

## Bagh Singh and Others Vs Iqbal Singh

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 9, 2001

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 145 , 190, 190(1), 195, 340  
Penal Code, 1860 (IPC) â€” Section 120, 120B, 148, 149, 172

**Citation:** (2002) CriLJ 1891 : (2002) 1 RCR(Criminal) 249

**Hon'ble Judges:** V.M. Jain, J

**Bench:** Single Bench

**Advocate:** P.S. Hundal, for the Appellant; R.K. Dhiman, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

V.M. Jain, J.

This is a petition u/s 482, Cr.P.C. filed by the accused petitioners, seeking quashment of the criminal complaint, copy

Annexure P2 and the summoning order dated 15-5-1995, copy Annexure P3, passed by the learned Magistrate ordering summoning of the

present petitioners as accused for the offences under Sections 182, 466, 467, 468, 471, 120 read with Section 120B, IPC in the criminal

complaint filed by complainant respondent Iqbal Singh, to prevent the abuse of the process of the Court.

2. In the petition it was alleged by the accused-petitioners that Balwinder Singh, petitioner No. 2, lodged FIR No. 48 dated 28-6-1992 under

Sections 336, 379, 447, 148, 149 IPC, in PS KotBhai, Distt. Faridkot, against Gurcharan Singh and 4 others, including complainant respondent

Iqbal Singh. It was alleged that accused in the said FIR were tried by the learned Addl. Sessions Judge, for the offences under Sections 148, 452,

395 IPC but all the accused in the said FIR were acquitted by the Addl. Sessions Judge, vide order dated 10-2-1995, copy Annexure PI. It was

alleged that while acquitting the accused in the said FIR, learned Addl. Sessions Judge had made a reference that the receipt Exhibit P8 produced

by Balwinder Singh, during investigation in the said case, arising out of the said FIR, was fabricated. It was alleged that without filing any

application u/s 340 Cr.P.C. for initiating proceedings against the present petitioners about the said receipt, being forged, complainant respondent

namely Iqbal Singh filed criminal complaint, copy Annexure P2, in the court of Judicial Magistrate and after recording preliminary evidence the

learned Judicial Magistrate, vide order dated 15-5-1995, copy Annexure P3, ordered summoning of the petitioners besides ASI Gural Singh

(who had investigated the case arising out the aforesaid FIR), as accused for the aforesaid offences. It was alleged that u/s 195(1)(a)(i), Cr.P.C.

(wrongly mentioned as IPC), no court could take cognizance of any offence which would be under Sections 172 to 188 IPC, except on the

complaint in writing of the public servant concerned. It was further alleged that u/s 195(1)(b)(ii), Cr.P.C, no court could take cognizance of any

offence described in Section 463 or punishable under Sections 461, 475 or 476 IPC, 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, except on the complaint in writing of that court. It was alleged

that since the aforesaid receipt in question was produced before the I.O. and used as evidence in the court during trial of the criminal case, the

prosecution except on the complaint of the court concerned was not maintainable. It was accordingly prayed that the criminal complaint,

summoning order and all subsequent proceedings taken thereon be quashed.

3. In the written reply filed by complainant-respondent Iqbal Singh, it was alleged that the present petition was not maintainable in this court. It was

alleged that Balwinder Singh, petitioner had lodged a false FIR against the complainant-respondent and that he was rightly acquitted by the Addl.

Sessions Judge. It was alleged that the provisions of Section 340, Cr.P.C. were not applicable to the present case. It was alleged that provisions

of Section 195(1)(a)(i) and 195(1)(b)(ii) Cr.P.C, were not applicable to the facts of the present case, as there is nothing to show that the alleged

forgery was committed while the document was in the custody of the court. It was accordingly prayed that the petition be dismissed.

4. I have heard the learned counsel for the parties and have gone through the record carefully.

5. Learned counsel for the accused-petitioners has submitted before me that since the criminal complaint is in respect of a document which was

produced in the court and was found to be forged, only the court concerned could file a complaint in view of the provisions of Section 340

Cr.P.C. read with Section 195 Cr.P.C Reliance has been placed on the law laid down by the Hon"ble Supreme Court in the case reported as

Surjit Singh and others Vs. Balbir Singh,

6. On the other hand, the learned counsel for the respondent submitted before me that since the aforesaid receipt was not forged, after it was

produced in the court, but was produced in the court after it had been forged, provisions of Section 195, Cr.P.C. and Section 340 Cr.P.C. would

have no application to the facts of the present case (case). Reliance was placed on the law laid down by this court, in the case reported as

Madan Lal Sharma v. Punjab and Haryana High Court (1999) 2 Rec Cri 223.

7. As referred to above, in the present case, it is not the case of the complainant/respondent that the alleged receipt, which was stated to be a

forged receipt, was forged after it was produced in the court. On the other hand, the case of the complainant/respondent is that the aforesaid

receipt was produced before the police during investigation of the aforesaid FIR and it was produced in the court with the challan and since the

receipt in question was a forged document, various offences had been committed in this case and accordingly the complainant had filed the criminal

complaint in the court of Judicial Magistrate against the accused-petitioners.

8. In Sachida Nand Singh and Another Vs. State of Bihar and Another, the question before the Hon"ble Supreme Court was as under (para 1) :-

Can prosecution be maintained in respect of a forged document produced in court unless complaint has been filed by the court concerned in that

behalf? In other words, the question involved in this appeal is, whether the provision contained in Section 195(1)(b)(ii) of the Code of Criminal

Procedure 1973 (for short the "Code"), would apply to such prosecution.

9. In the reported case, the complaint was filed by the complainant in the court of CJM, alleging offences, inter alia under Sections 468, 469, 471

IPC, on the facts that the appellants had forged a document and produced it in the court of the Executive Magistrate, which was dealing with the

proceedings u/s 145, Cr.P.C. While considering this matter, it was observed by the Hon"ble Supreme Court as under (paras 7, 8 and 9) :-

A reading of the Clause (195 (i) (b) (ii)) reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that

an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has

been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a

proceedings in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then

prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document

which has not been produced in a court, then the prosecution would lie at the instance of any person. If so, will its production in a court make all

the difference?

Even if the Clause is capable of two interpretations, we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the

Code empowers, "any Magistrate of the 1st 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 general right of a person to move the court with a

complaint is to that extent curtailed. It is a well-recognized canon of interpretation that provision curbing the general jurisdiction of the court must

normally receive strict interpretation unless the statute or context requires otherwise ( Abdul Waheed Khan Vs. Bhawani and Others,

That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the

document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the court. Any such construction

is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgerer is sure that he would

imminently be embroiled in prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either

instituted by himself or by somebody else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of

pendency of that litigation. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is

capable of causing mischievous consequences should be averted.... The Clause which we are now considering contains enough indication to show

that more natural meaning is that which leans in favour of a strict construction and hence the aforesaid observation is eminently applicable here.

10. The Hon"ble Supreme Court had placed reliance on the law laid down by the Hon"ble Supreme Court, in the case reported as Patel Laljibhai

Somabhai Vs. The State of Gujarat, as also the law laid down in the cases reported as Raghunath and Others Vs. State of U.P. and Others, ;

Mohan Lal and Others Vs. The State of Rajasthan and Another, and Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra, The

Hon"ble Supreme Court also upheld the law laid down by a Full Bench of this Court, reported as Harbans Singh and Others Vs. State of Punjab,

After discussing the entire matter, it was held by the Hon"ble Supreme Court as under para 24 of Sachida Nand Singh and Another Vs. State of

Bihar and Another, :-

The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) is not applicable to a case where forgery of the document

was committed before the document was produced in a court.

The authority Surjit Singh and others Vs. Balbir Singh, relied upon by the learned counsel for the accused-petitioners, in my opinion, would have

no application to the facts of the present case, in view of the law laid down by the Hon"ble Supreme Court in Sachida Nand Singh and Another

Vs. State of Bihar and Another, . The point for consideration before the Hon"ble Supreme Court was as to whether the criminal court is debarred

from proceeding with the private complaint laid against the appellants for offences punishable under Sections 468, 471 read with Section 120B,

IPC with the allegations that the appellants had conspired and fabricated an agreement and forged the signatures of Smt. Dalip Kaur and on the

basis thereof they attempted to claim retention of the possession of the remaining part of the house. The Magistrate after examining preliminary

evidence ordered the issuance of process summoning the appellants as accused in the said complaint. Subsequently, the accused appellants filed a

civil suit for injunction to restrain Smt. Dalip Kaur from interfering in the possession of the appellants and also produced the agreement which was

allegedly executed and signed by Smt. Dalip Kaur. Thereafter, the accused-appellant filed an application to quash the criminal complaint on the

ground of bar u/s 195, Cr.P.C. The Hon"ble Supreme Court after considering various aspects of the matter found that in the said case the criminal

court had taken the cognizance earlier while the original document was produced in civil court later. Under these circumstances, it was held by the

Hon"ble Supreme Court that since cognizance was already taken before the filing of the document before the civil court, the High Court was right

in directing that the Magistrate would be at liberty to proceed with the trial of the criminal case. The law laid down by the Hon"ble Supreme Court

in this authority thus would be of no help to the accused-petitioners in this case.

11. In (1992) 2 RCR 223 (supra), the Hon"ble Full Bench of this court (consisting of five Hon"ble Judges) had observed that the law laid down by

a Full Bench of this court, in Harbans Singh and Others Vs. State of Punjab, had been approved by the Hon"ble Supreme Court, in Sachida Nand

Singh and Another Vs. State of Bihar and Another, ,

12. In the present case, as referred to above, since the document in question was allegedly forged before the said document was produced in the

court, the bar contained in Section 195(1)(b)(ii), Cr.P.C. would have no application. That being so, the learned trial Magistrate was justified in

passing the summoning order against the accused-petitioners.

13. No other point has been raised in this petition.

14. In view of my detailed discussion above finding no merit in this petition the same is dismissed.

15. Since the proceedings before the trial Court were stayed by this Court, vide order dated 7-8-1995, parties through their counsel are directed

to appear before the trial court on 14-12-2001 for further proceedings in accordance with law.