Analyst. The defence of the petitioner that he had prepared sweetened aerated water by putting saccharin in it, at the instance of his customers, who were diabetic patients may well be true. The colouring agent used has not been found to be prohibitive. The adding of a colouring agent to carbonated water would not cease the substance to remain corbonated water any more; but further addition of a sweetening agent would make it a sweetened corbonated water and then alone the standards of the proviso have to apply.

(8) In the result, this petition succeeds and the petitioner is hereby acquitted. Fine, if paid, be refunded to him.

H.S.B.

Before M. M. Punchhi, J.

UJAGAR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 384 *of* 1977.

November 22, 1979.

Indian Penal Code (XLV of 1860)—Sections 193, 218, 463 *and* 466—*Code of Criminal Procedure* (2 *of* 1974)—*Sections* 195 *and* 360—*Court official tampering with the statements of the witnesses given in that court—Such action—Whether falls within the mischief of sections* 218 *and* 466—*Section* 193—*Whether attracted—Bar to prosecution as envisaged in section* 195 *of the Code—Whether applicable to cases under section* 21-*B—Benefit of Probation—Whether should be given to the offenders in such cases.*

Held, that a bare reading of the provisions of section 195 of the Code of Criminal Procedure, 1973 reveals that the clog to cognizance is placed on Courts with respect to the offences mentioned therein and section 218 of the Indian Penal Code 1860 is not one of those sections. Equally, the offences described under section 463 of the Indian Penal Code which are excluded from the purview of cognizance except on a complaint are those offences which are alleged to have been committed in respect of a document produced or given in

evidence in a proceeding in any court. It is clear therefrom that the record prepared by the court as a memorandum of evidence is neither a document produced or given in evidence in a proceeding in any Court. It is postulated that a document would be prepared by an outside agency and then produced or given in evidence in the Court. A writing prepared by the Court itself cannot be a document which would come within the mischief of section 195(1) (b) (ii) of the Code of Criminal Procedure. Equally, the offence under section 218 of the Indian Penal Code pertains to a public servant framing an incorrect record, the object of which is to save any person from legal punishment or property from forfeiture or to other charge to which it is liable by law. Section 193 of the Indian Penal Code would have no applicability as fabrication of false evidence which has taken care of in that section again pertains to a document which would ultimately appear in evidence in a judicial proceeding. This again pertains to an outside agency fabricating false evidence and using it in a judicial proceeding. Thus, where a court official tampers with the statements of witnesses given in that court, the provisions of sections 218 and 466 of the Indian Penal Code are attracted and the bar to prosecution as envisaged in section 195 of the Code of Criminal Procedure is not applicable. (Para 5).

Held, that for the maintenance of the prestigious role and high standards of judicial conduct, it is essential that not only members of the judicial service are to stay clean and remain above suspicion, but that joyful burden be also shared by the Clerks, Readers, Ahlmads, Record-keepers and other functionaries of the Courts with equal zeal and discipline. The fountain of justice has to remain unpolluted. Even the slightest attempt to sully its clear and calm waters disturbs the judicial mind and the broom stick to sweep the dirt comes into action severely and swiftly. There cannot be any extenuating circumstance in favour of a court official accused of dishonest conduct and his previous conduct even though noted as good can cast no reflection of innocence for the crime for which he is found guilty and as such he could not be granted probation under section 360 of the Code of Criminal Procedure. (Para 6).

Petition for revision under section 401 of Criminal Procedure Code of the order of Shri M. L. Merchea Sessions Judge, Faridkot dated the 25th of April, 1977, affirming that of Shri J. S. Pamma, P.C.S. Judicial Magistrate 1st Class, Giddarbaha, dated 2nd September, 1976, convicting the appellant.

D. R. Puri, Advocate and Gurjit Singh, Advocate, *for the Petitioner.*

Ashok Behal, Advocate for *A.G., Punjab.*

JUDGMENT

Madan Mohan Punchhi, J. (Oral)

(1) Ujagar Singh has challenged his conviction under sections 466 and 218 of the Indian Penal Code, whereunder he stands sentenced to one year's rigorous imprisonment and fine of Rs. 200, in default rigorous imprisonment for three months for the first mentioned offence and no separate sentence was imposed for the second mentioned offence. The trial Court convicted and sentenced him as aforesaid and his appeal to the Sessions Judge remained abortive.

(2) The case of the prosecution was that one Harmel Kaur complained against her husband that he had committed bigamy by marrying a second time a woman named Dhan Kaur. As a part of preliminary evidence, she produced Hazara Singh and Chand Singh as witnesses before Shri Dina Nath, Judicial Magistrate, 1st Class, Gidderbaha. The statements were recorded on 20th October, 1973 and 8th November, 1973 respectively, on the dictation of Shri Dina Nath, Judicial Magistrate, to the petitioner Ujagar Singh, who was then working as a Reader in that Court. The case of the prosecution is that the petitioner incorporated words at the end of those statements to the effect that one Surjit Singh had seen the entire occurrence with his own eyes. It is immaterial as to what fate that complaint ultimately met but the matter came to light of the said Magistrate. He made a reference to the Sessions Judge, Faridkot. After a preliminary inquiry was held against the petitioner, a case was registered against him. On completion of the investigation, the police report was put in, the accused was charged and convicted as aforesaid.

(3) Though the prosecution examined as many as seven prosecution witnesses yet the most important and the material one was Shri Dina Nath (P.W. 3), Judicial Magistrate, Ist Class who stated in categoric terms that the inserted writings concededly being in the hands of the accused, were never dictated by him. It was also stated by him that had those assertions been at his instance at the close of the evidence on suggestion by the counsel for the parties, he would have initialled them. That apart, other evidence was also examined to connect the accused with the crime. The accused did not deny the writing and the assertion but twisted the pivot of the case of the

prosecution by saying that the insertions had been made at the instance of the Judicial Magistrate and not on his own. The only question which had to be determined was whether the aforesaid insertions made in the statements of Hazara Singh and Chand Singh were made on the dictation of Shri Dina Nath, Judicial Magistrate, or were added later by the accused-petitioner. It is apparent to the naked eye that the main body of the statement with regard to Hazara Singh, Exhibit P.E., dated 20th October, 1973 is written by a different pen and ink than the insertion. It is patent that the insertion is abbreviated because the space was smaller. It is to the effect "Surjit Singh also saw the occurrence." The later statement Exhibit P.A. of Chand Singh, dated 8th November, 1973 is still in a different ink and the insertion in this instance was longer because of availability of space. It is to the effect that "Surjit Singh of Giddarbaha had seen the whole occurrence with his own eyes". The ink and pen of the later insertion is different than the body of the statement. However, both the insertions are in the same ink and with the same pen. It is obvious therefrom that these insertions came about at one and the same time whereas the statements of the witnesses were recorded at different times. There is no possibility of the insertions happening at the time when Hazara Singh's statement was recorded but the need for it may have arisen after the statement of Chand Singh was recorded as it is later in time. In view of the categoric statement of Shri Dina Nath, Judicial Magistrate, there is no scope to doubt that the last lines in the aforesaid two statements had been inserted by the accused-petitioner after the said Magistrate had signed the two statements as part of the record of a judicial proceeding prepared by him. Two Courts have believed, and rightly so, Shri Dina Nath, Judicial Magistrate, and no infirmity could be found in his statement in this Court as well.

(4) It was then contended that there was a legal bar to the trial and the conviction arising therefrom has to be quashed. It was contended that the conviction under section 218, Indian Penal Code, cannot sustain as it is an offence which falls under section 195(i)(b)(i) of the Code of Criminal Procedure and that offence could only be tried if a complaint in writing had been made by the Court when such offence was alleged to have been committed in or in relation to any proceeding in the Court. Carrying the argument further, it was contended by the learned counsel for the petitioner that the offence under section 466, Indian Penal Code, was also an offence described in section 463 Indian Penal Code and as such that offence

also could not be tried except on the complaint in writing of the Court when the offence was committed in respect of a document prepared by the Court in judicial proceedings. In support thereof, a decision of the Supreme Court reported as *Kamla Prasad Singh* v. *Hari Nath Singh and another* (1), was cited to contend that at least the offence under section 218 Indian Penal Code, could not be taken cognizance of except on a complaint because the offence according to the learned counsel was within the ambit of section 193, Indian Penal Code and not under section 218, Indian Penal Code.

(5) A bare reading of the provisions of section 195, Criminal Procedure Code, reveals that the clog to cognizance is placed on Courts with respect to the offences mentioned therein and section 218, Indian Penal Code, is not one of those sections. Equally, the offences described under section 463, Indian Penal Code, which are excluded from the purview of cognizance except on a complaint are those offences which are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court. It is clear therefrom that the record prepared by the Court as a memorandum of evidence is neither a document produced or given in evidence in a proceeding in any Court. It is postulated that a document would be prepared by an outside agency and then produced or given in evidence in the Court. A writing prepared by the Court itself cannot be a document which would come within the mischief of section 195(1)(b)(ii), Criminal Procedure Code. Equally the offence under section 218, Indian Penal Code, pertains to a public servant framing an incorrect record, the object of which is to save any person from legal punishment or property from forfeiture or to other charge to which it is liable by law. Section 193, Indian Penal Code, would have no applicability to the present case, as fabrication of false evidence which has been taken care of in that section, again pertains to a document which would ultimately appear in evidence in a judicial proceeding. This again pertains to be an outside agency fabricating false evidence and using it in a judicial proceeding. It is concededly not a case of giving false evidence. Since section 193, Indian Penal Code, cannot be attracted to the facts established in this case, obviously the Supreme Court's decision in *Kamla Prasad Singh's case* (supra) has no applicability. The conviction under section 218, Indian Penal Code, is attracted to the facts established. Even otherwise, the discussion is purely academic for no sentence has been imposed on the petitioner for this offence. Thus

(1) AIR 1968 S.C. 19.

the conviction is well based on either of the two counts and is hereby affirmed.

(6) It was then contended by the learned counsel for the petitioner that the petitioner be granted probation under section 360, Criminal Procedure Code, and there were no reasons to deny him that benefit. He cited *Dilbag Singh* v. *State of Punjab* (2), in support of his prayer. That was a hurt case under section 324, Indian Penal Code, and would have no bearing to the Criminal conduct of the petitioner in the present case. For the maintenance of the prestigious role and high standards of judicial conduct, it is essential that not only the members of the judicial service are to stay clean and remain above suspicion; but that joyful burden be also shared by the Clerks, Readers, Ahlmads, Record-keepers and other functionaries of the Courts with equal zeal and discipline. The fountain of justice has to remain unpolluted. Even the slightest attempt to sully its clear and calm waters disturbs the judicial mind and the broomstick to sweep the dirt comes into action severely and swiftly. There cannot be any extenuating circumstance in favour of the petitioner merely because he at the time of the commission of the offence was 39 years of age, a family man and having children, as suggested. Previous conduct of the petitioner may have been noted as good but that can cast no reflection of innocence for the crime for which he has been found guilty. He has already been leniently dealt with. In the result, the revision petition fails and is hereby dismissed.

H.S.B.

Before B. S. Dhillon and G. C. Mital JJ.

COMMISSIONER OF INCOME-TAX, PATIALA,—*Applicant.*

versus

MR. JUSTICE S. C. MITAL, JUDGE, PUNJAB & HARYANA HIGH COURT, CHANDIGARH,—*Respondent.*

Income Tax Reference Nos. 85 *to* 88 *of* 1979.

November 21, 1979.

Income Tax Act (XLIII of 1961)—*Section* 10(13A)—*Income Tax Rules* 1962—*Rule* 2-*A*—*Assessee occupying his own house*—*Whether could be said to be incurring expenditure in terms of section* 10(13A) *Compensation by the employer by payment of special allowance as*

---

(2) AIR 1979 S.C. 680.