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AMIT VASHISTHA

v.

SURESH AND ANOTHER

(Criminal Appeal No. 245 of 2010)

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AUGUST 31, 2017

[**RANJAN GOGOI AND NAVIN SINHA, JJ.**]

*Penal Code, 1860 – s.228 – In an adjudication proceeding u/s.7A of Employees Provident Funds & Miscellaneous Provisions Act, 1952 with regard to provident fund claims of the respondent, the Provident Fund Commissioner filed a complaint u/s. 228 that respondent had obstructed and interfered with the proceedings by abusing and assaulting the Presiding Officer – Maintainability of complaint challenged – Held: s.2(i) of the Cr.P.C. defines a judicial proceeding to include any proceedings in the course of which evidence is or may be legally taken on oath – This power is indisputably statutorily vested in the authority holding proceedings u/s.7A of the 1952 Act. – Therefore, the proceedings u/s. 7A are deemed to be judicial proceedings and complaint u/s.228 maintainable – Code of Criminal Procedure, 1973 – s.195(1)(b)(i) – Employees Provident Funds & Miscellaneous Provisions Act, 1952 – s.7A.*

Allowing the appeal, the Court

**HELD:** The legislature, in its wisdom, considering the seriousness of the adjudicatory process under Section 7A of 1952 Act vested it with the nature of a judicial proceeding within the meaning of Sections 193 and 228 IPC. If the proceedings under Section 7A are deemed to be a judicial proceeding by fiction, it must be carried to its logical conclusion. Therefore, such a judicial proceeding can well be equated for that purpose with a court under Section 195(1)(b)(i). The High Court failed to consider the effect of the judicial nature of the proceeding, simply by reference to Section 195(1)(b)(i) Cr.P.C. to hold that the proceedings did not partake the nature of a court, and therefore, the complaint was not maintainable. [Para 6] [738-F-H]

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*Lalji Haridas v. State of Maharashtra* [1964] 6 SCR 700 – referred to.

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Case Law Reference

[1964] 6 SCR 700

referred to

Para 6

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 245 of 2010.

From the final Judgment and Order dated 30.01.2009 passed by the High Court of Madhya Pradesh, Bench at Indore in Cr. R.No.445 of 2007.

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Keshav Mohan, Smarhar Singh, Piyush Choudhar, Advs. for the Appellant.

Suresh (in-person), C.D. Singh, Ms. Sakshi Kakkar, Gaurav Shukla, Usman, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**NAVIN SINHA, J.** 1. The appellant is aggrieved by order dated 30.01.2009 in Criminal Revision No.445 of 2007. By the impugned order, the respondent has been acquitted of the charge under Section 228 of the Indian Penal Code on the premise that the adjudication proceedings under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter for short the 'Act') not being before a court, the complaint itself was not maintainable.

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2. In an adjudication proceeding under Section 7A of the Act, with regard to provident fund claims of the respondent, the Assistant Provident Fund Commissioner filed a complaint on 22.06.2001 before the Judicial Magistrate First Class under Section 228 IPC, that the respondent had obstructed and interfered with the proceedings by abusing the Presiding Officer, and rushed to assault him, but the complainant was saved by the office staff. The Magistrate convicted the respondent till rising of the Court and imposed fine of Rs.500/- with default stipulation. In appeal, preferred by the respondent, the Sessions Judge while maintaining the conviction released him under the Probation of Offenders Act, 1958 on an undertaking of good behavior for a period of one year.

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- A Aggrieved, the respondent moved the High Court in a revision application leading to the impugned order, thus the present appeal.

3. Learned Counsel for the appellant submits that the High Court erred in not appreciating that the proceedings under Section 7A were judicial proceedings, and misdirected itself in concluding that the office of the appellant was not a court, and therefore, the complaint itself was not maintainable under Section 195(1)(b)(i) of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C').

B 4. The respondent appearing in person, supporting the impugned order submitted that the proceedings under Section 7A not being before a court, the High Court rightly held that no complaint could have been filed under Section 195(1)(b)(i) of the Cr.P.C which was applicable only to proceedings before a court. It was next submitted that in any event the complaint could have been filed, if at all, before the appellate tribunal under Section 7J of the Act, and not before the magistrate directly.

D 5. The facts are not in dispute, and neither is it in dispute that the appellant is a public servant. The only question for consideration is if the complaint under Section 228 IPC was maintainable in view of the proceeding under Section 7A deemed to be a judicial proceeding or whether the proceedings had to be before a court to invoke Section 195(1)(b)(i) Cr.P.C.

E 6. Section 2(i) of the Cr.P.C defines a judicial proceeding to include any proceedings in the course of which evidence is or may be legally taken on oath. This power is indisputably statutorily vested in the authority holding proceedings under Section 7A of the Act. The legislature, in its wisdom, considering the seriousness of the adjudicatory process under F the said provision, vested it with the nature of a judicial proceeding within the meaning of Sections 193 and 228 IPC. If the proceedings under Section 7A are deemed to be a judicial proceeding by fiction, it must be carried to its logical conclusion. Therefore, such a judicial proceeding can well be equated for that purpose with a court under Section G 195(1)(b)(i). Whether the proceedings under Section 7A will partake the character of a court or not, is not relevant to the controversy. The High Court failed to consider the effect of the judicial nature of the proceeding, simply by reference to Section 195(1)(b)(i) Cr.P.C. to hold that the proceedings did not partake the nature of a court, and therefore, the complaint was not maintainable. A similar issue was considered in

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*Lalji Haridas vs. State of Maharashtra*, (1964) 6 SCR 700, observing as follows:- A

“14. It is somewhat remarkable that though Section 193 IPC, refers to a judicial proceeding, Section 195 CrPC refers to a proceeding in any court; it does not say a judicial proceeding in any court. Mr Desai contends that reading Section 193 IPC and Section 195(1)(b) CrPC together, it would not be unreasonable to hold that proceedings which are judicial under the former, should be taken to be proceedings in any court under the latter. The whole basis of providing for a higher sentence in regard to offences committed at any stage of a judicial proceeding appears to be that the legislature took the view that the said offences were more serious in character, and so, it distinguished the said offences from similar offences committed at any stage of other proceeding. The argument is that while providing for a higher sentence in respect of this more serious class of offences committed at any stage of judicial proceedings, the legislature intended that there should be a safeguard in respect of complaints as regards the said offences and that safeguard is provided by Section 195(1)(b) CrPC. In other words, an offence which is treated as more serious by the first paragraph of Section 193 IPC because it is an offence committed during the course of a judicial proceeding should be held to be an offence committed in any proceeding in any court for the purpose of Section 195(1)(b) CrPC. On this argument, it is not necessary to consider whether the Income Tax Officer is a court or not, for, in substance, the contention is that as soon as Section 37(4) of the Act was enacted, the proceedings before an Income Tax Officer become judicial proceedings for the purpose of Section 193 IPC, and since they are classed under the first paragraph of the said section, they attract the protection of Section 195(1)(b) CrPC. In our opinion, there is considerable force in this argument, and, on the whole, we are inclined to prefer the construction suggested by Mr Desai to that pressed before us by the learned Additional Solicitor-General. B C D E F G

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16.....There can be little doubt that if a person offers an insult to a public servant sitting in a judicial proceeding, or causes interruption to him while he is so sitting at any stage of the judicial proceeding, H

A        the complaint has to proceed from the public servant himself; that is the effect of Section 195(1)(b) CrPC.”

7. The argument that the complaint was required to be filed under Section 340 Cr.P.C. before the appellate tribunal and not before the magistrate having jurisdiction is considered frivolous and is rejected.

B        8. The order of the High Court is, therefore, held to be unsustainable and is set aside.

9. The appeal is allowed.

Devika Gujral

Appeal allowed.