



RCBHC



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI
SUBJECT: CRIMINAL LAW
DATE: 01ST MARCH 2025
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Query No 1:

Whether a private person viz. Husband of the plaintiff could lodge an FIR for submission of forged documents in Court during judicial proceedings in?

Query No 2.

Whether trial court can take cognizance of an offence if an FIR has been lodged by a private person in absence of a complaint in writing by such court before which forged document is produced?

In response to the quires, it is submitted as follows: -

Background

In a suit (related to inheritance), the defendant has filed/submitted forged documents as evidence and such point has been proved as the court has verified such documents and found them to be forged. Subsequently the suit has been decreed in favour of Plaintiff and such order has been upheld. The husband of the plaintiff has lodged an FIR in police station against such defendant for submitting forged documents in his defense before the court.

The Answer to the Query is **yes**. The husband of the plaintiff, being a private person, can lodge an FIR in Police Station as the provisions of 195 (1) (c) *do not bar on reporting such forgery to police, registration of FIR or conduction of investigation in respect of that allegation but place an embargo on the jurisdiction of the Courts to take cognizance*. In this regard a three member bench of Honourable Supreme Court in case **Muhammad Nazir vs Fazal Karim and others** (P L D 2012 Supreme Court 892) has held that *taking cognizance of an offence* as mentioned in section 195(1) (c) Cr.P.C. and *registration of an FIR* are **two different and independent concepts** under criminal law and such section does not

place any embargo on lodging of any FIR with regard to allegation of forgery. The relevant part of the judgment is produced as under;

"195. Prosecution for -----certain offences relating to documents given in evidence--

(1) No Court shall take cognizance:

(a)-----

(b) -----

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or some other Court to which such Court is subordinate."

We may observe with respect that the learned Judge-in-Chamber of the Lahore High Court, Lahore seems to have confused the expression "cognizance" appearing in section 195, Cr.P.C. with the expressions "cognizable" and "non-cognizable" finding mention in sections 154 to 157, Cr.P.C. and had also failed to appreciate that taking of cognizance of an offence by a court is a thing quite distinct from investigation of a reported offence by the police or any other investigation agency. The learned Judge-in-Chamber ought to have appreciated that the provisions of section 195(1)(c), Cr.P.C. deal only with taking of cognizance of an offence by a court and the same do not place any embargo upon reporting such an alleged forgery to the police, registration of an F.I.R. in that regard or conducting of an investigation in respect of such an allegation. There may be situations where a court before whom an allegation has been levelled regarding production or giving in evidence of a forged or tampered document may in the first instance like to get the matter of alleged forgery inquired into or investigated by a trained investigating agency or it may require the party levelling the allegation to report the matter to the investigating agency for an inquiry or investigation before making up its mind whether to lodge any complaint in writing under section 195(1)(c), Cr.P.C. before the trial court or not. In the case of Industrial Development Bank of Pakistan and others v. Mian Asim Fareed and others (2006 SCMR 483) it had expressly been held by this Court as follows:

"Needless to add that the registration of an F.I.R. and taking of cognizance of cases were two distinct and independent concepts under the criminal law; that if the intention of the law-maker was to put any clog on the registration of an F.I.R. then the Legislature would have said so specifically and that if the law put a condition only on the taking of cognizance then it can never be read to imply prohibition on registration of F.I.Rs."

The said exposition of law was subsequently followed by the Lahore High Court, Lahore in the case of Muhammad Bashir alias Bakola and 8 others v. Superintendent of Police, City Division, Lahore and 9 others (2007 PCr.LJ 864). It may not be out of place to mention here that in the context of the provisions of section 197, Cr.P.C., which also contemplate a prohibition against taking of cognizance of an offence by a court in the absence of a sanction for prosecution, this Court had observed in the case of Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad v. Zafar Awan, Advocate, High Court (PLD 1992 SC 72) as under:

"10. There are other cases referred to like R.C. Pollard v. Satya Gopal Mazumdar (AIR 1943 Calcutta 594), Matiar Rahman Dewan v. The State (PLD 1958 SC 21), Syed Ahmad v. The State (PLD 1958 SC 27) and Iqbal Hussain Siddiqui and 2 others v. The State (1970 SCMR 726) followed by Syed Mushtaq Hussain Shah Bokhari v. The State and another (PLD 1981 SC 573), all indicating that proceedings can start in a Criminal Court against the functionary unhampered

till the stage when it is found that there is nexus between the act complained of and the official position enjoyed by him in which case and at that stage the sanction of the competent authority is to be sought for and obtained before proceeding further."

An analogy from the last mentioned precedent case could be drawn to conclude that if the provisions of section 195(1)(c), Cr.P.C. place a prohibition against taking of cognizance of an offence by a court except in the given manner then all prior steps taken before the stage of taking of cognizance by a court could be deemed to be permissible. It appears that this aspect vis- -vis the provisions of section 195(1)(c), Cr.P.C. had escaped attention of the learned Judge-in-Chamber of the Lahore High Court, Lahore while recording his observations contained in paragraphs numbers 2 and 3 of the impugned order which observations reflect a misconception of the real intent and import of the said provisions and that is why the present clarification has been considered by us to be necessary and called for.

In the above mentioned judgment, the honourable Supreme Court of Pakistan has presented **clarification** as to what had been observed by Lahore high court in para number 2 and 3 of its order which are produced as under;

"2. The complainant of the case, who is a private person, has lodged an F.I.R., attributing the allegation of producing a document in the proceedings of a civil suit, which according to the complainant, was result of forgery and tampering. The document was received in evidence as Exh.P.1 and the parties tried their luck in the said civil suit up to the level of apex Court. Although the provisions of section 190 Cr.P.C. lays down general rule that any person can set the criminal law in motion but section 195, Cr.P.C. is one of the exceptions to such general rule. Provisions of section 195(1)(c), Cr.P.C. provides that in case of offence under section 195, Cr.P.C. only the public authority concerned and the Court has the right to file a complaint and unless there is a complaint by such public authority or Court, as the case may be, no Criminal Court shall take cognizance of such offences. Every offence mentioned in section 195, Cr.P.C. though affects a private person, yet such private person stands deprived of general vested right to have recourse to the criminal law. This view find supports from an authoritative view of the Hon'ble Supreme Court of Pakistan in case of Abdul Wahab Khan versus Muhammad Nawaz and 7 others (2000 SCMR 1904).

3. When the complainant has no authority under the law to move the investigating agency under criminal law, the very registration of a criminal case would be an act which is without lawful authority. The courts, which have dealt the civil suit of which proceedings, Exh.P.1, the agreement to sell was a part, have never proceeded to initiate any proceeding under section 195, Cr.P.C. Rather issue No. 3 regarding frivolous nature of the suit or falsity of the plaint of the plaintiff has been decided against the complainant of the criminal case. The complainant has lodged the F.I.R. after almost 12 years of the alleged commission of offence. Such delay has been attempted to be explained by the learned counsel for the complainant by arguing that it was just after the decision of the Hon'ble Supreme Court of Pakistan on 14-11-2011 that the grievance of the complainant was raised but for the reasons that firstly the Civil Court have never moved the criminal machinery in this regard and secondly, the complainant a private person has no authority under the law to get registered such case."

Such distinction in cognizance provided in section 195 Cr.P.C. and lodging of an FIR and the point that section 195 does place any embargo in lodging of FIR has also been highlighted in case reported as ***Muhammad Siddique and another vs Province of Punjab and others*** (2020 P Cr. L J 197 [Lahore (Multan Bench)]) The relevant part of the judgment is produced as under:

“Suffice it to observe that section 195, Cr.P.C. deals with taking cognizance of offences enumerated in the said provision of law only on a complaint in writing of the public servant/Court but does not debar lodging of the FIR and investigation of case. Needless to mention that taking cognizance of an offence by a Court of law (on a complaint of the Court) and lodging of FIR are two distinct legal terminologies/remedies under Criminal Law and in any case section 195, Cr.P.C. does not bar lodging of FIR in respect of commission of cognizable offence, whereas, learned counsel for the petitioners has made unsuccessful attempt to intermingle the same, prima facie, only to perpetuate the act of forgery in judicial record duly noticed by learned trial Court and so concluded by learned Sessions Judge after thorough probe.”

Query No 2. Whether trial court can take cognizance of an offence if an FIR has been lodged by a private person in absence of a complaint in writing by such court before which forged document is produced?

The answer to the query is **NO**. Suffice to highlight here that ***though lodging of an FIR by a private individual and investigation of a case is not bared*** under section 195(1) (c), yet for ***taking cognizance*** of such matter by the trial court a ***complaint in writing*** of such court before which forged document was produced during proceedings *or some other Court to which such Court is subordinate.* is ***mandatory*** and *no cognizance can be taken in absence of such written complaint.* Thus, in circumstances where FIR has already been lodged and investigation has been conducted, the matter alone would be the element of cognizance. The remedy would be filing of a complaint in writing by such court before which forged document was produced. This point has been elaborated in case reported as **2020 S C M R 414 [Supreme Court of Pakistan]**. The relevant part of the judgment is reproduced as under:

“4. We have gone through the record and considered the submissions of the learned ASCs. The record reveals that the petitioner by using forged documents during proceedings before the Family Court has prima facie committed offences enumerated in section 195(1)(b) and (c), Cr.P.C. A case was registered against the petitioner under sections 419, 420, 468, 471, 208, 406 and 193, P.P.C. and forwarded to the Trial Court for trial but the trial Court could not take cognizance of the offences as complaint in writing by the Court concerned or the Court to which such Court is

subordinate was not made. The learned Single Judge of the High Court while deciding the appeal in this case could have directed the Family Court where the forged document was used in evidence, to file a complaint in writing in respect of the offences committed, before the Court of competent jurisdiction. But he, for the reason best known to him, opted to remand the case to the Trial Court for proceeding against the accused for offences other than those mentioned in section 195, Cr.P.C. Remand of the case for proceeding with the trial of the offences which were neither made out nor committed by the petitioner was absolutely unjustified as it was not a trial for the heck of it but a trial for the offences committed during the proceedings before the Family Court. If the Trial Court could not take cognizance of the case for want of proper complaint for the offences committed, proper complaint was the remedy. Resumption of the trial on remand of the case for the offences not committed would be nothing but mockery of law and travesty of justice which cannot be allowed under any circumstances. Let the things be done in accordance with the requirements of law. Shortcuts would not only complicate the matter but also enable the accused to escape the punishment in the offences he committed. We thus do not feel persuaded to maintain the impugned judgment.

5. For the reasons stated above, we convert this petition into an appeal, allow it and set aside the impugned judgment by holding that the trial Court in view of the provisions contained in section 195(1) (b) and (c), Cr.P.C. could not take cognizance of the matter. However, we direct the Family Court to file a compliant against the petitioner in accordance with provisions of section 195, Cr.P.C. for the offences alleged to have been committed by him.”

In a similar matter, arose in case **Ifikhar Khan vs Muhammad Hassan and 3 others (2016 YLR 2691)**, the accused submitted forged power of attorney during judicial proceedings, a private complaint was filed by the opponent party but the trial Court acquitted the accused holding that cognizance on private complaint was barred under section 195 (1) (c) Cr. P.C. The judgement of the trial Court was upheld in appeal by the D.B of this Court and the honorable Mr. Justice Muhammad Kamiran Khan Mulakhail, speaking for the Division Bench, ruled that:

"In the referred to provision the subsection (1) clearly prohibits that no cognizance can be taken by any court for offences falling under Section 195, Cr.P.C. except on complaint in writing of such court where said offences are committed or some other court to which such court is subordinate, the private person has no authority to file a complaint, therefore, only public authority concerned and the court has the authority to file the complaint for offences mentioned in sub-clauses (a), (b) and (c) of subsection (1) of Section 195, Cr.P.C. and unless there is a complaint by the officer of the court, no court can take the cognizance of the offences mentioned in provision supra. There is no dispute to the fact that criminal prosecution can be launched only by the court before whom a forged document is pending or can be launched by a person who has been defrauded as a result thereof and that, too, much prior to production of that document before the court, therefore, the conditions necessary for the applicability of Section 195(1)(a), (b) and (c), Cr.P.C. are:--

i) The offence mentioned should be committed by a party to the proceeding in the court;

ii) Such offence should be in respect of a document produced or given in evidence in such proceeding and that said officer fell under sections 463, 471, 475 or 476, P.P.C.

Reference is made to the reported case of Abdul Wahab Khan v. Muhammad Nawaz 2000 SCMR 1904.

Thus, in view of above discussion it can safely be concluded that the complaint filed by the appellant was not maintainable due to non-obstinate clause contained in section 195, Cr.P.C. Therefore, the order passed by the learned trial Court is unexceptional, which does not warrant any interference by this Court.

Therefore, the appeal is dismissed in limine. "

In light of the legal principles discussed above, it is evident that while **section 195 (1) (c) Cr.P.C.** places a restriction on the ***court's jurisdiction to take cognizance*** of an offense related to forgery committed during judicial proceedings ***without a complaint from the concerned court***, it does **not** impose any bar on the ***registration of an FIR or police investigation*** into such allegations.

Therefore, the ***husband of the plaintiff, being a private individual, was within his legal right*** to lodge an FIR regarding the submission of forged documents in court proceedings. However, despite the initiation of criminal proceedings through an FIR, ***the trial court can take cognizance of the matter only upon a complaint in writing by the court where the forgery allegedly occurred.***

The End