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3. Section 321 of the Municipal Corporations Act, 1976 (the Act) confers power on the Commissioner to take action to remove the unauthorised construction if the said construction is contrary to the licence, approved plan or Building Regulations. The Corporation has also framed Bye-laws regulating the construction of buildings in the city of Bangalore. Neither the provisions of the Act, nor the building Bye laws permit construction of building on foot path either temporarily or otherwise. The Corporation is a corporate body conferred with the power to enforce law providing for construction of building. If that is so, the Corporation shall not be permitted to violate the law and construct building contrary to the building regulations. The proposed construction by the Corporation is on a foot path which is specifically meant for public use. Therefore, the footpath shall not be allowed to be used for any purpose other than the purpose for which it is meant to be used. Such being the case, the proposed construction by the Corporation on a foot path is unauthorised.

4. In the result, writ Petition is allowed directing the Corporation not to put up any construction on the public street together with the footways, drains, roadways, attached to the public street located in between Ashoka Pillar road and circle of RV Road, 2nd block, Jayanagar, Bangalore, running east to west. If the Corporation, has already put up construction on the above said area, it is directed to remove such constructions forthwith.

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M.P. CHINNAPPA, J.

Dr. Manjunath vs N.S. Nagarathna*

PENAL CODE, 1860 (Central Act No.XI.C of 1860) Section 193 and CRIMINAL PROCEDURE CODE, 1974 (Central Act No.2 of 1974 Section 195(1)(b)(i) — Magistrate issued process under Section 204 Cr.P.C after taking cognizance of the offence punishable under Section 193 of the Indian Penal Code on the basis of a private complaint filed by a person related to a deceased LIC Policy Holder and not

*Cr.P.No. 1536/1996 dated 30th June 1997

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by a Court or a Public Servant. Held - in view of the LAW enacted in Section 195(1)(b)(i) Cr.P.C the Magistrate erred in taking cognizance and issuing process on a private complaint filed by an individual.

CASES REFERRED:	AT PARAS
1. AIR 1988 SC 2267 - <i>Balaram vs Justice B. Lentin</i> (Ref)	4
2. ILR 1994 KNT 3478 - <i>S.H. Taralagatti vs Director General All India Radio</i> (Foll)	7
3. 1991(4) Kar.L.J. 262 - <i>Ismail Khan vs State of Karnataka</i> (Foll)	7

Sri H.S. Chandramouli, Advocate for Petitioner

ORDER

M.P. Chinnappa, J

Being aggrieved by the order dated 18.7.96 directing to issue process to the petitioner for the offence punishable under Section 193 I.P.C. in P.C.R.No.52/96 (C.C.No.613/96) the petitioner filed this petition.

2. Heard.

3. The Learned Counsel for the petitioner at the very outset submitted that there is a bar to take cognizance of the offence alleged against this petitioner under Section 195(1)(b)(i) Cr.P.C. To appreciate the argument it is necessary to succinctly put the facts of the case which are:

That the petitioner is running a private nursing home in Tiptur. One Smt. Mahalakshmi approached this petitioner for treatment due to some ailment. It appears that the petitioner has diagnosed it to be cancer and advised her to go to Kidwai Hospital at Bangalore. After several days the said Mahalakshmi died. It is alleged that she had 2 LIC policies wherein the respondent was nominated. After her death when the respondent approached the LIC they declined to satisfy the amount due under those policies on the ground that the policy holder obtained policies by suppressing certain material

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particulars specially the disease with which she was suffering. As the amount was denied, the respondent approached the Dist. Consumer Redressal Forum, Tumkur, which was regd, as DCFT 284/95, against the LIC. of India. The matter is still pending in the District Forum. Before the matter was concluded, she approached the Criminal Court under Section 200 Cr.P.C.

4. The argument of the Learned Counsel for the petitioner is that where the offence is alleged under Section 193 the complaint has to be lodged by the Court which is dealing with the matter. The question arises as to whether the District Forum is a Court. To substantiate the argument, he has drawn by attention to Section 13 of Consumers protection Act, 1986. Sub-section (4) of Section 13 reads:

"For the purposes of this Section, the District forum shall have the same Powers as are vested in a civil Court under the CPC 1908, while trying a suit in respect of the following matters, viz."

(they are enumerated in sub-clause (i) to (vi). Sub-section (5) clearly provides:

"Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Dist. Forum shall be deemed to be a civil Court for the purposes of Section 195 & Chapter XXVI of the Cr.PC, 1973 (2 of 1974)."

To put it shortly, the matter is pending before the Civil Court which has to decide as to whether the petitioner has wrongfully issued a certificate against the interest of this respondent to constitute an offence.

Similarly in *BALIRAM vs JUSTICE B. LENTIN*¹ Their Lordships have held:

"Sub-Section (3) of Section 195 of the Code provides that in Clause (b) of Sub-Section (1), the term 'Court' means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this Section."

1. AIR 1988 SC 2267

The definition of 'Court' in the first part of Section 195(3) of the Code is therefore restrictive while the second is inclusive. It is contended that the definition of a word may either be restrictive of its ordinary meaning or it may be extensive of the same. Sometimes, definition of a term contains the words 'means and includes' which may inevitably raise a doubt as to interpretation. According to the learned Advocate General, the inclusive part of the definition of 'Court' in Section 195(3) of the Code was ex abundant cautela and was merely declaratory of the law. It is submitted that the first part of Sub-Section (4) of Section 5 of the Act fulfills the requirements of the inclusive part of the definition of 'Court' in Section 195 (3) of the Code. Therefore, the Act was in line with sub-section (3) of Section 195 of the Code, there was no occasion for Parliament to effect an amendment of the Act, particularly having regard to the majority decision in LALJI HARIDAS' AIR 1964 SC 1164 case. For the foregoing reasons, it can be held that the District Forum is a Court.

6. Admittedly the complainant has approached the Consumers' Forum at Tumkur and the matter is pending in DCFT 284/95 against the LIC of India. In that proceeding, the LIC of India produced the prescription alleged to have been given by the petitioner herein. According to the complainant, the said prescription is totally false and the said Mahalakshmi had not taken any treatment with the accused at any point of time. Therefore, the main question that was involved in that case was as to whether Mahalakshmi had approached the petitioner for treatment and that whether he had issued the prescription which was produced by the LIC and if issued, whether that prescription is a false one are the issues involved in that case. Therefore, the complainant gets the cause of action to proceed, if any, against the petitioner, only after the said District Forum which is held to be a 'Court' decided the matter in favour of this complainant or it is for the District Forums to take action as contemplated under the provisions of law.

7. Therefore, as rightly pointed out by the Learned Counsel for the petitioner, the respondent has filed a complaint contrary to the provisions of law and the said complaint also is premature. In S.H. TARALAGATTI vs DIRECTOR GENERAL, ALL INDIA RADIO² this Court has held:

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"Sections 195 and 340 Cr.P.C. are supplementary to each other and they must be read together. Section 195 describes the offences in respect of which a complaint is necessary and Section 340 (1) prescribes the procedure under which a complaint is to be made."

It is further held:

"The objects of the law in requiring a complaint from the Court or authority concerned are (i) to protect persons from criminal prosecutions by persons actuated by malice, hatred or illwill; (ii) to insist on there being prosecutions only when the interests of public justice render it necessary and to protect prosecutions when public interest cannot be served; (iii) to protect persons from prosecutions only when the Court after due consideration is satisfied that there is proper case to put a party on his trial."

Further in ISMAIL KHAN vs STATE OF KARNATAKA³ this Court has held that in that case there was no complaint filed for the offence under Section 193 IPC by the Court. Therefore, this Court has held that the learned Magistrate was not competent to take cognizance of the offence under Section 193 IPC. and proceed to record the plea of the petitioner. The proceedings initiated under Section 193 were quashed. In (AIR 69 SC 355) it is held that no cognizance can be taken by the Magistrate for the alleged offence under Section 193 I.P.C.

8. In this case also, prosecution for offences under Section 193 IPC. were initiated by the complainant and not by any Court or a public servant. As contemplated under sub-clause (i) of sub-section 1(b) of Section 195 Cr.P.C. if the complaint came to be filed without there being a case pending in the Court, the matter would have been different. On the other hand, the very same issue is pending before the District Forum for consideration though this petitioner is not a party to the proceedings. It is clear that the discretion exercised by the learned Magistrate in issuing process is capricious and arbitrary and such complaint suffers from fundamental legal defect. The complaint also does not disclose the essential ingredients of alleged offence under Section 193 of the Act. For the foregoing reasons, I hold that the petition deserves to be allowed.

3. 1991 (4) Kar.L.J. 262

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Accordingly, the petition is allowed and the impugned order is set aside. The complaint stands dismissed and the petitioner is discharged.

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T.N. VALLINAYAGAM, J

**Badigera Veeravva and others vs Badigere
Bhadrachari and another***

**CIVIL PROCEDURE CODE (Act No.5 of 1908) Section 100
and TRANSFER OF PROPERTY ACT, 1882, (Central Act
No.IV of 1882) — Section 22 Trial Court and first Appellate
Court granted injunction restraining a person having life
interest only under the terms of the will from alienating
the property to prevent attempt made to create
complication by selling the bequeathed property — Held
such injunction cannot be granted.**

HELD:

Suit against alienation is not maintainable and if such injunction is granted it will be against the very tenor, tone and ambit of the Transfer of property Act.

Sri T.N. Raghupathy, Advocate for appellants
Sri K.G. Shanthappa, Advocate for Respondents

JUDGMENT

T.N. Vallinayagam, J

The defendants are the appellants. The suit for permanent injunction in O.S. 24/82 was decreed by the learned Munsiff Harapanahalli on 14.3.1983. On appeal in R.A. 15/83, the learned Civil Judge Hospet confirmed the judgment and decree of the trial Court and dismissed the appeal on 30.11.1985. Hence, the second appeal.

*RSA.350/1986 dated 28th July 1997