not have been taken by the Magistrate in view of the express prohibition contained in Section 195(1)(b)(i) Cr.P.C., which restricts prosecution for offences under Sections 193 to 196, 199 to 211 and 228 IPC, except upon a complaint in writing by the concerned 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.

3.3. The Complainant examined ASI Shabuddin (CW-1), to whom Sunair's complaint dated 14th April, 2006 had been entrusted for inquiry. CW-1 deposed that the complaint could not be investigated due to lack of territorial jurisdiction; he did not, however, state that the allegations were false or fabricated. In fact, the status report filed before this Court in W.P. (Crl.) 983/2006 did not refer to any jurisdictional impediment. It merely recorded that the report of the Income Tax Department had not been stolen and continued to remain in official custody. The Petitioners' grievance, however, was not limited to the physical theft of documents, but rather to the alleged unauthorised access and use of confidential departmental reports by Respondent No. 2, an allegation of a distinct and serious nature.

3.4. Respondent No. 2 deliberately suppressed material facts: While asserting that the complaints dated 21st March, 2005 and 14th April, 2006 filed by the Petitioners had been closed, Respondent No. 2 omitted to

disclose that, pursuant to a separate complaint lodged by Sunair, FIR No. 326/2004 was registered at P.S. Connaught Place under Sections 406, 409, 420, 424, and 120-B IPC. In addition, FIR No. 380/2005 was also registered against the Respondents. Further, W.P. (Crl.) 983/2006, instituted by the Petitioners before this Court, was dismissed solely on the ground of maintainability and not on merits. The dismissal, therefore, cannot be construed as a judicial determination that the allegations made therein were false or unfounded.

ANALYSIS

4. The challenge to the summoning order is primarily premised on two grounds: First, it is urged that the allegations made by Respondent No. 2, even if accepted in entirety, disclose at best an offence under Section 182 IPC and not under Section 211 IPC. Consequently, in view of the express bar contained in Section 195(1)(a)(i) Cr.P.C., cognizance could not have been taken on a private complaint. Second, it is contended that even assuming, *arguendo*, that the ingredients of Section 211 IPC are attracted, the Magistrate would nonetheless be precluded from taking cognizance in the absence of a complaint by the concerned Court, as mandated under Section 195(1)(b)(i) Cr.P.C.

5. It is well-settled that at the stage of summoning, the Magistrate's inquiry is confined to determining whether a *prima facie* case exists to proceed against the accused. The Magistrate is not expected to meticulously weigh the evidence or assess its sufficiency for conviction.[5] The test is whether the allegations, if taken at face value, constitute an offence known to law and disclose sufficient ground for proceeding further.[6] The inquiry at

[5] Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424.
[6] Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424.

this stage is confined to examining whether there is sufficient ground to proceed against the accused, not whether the accused is likely to be found guilty.[7]

6. The Magistrate has summoned the Petitioners for offences under Sections 211, 34, and 120-B of the IPC. Section 211 IPC criminalises the act of instituting or causing to be instituted any criminal proceeding, or falsely charging a person with an offence, with the intent to cause injury and with knowledge that there is no just or lawful ground for such proceeding. The provision, therefore, contemplates two essential elements: (i) the institution or instigation of criminal proceedings, and (ii) the presence of *mens rea*, *i.e*, the intent to cause injury coupled with knowledge that the accusation is false or baseless.

7. Respondent No. 2 alleges that the Petitioners maliciously instituted false complaints of theft against the officials of VLS to compel withdrawal or settlement of its claims against Sunair. To substantiate this allegation, the Complainant examined CW-1, ASI Shabuddin, who had conducted enquiry into the complaint dated 14th April, 2006. CW-1 deposed that he had received a communication from the Income Tax Department confirming that the original appraisal report of Sunair had not been stolen and remained in official custody. On that basis, the police closed the compliant. Relying on this statement and other material, the Magistrate formed a *prima facie* view that the Petitioners had instituted false criminal proceedings with the intent to cause wrongful injury to the Complainant, and accordingly, summoned them under Sections 211, 34, and 120-B IPC.

8. The impugned order, based on the material on record, satisfies the

[7] State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539.

limited threshold applicable at the stage of summoning. The order demonstrates consideration and application of mind to the facts and the material before the Court and cannot be said to suffer from manifest illegality or procedural impropriety.

9. The Petitioners have, without prejudice, contended that the allegations, even if accepted in their entirety, would at best, attract Section 182 IPC and not Section 211 IPC. On this score as well, the material on record is sufficient to justify issuance of process for the charged offence. Moreover, at the stage of summoning, the exact provision under which an offence may ultimately fall is not conclusive. An accused summoned for one offence may, depending on the evidence adduced during trial, be charged with or convicted of another cognate offence if the facts so warrant. The Petitioners are therefore at liberty to raise all contentions regarding the applicability of Section 182 IPC before the Trial Court, which shall be free to consider the same in accordance with law and on the basis of the evidence led.

10. We shall now turn to the Petitioners' second contention that, even if the ingredients of Section 211 IPC are assumed to be made out, the Magistrate was barred from taking cognizance in view of Section 195 Cr.P.C. For convenience of reference, the relevant portion of the provision is reproduced below:

> *"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....*
>
> *(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....*

> ***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****."*

11. A plain reading of Section 195(1)(b)(i) reveals that cognizance of an offence under Section 211 IPC is barred unless a written complaint is made by the Court in which, or in relation to whose proceedings, the offence is alleged to have been committed. The provision thus creates a procedural safeguard, to prevent private individuals from initiating criminal proceedings for offences that directly impinge upon the administration of justice. However, the judicial interpretation of this embargo has consistently sought to ensure that the restriction does not defeat the larger objective of enabling redress for genuine grievances.

12. In ***Iqbal Singh Marwah v. Meenakshi Marwah***,[8] although the Court was dealing with sub-clause (ii) of Section 195(1)(b), and did not render conclusive findings with respect to sub-clause (i), it nevertheless emphasized that the restrictions under Section 195 Cr.P.C. must not be interpreted so broadly as to deprive a victim of an effective remedy, particularly in situations where the Court may not consider it expedient to initiate proceedings on its own motion. The Court categorically held that any construction of the provision that renders a victim remediless must be rejected.

13. This interpretation was reaffirmed in ***Bandekar Bros. (P) Ltd. v. Prasad Vassudev Keni***,[9] where the Supreme Court, while distinguishing between the ingredients of Sections 195(1)(b)(i) and 195(1)(b)(ii), emphasised the importance of striking a balance between shielding accused from frivolous or vexatious prosecutions and ensuring that victims are not

[8] (2005) 4 SCC 370.

left remediless due to procedural bars. In ***Bhima Razu Prasad v. CBI***,[10] the Supreme Court, referring to the aforesaid judgements, observed that the embargo under Section 195(1)(b)(i) would apply where the alleged offence has a *reasonably close nexus* with judicial proceedings. Accordingly, the guiding principle is that the embargo under Section 195(1)(b)(i) operates only where such a nexus exists, and it must not be construed so broadly as to deny a victim having a legitimate grievance, the opportunity to seek redress.

14. Specifically, in relation to the offence under Section 211 IPC, the Supreme Court in ***M.L. Sethi v. R.P. Kapur***,[11] elucidated that the embargo under Section 195 applies only upon the conjunctive satisfaction of the following conditions: (i) the offence falls under Section 211 IPC; (ii) there is a proceeding before any court; and (iii) the offence under Section 211 is alleged to have been committed in, or in relation to, such proceeding. Unless all three conditions co-exist, the bar under Section 195(1)(b) will not apply. The Court observed :

> *"12. …….When examining the question whether there is any proceeding in any court, there are three situations that can be envisaged. One is that there may be no proceeding in any court at all. The second is that a proceeding in a court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211 IPC. The third is that, though there may be no proceeding pending in any court in which, or in relation, to which the offence under Section 211 IPC could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195(1)(b) would come into operation. If there be a proceeding actually pending in any court and the offence under Section 211 IPC is alleged to have been committed in relation to that proceeding, Section 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which*

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[9] (2020) 20 SCC 1.
[10] (2021) 19 SCC 25.
[11] 1966 SCC OnLine SC 115.

> *may have concluded by the time the question of applying the provisions of Section 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under Section 211 IPC, was committed in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) does not require that the proceeding in any court must actually be pending at the time applying this bar arises.*
>
> *13.* ***In the first circumstance envisaged above, when there is no proceeding pending to any court at all at the time when the applicability of Section 195(1)(b) has to be determined, nor has there been any earlier proceeding which may have been concluded, the provisions of this sub-section would not be attracted, because the language used in it requires that there must be a proceeding in some court in, or in relation to, which the offence under Section 211 IPC is alleged to have been committed. In such a case, a Magistrate would be competent to take cognizance of the offence under Section 211 IPC, if his jurisdiction is invoked in the manner laid down in Section 190 of the Code of Criminal Procedure****."*

15. In the present case, the first two conditions identified in ***M.L. Sethi*** *prima facie* stand satisfied. The alleged act pertains to an offence under Section 211 IPC, and the Petitioners are accused of having instituted criminal proceedings through their complaints of theft. The determinative question, therefore, is whether these alleged acts were committed *in* or *in relation to* any judicial proceeding, pending or concluded, so as to attract the bar under Section 195(1)(b)(i) Cr.P.C.

16. The record reveals that no judicial proceeding was either pending or concluded in connection with the alleged offence of theft. The complaints lodged by Sunair on 21st March, 2005 and 14th April, 2006 were made before the police, not before any Court of law, and were closed at the stage of inquiry, based on clarification from the Income Tax Department. They never matured into judicial proceedings. Although several other litigations between the parties were pending before different fora, those related to distinct causes of action and bore no proximate or legal nexus to the allegations of theft forming the foundation of the impugned complaint.

Accordingly, at the time cognizance was taken, there existed no judicial proceeding, pending or concluded, in or in relation to which the alleged offence under Section 211 IPC could have been committed. The embargo under Section 195(1)(b)(i) Cr.P.C. is therefore inapplicable, and the Magistrate rightly assumed jurisdiction to take cognizance and issue summons to the Petitioners.

17. In light of the above, no ground is made out to interfere with the impugned complaint or the summoning order. The Petitioners are, however, at liberty to raise all contentions urged in the present petition, including those relating to the applicability of Section 182 IPC and the alleged suppression of material facts by Respondent No. 2, before the Trial Court at the appropriate stage, which shall be examined in accordance with law.

18. This Court has examined the matter only to the extent necessary to adjudicate the present challenge and the legality of the summoning order. No observation herein shall be construed as an expression on the merits of the allegations, which shall be independently considered by the Trial Court. All rights and contentions of the parties are left open.

19. The petitions are dismissed, along with pending applications.

SANJEEV NARULA, J

OCTOBER 14, 2025
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