False implication becomes false evidence: a discussion by Rakesh Kumar Singh

Present discussion is humble attempt to consider if a person by implicating another falsely by misinforming the police commits a trivial offence under Section-182 IPC or a grave offence of fabrication of false evidence which is punishable under Section-193, 194, 195 etc. Present paper will take considerable help from a judgment of the Hon'ble High Court of Delhi in **Shyni Varghese vs State** 147(2008) DLT 691 which applies to the present facts situation on legal points. One may argue that due to bar created by Section-195 CrPC, cognizance could not be taken of any offences related to fabricating false evidence but of course since the judgment aforesaid is binding in Delhi, therefore the ratio thereof has to be applied and as such, such argument related to Section-195 CrPC has to be rejected. Even a cursory search at website of Supreme Court would show that the SLP filed against the aforesaid judgment was dismissed on 05.05.2008 with the observations "**Heard learned counsel for the petitioners. We do not find any ground to interfere in these petitions. The special leave petitions are dismissed**". There would hardly be any scope for deviation.

2. Now, we will proceed to see as to how the present facts situation attracts the provisions related to fabricating the false evidence and as to how the judgment aforesaid would apply to the present case.

3. Provisions related to false evidence fall within Chapter-XI titled as "OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE" which contains several sections some of which are presently relevant and therefore the same are reproduced herein under:

> "191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, **makes any statement** which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know".
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> "192. Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, **intending that** such circumstance, false entry or false statement **may appear in evidence** in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, **and that** such circumstance, false entry or false statement, **so appearing in evidence**, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".
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> "193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence **for the purpose of being used** in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Explanation 1.- A trial before a Court-martial is a judicial proceeding. Explanation 2.- An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Explanation 3.- An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice".

4. We have to first understand the distinction between giving false evidence and fabricating false evidence. Both the actions are punishable in law but of course they are clearly different. A person may be bound by oath or by any other law to state the truth and despite that if he makes false statement, he will be treated as giving false evidence. On the other hand however, if a person causes any circumstance to exist with an intention that such circumstance may appear in evidence in a judicial proceeding and such circumstance so appearing in evidence may cause the presiding judge to form an erroneous opinion, he will be treated to have fabricated false evidence.

5. Difference is clear. In the first instance, there is binding law (either of oath or other law) due to which the person is required to tell the truth. However, in the latter instance, there is no law at all. In the former, actual making of statement results in the crime whereas in the latter, only the intention of doing the act results into the crime. If intention of a person for causing a circumstance to exist is clearly established as required, the offence would be complete.

6. Clearly, two ingredients are involved here. Firstly, an act to cause a circumstance to exist. So, one has to first establish that a circumstance has really come in existence and that this was a clear result of an act of that person. Secondly, the intention. So, one has to establish that the person brought the circumstance in existence for a particular purpose.

7. It is the purpose of that person which is the central point. The purpose should be that the circumstance may appear in a judicial proceeding. It nowhere says that the circumstance must appear or that it has already appeared in the judicial proceeding. Actual use of the circumstance is basically immaterial here unlike Section-191 where actual making of false statement is a necessity. In Section-192, only the actual coming into existence of the circumstance is a necessity alongwith the intention.

8. What is further of some significance is that the expression “intending” appearing in the section-192 does not only govern the first part which says “may appear in evidence” but it also governs the second part which says “so appearing in evidence”. A combined reading of both the parts would suggest that if the intention of the person is that the circumstance may appear in evidence and on so appearing it should lead to an erroneous opinion by the deciding officer, the ingredients will be satisfied. There is no necessity that there must be actual evidence or that the circumstance must appear in evidence or that the deciding officer must have formed an erroneous opinion or that the deciding officer must have an opportunity to so form an erroneous opinion. Only the intention of that person is sufficient to attract the provision if he so caused the circumstance to exist with that intention as mentioned in the Section.

9. The section-193 appears to be the umbrella provision for punishing all such activities. It also contrasts between “giving” and “fabricating”. It clearly recognizes that so far as giving is concerned, the false evidence must be given in any stage of a judicial proceeding. On the other hand, so far fabrication is concerned, it recognizes that the fabrication should be for the purpose of being used in any stage of a judicial proceeding. It nowhere says that fabricated evidence must be used. It punishes the purpose and not the actual usage so far as fabrication is concerned. If the purpose was that the fabricated evidence should be used in any stage of a judicial proceeding, it hardly matters whether the same was actually used or not. Ingredients of Section-193 are satisfied.

Shyni Varghese vs State 147(2008) DLT 691:

10. Facts of the case are positively simple. During the investigation in case FIR No.104/06 dated 03.06.2006 under Section 21/25/27/29 of Narcotics Drugs and Psychotropic Substances Act read

with 201/34 Indian Penal Code it was revealed to the Police that the doctors and management of the Apollo Hospital had misled the investigating agency by fabricating and manipulating their records with an intent to harbour and help accused involved in the case to escape from law and also arranged press conference and gave incorrect facts to the media with a view to conceal the offence and screen the offenders.

11. Upon taking permission under Section-155(2) CrPC, the police registered an FIR and investigated the matter. The police then filed chargesheet for offences under Section-182/201/109/114/120-B IPC. The court however, additionally taken cognizance of Section-173/193 IPC suo moto.

12. Accused persons challenged the court order on several grounds whereon the Hon'ble High Court of Delhi made following observations:

> "it deserves to be noticed again that in respect of Section 193 IPC, the learned ACMM had taken suo moto cognizance of the offence under Section 193 IPC as the said offences were committed much prior to the commencement of the trial in the Rahul Mahajan case as is clear from the order dated 04.11.2006. There is, therefore, no substance in the contention of the learned senior counsel for the petitioners that in the absence of a complaint in writing, the learned ACMM could not have taken cognizance of the offence under Section 193 of the IPC".
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> "Mr. Salve's further contention that the language of Explanation 2 to Section 193 IPC does not limit the coverage provided by the said Explanation to offences in Chapter XI of the Penal Code, but the said Explanation is couched in general language, and in the absence of words of limitation in the said Explanation, its language must be given full effect to, in my view, also has no substance for the reason that a bare glance at Section 195 (b) (i) makes it clear that the bar of the said sub-section will apply only "when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court". Any other interpretation would render the words "when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court" otiose. It also cannot be lost sight of that the provisions of Section 195 have to be strictly construed as they create a bar on the power of the Court to take cognizance of an offence and any provision which ousts the jurisdiction of the Court, which it otherwise possesses, cannot be given an enlarged meaning".
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> "clearly shows, the intention of the legislature is manifest that the offences committed should be of such type which directly affect the administration of justice, viz., which are committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court. In the instant case, there is no allegation that any offence affecting the administration of justice was committed while the proceedings were pending in any Court of law and, therefore, clearly neither Section 195(1)(b)(i) will be attracted nor Section 340 will be applicable".
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> "The fact that the procedure for filing a complaint by the Court has been provided in Chapter XXVI clearly shows that the legislative intent was that the offence committed should be of such type which directly affects the administration of justice. Any offence committed in relation to Sections 193 to 196, 199, 200, 205 to 211 and 228, which is not alleged to have been committed in, or in relation to, any proceeding in any Court, cannot be said to be an offence affecting the administration of justice".

13. What appears is that the manipulation of Appolo management was done prior to the investigation of Rahul Mahajan case (FIR No.-104/06) and certainly at that time there was no trial pending in the court. Despite that the concerned persons of the Appolo hospital were summoned for Section-193 i.e. fabricating false evidence.

14. Here, we may take an example. One “A” fires from a desi katta on himself and informed the police that “X” done this thing to him. However, police smells doubt and does not believe on his story. Police interrogate him thoroughly and found the real story. The question then would be as to which offence the said “A” has committed. By doing this, clearly “A” wanted that the said “X” be booked for attempt to murder under Section-307 IPC. If hurt was also caused to “A”, he will be treated as wanting that the said “X” should be punished under second part of Section-307 IPC. Now, this second part attracts one of the sentences as life imprisonment.

15. It is at this stage that we have to note that Section-193 IPC is a general provision which punishes every kind of fabrication of false evidence. However, some subsequent sections of the same Chapter carve out special kind of cases of fabrication and therefore they become independent to Section-193. On this count, Section-194 & 195 are significant. When the “intention” was to get a conviction in death penalty cases, Section-194 provides for specific punishment and when the “intention” is to get a conviction in imprisonment cases, Section-195 provides for specific punishment. All other kind of fabrication of false evidence such as for acquittal, conviction for fine or imprisonment for less than 7 years or other fabrication which is not made for being used in judicial proceedings but falls within other domain of Section-192 are all reserved for punishment under Section-193. It is therefore clear that if the intention was to procure a conviction, we need to first look into Section-194 & 195 and only thereafter that we may look into Section-193. For the present purpose, we may see Section-195 IPC which reads as under:

> “195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.- Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished”.

16. This section also uses both the terms i.e. giving and fabricating. The illustration appended to the section clearly covers only the concept of “giving false evidence”and not the other concept. Giving false evidence in terms of Section-191 means the actual making of false statement whereas fabricating false evidence in terms of Section-192 is bringing a circumstance in existence with a particular intention. Section-195 further carves out a class of fabrication i.e. when its purpose is that the same may lead to a conviction for an offence punishable with 7 years imprisonment or more or the life imprisonment.

17. On a superficial reading, one might tend to argue that the section requires a conviction. However, a bare comparison between section-194 and 195 will go to show otherwise. Section-194 is in two parts, one where there is conviction and second, the rest of situation. On the other hand, Section-195 does not provide for such bifurcation. It is clear that the Legislature was well aware about the distinction and if it wanted that the provision would apply only to a specific thing, it would have said so.

18. One may argue that if a person sends a wrong information to police against someone else but the police does take any action against that other person for any reason whatsoever, the first person should not be treated as guilty of any offence as qua that other person there would nothing have happened. This court is of the opinion that at fist blush, the argument seems attractive but does not stand a closure scrutiny. As held earlier, actual happening is not a necessary requirement and the punishment is actually for the “intention” of the person.

19. A very insightful discussion on offence in the absence of actual happening is available in a decision reported in **48 Ind Cas 817** titled as Srilal Chamaria vs Emperor dated 22.10.1918.

20. In the year 1918, Section-116 IPC was still in the statute book. A person offers bribe to a government servant. If bribe is accepted, the government servant would be liable under Section-161 and the person shall be liable under Section-109. If bribe is not accepted, the government servant shall not be liable but the person shall be liable under Section-116. In the said case, no bribe was offered to the Magistrate but it was given to his clerk for being further given to the Magistrate and the same was seized at the spot. Be it noted that it was not the intention of the accused therein to bribe the said clerk. In such circumstances, anyone would argue that since no bribe has been offered to a government servant, no offence was committed. Using Explanation-4 appended to Section-108 IPC, it was held that if when the abetment of an offence is by definition of description an offence under the IPC that is, when an abetment of an offence is punishable under Section 109 or Section 116 or some other provision of IPC, then the abetment of such abetment is also an offence. Accused was convicted therein. There was simply no actual happening of offering to or receiving bribe by a government servant. However, accused was convicted for a simple reason that had the clerk on his instigation given the bribe or even offered the bribe to the Magistrate, the clerk would have been liable for an abetment and since the abetment would have been an independent offence itself, its abetment by the first person would also be an offence. Since, punishment is prescribed for both the situations i.e. when the abeted offence is committed and also when the abeted offence is not committed, the first person was clearly liable for abetment of abetment whether the abeted person actually did anything in consequence or not. Therefore, actual happening was really immaterial. One interesting point of view may also be noted at this stage. Abetment of offence can also be done through conspiracy. If the reasoning of the aforesaid judgment and Explanation-4 is extended to its logical end, if two persons conspires to instigate a third person to give bribe to a public servant and goes to the place of that third person, then those two would be guilty of abetment though neither the said government servant nor the said third person knows anything at all. This is apart from offence of criminal conspiracy.

21. Coming now to the specifics in respect of the example aforesaid. When the accused fabricated false evidence, he clearly knew that if the case intended to be initiated by him goes to court and results in conviction, the concerned person would have been convicted for an offence punishable with life imprisonment. Be it noted that in India there is no requirement of plurality of witnesses and even the conviction can be solely based upon a solitary witness. As such, if the police had not doubted the projected version, the matter would have resulted into a trial against “X” and the said “X” would have been convicted upon the soliatary deposition given by the present accused. In reality, it does not matter whether the case actually would have ended in conviction or not. What is punishable is the intention or knowledge that it may result into conviction. The actual result was not and rather could never be in the hands of the accused. What was in his hand is the bringing into existence a circumstance which if appears in a judicial proceeding would have led to an erroneous opinion by the deciding officer and the said erroneous opinion would have led to a conviction for life imprisonment. The accused had done his part by firing at himself and then informing the police that “X” did so against him. His efforts could not succeed, not because any activity on his part but because the police official who could guess the falsehood of claim. Naturally, his intention to fabricate false evidence would fall within the ambit of Section-195 IPC. On a passing note, even if the circumstance is taken to be falling within the first part of Section-307 IPC attracting only 10 years imprisonment, the same would not change anything as Section-195 IPC would be applicable thereagainst also.

22. The natural result of the aforesaid discussion is that a person who tries to frame another by giving a wrong information to police risks a prosecution for fabrication of false evidence and if his

intention in so doing is found to be to procure a conviction for death penalty, life imprisonment or an sentence of 7 years or more, he shall be punishable in accordance with the offence for which he wanted to falsely implicate that other person by virtue of Section-194 & 195 IPC and in rest of the cases, he would be punishable under Section-193 IPC which also attracts sufficiently harsh punishment. Such person cannot be left with a prosecution for trivial offence under Section-182 IPC.

23. Discussion stands concluded on the aforesaid note but the reader is expected to also go through the judgment of Hon'ble Delhi High Court in minute details for more clarity.

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