

Lalji Haridas

Vs

State of Maharashtra and Another

Criminal Appeal No. 141 of 1962

(A. K. Sarkar, K. C. Das Gupta, K. N. Wanchoo JJ)

07.02.1964

JUDGMENT

GAJENDRAGADKAR C.J. –

The short question of law which arises for our decision in the present appeal is whether the proceeding before an Income-tax Officer under section 37 of the Indian Income-tax Act, 1922 (No. XI of 1922) (hereinafter called the Act) can be said to be a proceeding in any court within the meaning of s. 195(1)(b) of the Code of Criminal Procedure. This question arises in this way. The appellant Lalji Haridas and respondent No. 2 Mulji Manilal Kamdar are businessmen and they carry on their business in Jamnagar and Bombay respectively. They have known each other for several years past in the course of their ordinary business activities. In the income-tax assessment proceedings of the appellant for the assessment years 1949-50 and 1950-51, respondent No. 2 gave evidence on oath before the Income-tax Officer, Ward A, Jamnagar on 4th December, 1958. In his evidence he denied that he had a son named Nihal Chand and that he had done any business in the name of M/s. Nihal Chand and Co. at Jamnagar. According to the appellant, the said statements were false to the knowledge of respondent No. 2 and were made by him to mislead the Income-tax Officer and to avoid the incidence of income-tax on himself. As a result of the said false statements, the appellant was heavily taxed.

On the 24th November, 1959, the appellant filed a criminal complaint against respondent No. 2 under section 193 of the Indian Penal Code (No. 452/S of 1959) in the Court of the Presidency Magistrate, 19th Court, Esplanade, Bombay. At the hearing of the said complaint, respondent No. 2 raised a preliminary objection that the learned Magistrate could not take cognizance of the said complaint, because the proceedings in which he was alleged to have made a false statement on oath were proceedings before a Court within the meaning of s. 195(1)(b) Cr. P.C., and since no complaint in writing had been made by the Court of the Income-tax Officer before which the said proceedings were conducted, the provisions of section 195(1)(b) created a bar against the competence of the appellant's complaint. The learned Presidency Magistrate held that the Income-tax Officer was not a court within the meaning of section 195(1)(b), Cr. P.C., and so, he rejected the preliminary objection raised by respondent No. 2.

Against the said decision of the Presidency Magistrate, respondent No. 2 preferred a Criminal Revision Application (No. 1142 of 1960) before the Bombay High Court. The State of Maharashtra was impleaded as respondent No. 1 to the said Revision Application. A Division Bench of the said High Court reversed the conclusion of the Presidency Magistrate and held that the Income-tax Officer was a Court within the meaning of s. 195(1)(b) Cr. P.C., and so, it upheld the preliminary objection raised by respondent No. 2. In the result, the complaint filed by the appellant was ordered

to be dismissed. The appellant then applied for and obtained a certificate from the Bombay High Court under Art. 134(1)(c) of the Constitution and it is with the said certificate that he has brought the present appeal before us. That is how the narrow question which arises for our decision in the present appeal is whether the proceedings before an Income-tax Officer are proceedings in any court under s. 195(1)(b), Code of Cr. P.C. The question thus raised is undoubtedly a short one, but its decision is not easy, because the arguments urged in support of the two respective constructions are fairly balanced and the task of preferring one construction to the other presents some difficulty.

The proceedings before the Income-tax Officer during which, according to the appellant, respondent No. 2 made a false statement on oath, were held by the Income-tax Officer under s. 37 of the Act. Section 37(1) deals with the powers of Income-tax authorities and provides, inter alia, that the Income-tax Officer shall, for the purposes of the Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (No. V of 1908), when trying a suit in respect of the matters specified by clauses (a) to (d). Section 37(2) confers upon the Income-tax Officer certain additional powers which can be exercised subject to any rules made in that behalf, provided the said Officer is specially authorised by the Commissioner in that behalf, and in exercising these powers, the provisions of the Code of Criminal Procedure 1898 relating to searches apply. Section 37(3) deals with the question of impounding and retaining any books of account or other documents. That takes us to s. 37(4) which is relevant for our purpose; this section provides that any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code. It is thus clear that while the Income-tax Officer exercises his powers under s. 37(1), (2) and (3) the proceedings held by him are judicial proceedings for the purposes of the three sections of the Indian Penal Code mentioned in sub-section (4). Therefore, the question as to whether the false statement alleged to have been made by respondent No. 2 was made by him at any stage of a judicial proceeding within the meaning of s. 193 I.P.C., must be answered in the affirmative. That is the plain effect of s. 37(4) of the Act.

Section 193 of the Indian Penal Code with which we are directly concerned in the present appeal provides for punishment for intentionally giving false evidence. It consists of two parts : the first part deals, inter alia, with false evidence intentionally given in any stage of a judicial proceedings, and prescribes that the person found guilty of having given such false evidence in 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; the second part deals with cases where false evidence has been intentionally given in any other case, and it prescribes the maximum sentence of three years as well as fine. In other words, if the false evidence has been intentionally given in any judicial proceeding, the sentence awardable is higher than that where false evidence is intentionally given in proceedings which are not judicial. There are three explanations to s. 193. Expln. 1 provides that a trial before a Court-martial is a judicial proceeding; expln. 2 lays down that 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; this explanation takes in, for instance, committal proceedings. Under expln. 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. This explanation covers enquiries before officers deputed by Courts of Justice to ascertain, for instance, on the spot the boundaries of land. It would thus be seen that having provided for a higher sentence in regard to the offence of giving false evidence in any stage of a judicial proceeding, the three explanations of s. 193 include within the expression "judicial proceeding" certain proceedings which on a strict construction of the said expression may not have been included

under it. For the purpose of the present appeal, however, the only point to notice at this stage is that s. 37(4) of the Act makes a proceeding before an Income-tax Officer, held under the said section, a judicial proceeding for the purposes of s. 193, I.P.C. and that means that if an offence of giving false evidence is proved to have been committed by a person in a proceeding before the Income-tax Officer, he would be liable for the higher sentence awardable under the first part of section 193.

That takes us to section 195 of the Code of Criminal Procedure. It is well-known that s. 195 provides for an exception to the ordinary rule that any person can make a complaint in respect of the commission of an offence triable under the Cr. P.C. Section 4(h) of this Code defines a "complaint" as meaning the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but does not include the report of a police officer. This definition shows that any person can make a complaint in respect of the commission of an offence. Section 190 requires that the Magistrate to whom a complaint has been made should take cognizance of the said complaint, subject to the provisions of the said section. Thus, the general rule is that any person can make a complaint, and s. 195 provides for an exception. Section 195(1)(b) with which we are concerned, provides that no Court shall take cognizance of any offence punishable under the sections therein mentioned, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except the complaint in writing of such Court, or of some other Court to which such Court is subordinate; amongst the sections mentioned are sections 193 and 228 I.P.C. The effect of this provisions is that if an offence is alleged to have been committed either under s. 193 or s. 228 I.P.C., and it appears that the said offence was committed in relation to any proceeding in any Court, it is only if the said Court, or the Court to which it is subordinate, makes a complaint in that behalf that cognizance will be taken of the said complaint. A person cannot make a complaint in respect of the alleged commission of any of the offences specified in s. 195(1)(b); that is its plain effect.

Section 195(2) which was added in 1923 when the earlier section 195 was substantially amended, provides that in clauses (b) and (c) of sub-section (1) the term "Court" includes a Civil, Revenue or Criminal Court, but it does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877. It is unnecessary to deal with the effect of this provision, because, as will presently appear we do not propose to base our decision on the ground that the Income-tax Officer is a Revenue Court under this sub-section. The only point of interest to which we may incidentally refer is that this sub-section gives an inclusive, though not an exhaustive, definition and takes within its purview not only Civil and Criminal Courts, but also Revenue Courts, while excluding a Registrar or Sub-Registrar under the Indian Registration Act.

In dealing with the question which has been raised in the present appeal what we are required to determine is whether a proceeding before an Income-tax Officer which by virtue of the operation of s. 37(4) of the Act, must be held to be a judicial proceeding under s. 193, I.P.C. is a proceeding in any Court under s. 195, Cr. P.C. Section 193 makes a distinction between offences committed in any judicial proceeding and those committed in proceedings other than judicial proceedings, whereas s. 195(1)(b), Cr. P.C. does not refer to judicial proceedings as such, but mentions proceedings in any Court. That is why the controversy between the parties in the present appeal lies within a very narrow compass. Can it be said that the proceeding which is a judicial proceeding under s. 193, I.P.C., must be held to be a proceeding in any Court under s. 195(1)(b), Cr. P.C. ? It is on this aspect of the dispute that the arguments on both sides are fairly balanced.

In dealing with this question, it is unnecessary to consider what would have been the position of the Income-tax Officer acting under s. 37(1), (2) and (3), and what would have been the character of the

proceedings taken before him if sub-section (4) had not been enacted. In *Jagannath Prasad v. The State of Uttar Pradesh* ((1953) 2 S.C.R. 850), it has been held by this Court that the Sales-tax Officer functioning under the U.P. Sales Tax Act, 1948 (No. 15 of 1948) was not a Court within the meaning of s. 195, Cr. P.C., and so, it was not necessary for him to make a complaint for the prosecution of any person against whom it was alleged that he had committed an offence under s. 471 I.P.C. This decision would tend to indicate that in the absence of s. 37(4) it would have become necessary to hold that the Income-tax Officer acting under s. 37(1), (2) and (3), would not be Court under s. 195, Cr. P.C., and in that sense the provisions of s. 195 could not have been attracted. This position is not disputed by Mr. Desai who appears for respondent No. 2.

He, however, contends that the provisions of s. 37(4) which have been inserted in the Act in 1956 make all the difference, and according to him, this sub-section was added in order to make s. 195(1)(b), Cr. P.C., applicable to the proceedings before the Income-tax Officer. On the other hand, the Additional Solicitor-General has strenuously argued that the purpose which the legislature had in mind in inserting sub-section (4) in s. 37 was merely to make the proceedings before Income-tax Officer judicial proceedings within the meaning of s. 193, I.P.C., and not to make s. 195(1)(b), Cr. P.C. applicable to them. If the intention of the legislature had been to take the proceedings before the Income-tax Officer within the mischief of the said section of the Cr. P.C., the legislature would have expressly said so in terms. The omission to refer to the relevant provision of the Cr. P.C. in s. 37(4) is not accidental, but deliberate, and so, though the proceeding before the Income-tax Officer may be and has to be regarded as a judicial proceeding under s. 193, I.P.C., it cannot be said to be a proceeding before a Court, because the Income-tax Officer is not a Court.

In support of his argument, the Additional Solicitor-General has referred us to several statutes where the legislature intention to extend the provisions of s. 195, Cr. P.C., to specific proceedings has been carried out by making an express provision in that behalf. Section 23 of the Workmen's Compensation Act, 1923 (No. 8 of 1923) provides that the Commissioner shall have all the powers of a Civil Court for the purposes therein indicated, and by an amendment made in 1929, it further lays down that the Commissioner shall be deemed to be a Civil Court for all the purposes of s. 195 and Chapter 35 of the Code of Criminal Procedure. The argument is that where the legislature wanted to extend the provisions of s. 195, Cr. P.C. to the proceedings before the Commissioner held under the Workmen's Compensation Act, it thought it necessary to make a specific and express provision in that behalf. A similar provision is contained in s. 18 of the Payment of Wages Act, 1936 (No. 4 of 1936). In the Industrial Disputes Act, 1947 (No. 14 of 1947), the position is similar to that in the case of the Workmen's Compensation Act; section 11(4) confer on the authorities therein specified powers as are vested in a Civil Court in respect of the matter mentioned therein. In 1950, sub-section (8) was added to section 11 by which it was provided that every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of section 480 and 482 of the Code of Criminal Procedure. This scheme also shows, says the Additional Solicitor-General, that where the legislature wants to make any Tribunal or authority a Court, it uses express and appropriate language in that behalf. Section 45 of the Administration of Evacuee Property Act, 1950 (No. 31 of 1950) likewise confers powers of a Civil Court on the Custodian and expressly adds that the proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure. The same provision is made by s. 17 of the Evacuee Interest (Separation) Act, 1951 (Act 64 of 1951), as well as by section 26 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (No. 44 of 1954).

On the other hand, s. 51 of the Administrator-General's Act, 1913 (No. 3 of 1913) provides that

however, during any examination authorised by this Act, makes a false statement on oath knowingly, he shall be deemed to have intentionally given false evidence in a stage of judicial proceeding. The argument is that in this case, the legislature wanted to equate the proceedings under this Act with judicial proceedings under s. 193, I.P.C., and did not intend to make section 195, Cr. P.C., applicable to them, because it does not make the authority under this Act a court, or does not, in terms, extend the provisions of the said section to the proceedings held before such an authority. The same comment has been made on the provisions of s. 171A(4) of the Sea Customs Act, 1878 (No. 8 of 1878). Thus presented, the argument is no doubt attractive and cannot be rejected as without any substance.

The expression "judicial proceeding" is not defined in the Indian Penal Code, but we have the definition of the said expression under section 4(m) of the Cr. Procedure Code. Section 4(m) provides that "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. The expression "Court" is not defined either by the Cr. P.C. or the I.P.C., though 'Court of Justice' is defined by s. 20 of the latter Code as denoting a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially. Section 3 of the Evidence Act defines a "Court" as including all Judges and Magistrates and all persons except the Arbitrators legally authorised to take evidence. Prima facie, there is some force in the contention that it would not be reasonable to predicate about every judicial proceeding that it is a proceeding before a Court, and so, it is open to the appellant to urge that though the proceeding before an Income-tax Officer may be a judicial proceeding under s. 193, I.P.C., it would not follow that the said judicial proceeding is a proceeding in a Court as required by s. 195(1)(b), Cr. P.C.

It is somewhat remarkable that though section 193, I.P.C., refers to a judicial proceeding, section 195, Cr. P.C. refers to a proceeding in any Court; it does not say a judicial proceeding in any Court. Mr. Desai contends that reading section 193 I.P.C. and s. 195(1)(b) Cr. P.C., 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 proceedings. 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 s. 195(1)(b), Cr. P.C. In other words, an offence which is treated as more serious by the first paragraph of s. 193, I.P.C. 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 s. 195(1)(b) Cr. P.C. 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 s. 37(4) of the Act was enacted, the proceedings before an Income-tax Officer become judicial proceedings for the purpose of s. 193, I.P.C. and since they are classed under the first paragraph of the said section, they attract the protection of s. 195(1)(b), Cr. P.C. 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.

It is true, the Additional Solicitor-General has mainly relied upon the relevant provisions of several statutes in support of his construction and in so far as it appears that certain provisions in some of the said statutes in terms extend the application of s. 195, Cr. P.C. to the proceedings to which they

relate, the argument does receive support, but we hesitate to hold that the omission to refer to s. 195(1)(b), Cr. P.C. in s. 37(4) of the Act necessarily means that the intention of the legislature in enacting s. 37(4) was merely and solely to provide for a higher sentence in regard to the offence under s. 193, I.P.C. if it was committed in proceedings before the Income-tax Officer. It is plain that if the argument of the Additional Solicitor-General is accepted, the result would be that a complaint like the present can be made by any person and if the offence alleged is proved, the accused would be liable to receive higher penalty awardable under the first paragraph of s. 193, I.P.C. without the safeguard correspondingly provided by s. 195(1)(b), Cr. P.C. Could it have been the intention of the legislature in making the offence committed during the course of a proceeding before an Income-tax Officer more serious without affording a corresponding safeguard in respect of the complaints which can be made in that behalf? We are inclined to hold that the answer to this question must be in the negative. That is why after careful consideration, we have come to the conclusion that the view taken by the Bombay High Court should be upheld though for different reasons. Section 37(4) of the Act makes the proceedings before the Income-tax Officer judicial proceedings under s. 193 I.P.C. and these judicial proceedings must be treated as proceedings in any Court for the purpose of s. 195(1)(b), Cr. P.C. That, we think, would really carry out the intention of the legislature in enacting s. 37(4) of the Act.

In this connection, there is another consideration which has weighed in our minds. We have already noticed that s. 37(4) makes the proceedings before the Income-tax Officer judicial proceedings within the meaning of s. 228 I.P.C. When we turn to the latter section, we notice that the said section deals with the offence of intentionally causing insult or interruption to public servant sitting in judicial proceeding. It is obvious that the offence with which s. 228 deals is an offence committed against a public servant sitting in a judicial proceeding. This section is one of the sections mentioned in s. 195(1)(b), Cr. P.C., and so, any complaint in respect of the offence alleged to have been committed under s. 228, I.P.C. has to be made by the Court in question. 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, the complaint has to proceed from the public servant himself; that is the effect of s. 195(1)(b) Cr. P.C. Before s. 37(4) of the Act was enacted, an insult given to an Income-tax Officer or interruption caused to his proceedings whilst he was conducting his proceedings, would not have amounted to an offence under s. 228, I.P.C. Section 37(4) makes a proceeding before the Income-tax Officer a proceeding under s. 228 I.P.C. and thus, an interruption in his proceedings, or an insult given to him, has now become punishable under the said section. Could it have been intended by the legislature in enacting s. 37(4) that whereas an insult offered to a public servant acting judicially, or interruption caused in his proceedings would normally be cognizable only on the complaint of the public servant himself, the same offence, if committed in respect of the proceedings before an Income-tax Officer, should be cognizable at the complaint of a private party? The anomaly which would result if the construction suggested by the Additional Solicitor-General is accepted, is, in our opinion, so glaring that the alternative contention urged by Mr. Desai and upheld by the Bombay High Court which avoids the said anomaly appears to be more reasonable and more consistent with the true intention of the legislature. That is why we are not prepared to accept the appellant's argument that the Bombay High Court was in error in dismissing his complaint on the ground that the condition precedent prescribed by s. 195(1)(b) Cr. P.C. had not been complied with as no complaint had been filed by the Income-tax Officer.

It appears that in *In re : Punam Chand Maneklal* (I.L.R. 38 Bom. 642) the Full Bench of the Bombay High Court had taken the view that an Income-tax Collector is a Revenue Court within the meaning of that term as used in clauses (b) and (c) of s. 195, Cr. P.C., 1898. Scott, C.J. who spoke

for the Full Bench, observed that it could not be contended that the Income-tax Collector was a Civil or Criminal Court, and so, he addressed himself to the narrow question as to whether he was a Revenue Court. Dealing with the question on that footing, he examined the functions of the Income-tax Collector under Act II of 1886, and held that he was a Revenue Court. He rejected the contention that he could be treated as a Registrar or Sub-Registrar under the Registration Act, and so, he found no difficulty in coming to the conclusion that he was a Revenue Court. The Bombay High Court in the present case has substantially based itself on this decision in reversing the conclusion of the Presidency Magistrate and directing that the complaint filed by the appellant should be dismissed. It is unnecessary to consider whether the view taken by the Full Bench in *in re : Punam Chand Maneklal* (I.L.R. 38 Bom. 642) is right, because the relevant provisions of the Income-tax Act have been subsequently modified in 1922 and different considerations have now assumed importance. It is no longer possible to hold that the Income-tax Officer is a Revenue Court, and, indeed, that has not been the contention raised before us by Mr. Desai.

In the result, the appeal fails and is dismissed.

DAS GUPTA, J. –

Is an Income-tax Officer under the Indian Income-tax Act, 1922, a court within the meaning of cl. (b) in sub-section (1) of s. 195 of the Code of Criminal Procedure ? That is the short but difficult question that arises in this appeal against a decision of the High Court of Judicature at Bombay. On November 24, 1949, the appellant filed a complaint in the Court of the Presidency Magistrate, Bombay, alleging that when the respondent Mulji Manilal Kamdar, was examined on commission by the Income-tax Officer, Jamnagar Circle, Jamnagar, he gave answers which were false to his knowledge. He prayed for the issue of process against the said Mulji Manilal Kamdar, so that he might be dealt with according to law. An objection was raised by the accused that in the absence of a complaint by the Income-tax Officer before whom the false statement was alleged to have been made the Magistrate was debarred from taking cognizance of the case. This contention was based on a submission that the Income-tax Officer was a court within the meaning of s. 195(1)(b). This objection was rejected by the Presidency Magistrate. The High Court of Bombay was moved against the Presidency Magistrate's order. But considering itself bound by a Full Bench decision of the Court in *in re : Punamchand Maneklal* (I.L.R. 38 Bom. 642) and the later decision in *State v. Nemchand Peshvir* (57 Bom. L.R. 1056) the High Court held that an Income-tax Officer when holding proceedings under s. 23 of the Income-tax Act, 1922 is a Revenue Court within the meaning of cl. (b) in sub-section (1) of s. 195 of the Code of Criminal Procedure. The correctness of the High Court's view is challenged before us by the complainant on the strength of a certificate granted by the High Court under Art. 134(1)(c) of the Constitution.

Section 195(1)(b) is one of the group of sections in the Code of Criminal Procedure which have laid down exceptions to the general rule of criminal law that criminal proceedings can be instituted in a court by any person. To this rule s. 195 along with ss. 196, 196A, 197, 197A, 198, 198A, and 199 provide exceptions. Section 195 mentions in its first sub-section a number of offences of which no court shall take cognizance except on the complaint in writing of the persons as indicated. Three classes of offences are dealt with in three cls. (a), (b) and (c) of this sub-section. Section 195(1)(a) deals with offences punishable under ss. 172 to 188 of the Indian Penal Code and provides that no Court shall take cognizance of any of these except on the complaint in writing "of the public servant concerned or of some other public servant to whom he is subordinate." Section 195(1)(b) deals with offences punishable under ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228 and provides that when any such offence is alleged to have been committed in or in relation to

any proceeding in any court, no court shall take cognizance of it except on the complaint in writing of such Court or some other court to which such court is subordinate. Section 195(1)(c) deals with offences punishable under ss. 463, 471, 475 and 476 and provides that when any such offence is alleged to have been committed by a party to any proceeding in any court in respect of any document produced or given in evidence in such proceeding, no court shall take cognizance of the same except on the complaint in writing of such court, on some other court to which such court is subordinate.

The second sub-section of s. 195 runs thus :

"In clauses (b) and (c) of sub-section (1), the term "court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar, or Sub-Registrar, under the Indian Registration Act, 1877."

In this appeal we are concerned directly with cl. (b) of s. 195(1). The appellant's complaint before the Magistrate alleged the commission of an offence under s. 193 of the Indian Penal Code in the course of the examination on oath by the Income-tax Officer, Ward A, Jamnagar Circle, Jamnagar. The examination itself took place in relation to assessment proceedings against the complainant for the years 1949-50, and 1950-51. If the Income-tax Officer is a Court it necessarily follows that the Magistrate was not entitled to take cognizance of this offence except on the complaint of the Income-tax Officer. That is how the question whether the Income-tax Officer is a Court or not falls to be considered.

Section 5 of the Income-tax Act, 1922, mentions six classes of Income-tax Authorities for the purposes of the Act. The primary function of an Income-tax Officer is the assessment of income that is chargeable to tax under s. 3 of the Act and the determination of the tax payable on it. He has to perform other functions under the Act that are subsidiary and ancillary to this main function. Under s. 5(7) the Income-tax Officers are subordinate to the Director of Inspection, the Commissioner of Income-tax and the Inspecting Assistant Commissioner of Income-tax within whose jurisdiction they perform their functions. Under s. 5(8) they have to observe and follow the orders, instructions and directions of the Central Board of Revenue. Chapter III of the Act in its several sections states what heads of income - profits and gains shall be chargeable to income-tax and indicates the duties which the Income-tax Officer has to perform for the purpose of his main function of assessing the chargeable income. For instance, deductions under s. 7(2)(ia) in respect of conveyance owned by the assessee or used by him for the purpose of his employment "shall be such sums as the Income-tax Officer may estimate.....". The allowances permissible under s. 10(2)(i) "shall be such sum as the Income-tax Officer may determine"; the allowances under s. 10(2)(ix) also shall be such sum in respect of loans made in the ordinary course of business as the Income-tax Officer may estimate to be irrecoverable. Again, the allowances mentioned in cl. (a) and cl. (b) of s. 10(4)(a) cannot be made "if in the opinion of the Income-tax Officer any such allowance is excessive or unreasonable." The proviso to s. 10(5) requires the Income-tax Officer to satisfy himself in the cases dealt with there whether the main purpose of the transfer of assets was the reduction of liability to income-tax and provides that where he is so satisfied the actual cost of the assets shall be such amount as the Income-tax Officer may determine. Other sections showing the different matters in which the Income-tax Officer has to be satisfied or to form an opinion for the purpose of assessment are ss. 12(a), 13 and 17. Chapter IV of the Act which lays down the procedure to be followed in making the assessment, imposes inter alia the duty of calling for returns of income (s. 22); of making assessment of the Income and to determine the sum payable by the assessee (s. 23); the power to assess Companies to super-tax (s. 23A); the power to make provisional assessment in

advance of regular assessment (s. 23B). It is obvious however that for carrying out these several functions properly it is necessary for the Income-tax Officer to examine documents and persons. Powers for this purpose are conferred on the Income-tax Officer (and certain other Income-tax Authorities) in s. 37 of the Act. The first sub-section of s. 37 runs thus :-

"The Income-tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely :-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company, and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions."

The second sub-section empowers any Income-tax Officer specially authorised by the Commissioner to enter and search any building and seize books of account and other documents. Under the third sub-section the Income-tax Officer may impound or retain the books of account and other documents after following certain procedure. The fourth sub-section of this section which does not confer any powers but has been relied on strongly by the respondent will be dealt with in full detail later in this judgment.

From the brief summary of the Income-tax Officer's functions given above it is clear that he is a part and parcel of the executive organ of the State. The fact that for carrying out some of these executive functions he will have the powers as are vested in a court under the Code of Civil Procedure has not the effect of converting him into a limb of the judicial organ. It has been held that he is a quasi-judicial authority. That is not sufficient however to make him a court. Before we can call him a court, he must be shown to be a part of the judicial organ of the State. Leaving out for later consideration the effect of s. 37(4) it is clear that an Income-tax Officer is not a court.

We have not thought it necessary to refer to the numerous decisions of the High Courts in India, of this Court or of the Privy Council in which the question of what is a court has been considered. We have considered this unnecessary in view especially of the fact that most of these were noticed in a recent decision of this Court in *Jagannath Prasad v. State of Uttar Pradesh* ((1963) Supp. 1 S.C.R. 242) where the question whether a Sales Tax Officer was a court or not within the meaning of s. 195(2) of the Criminal Procedure Code was considered. This Court held that the Sales Tax Officer is not a Court within the meaning of that section. All the reasons set out in this judgment which Kapur J. delivered for the Court are applicable to the case of the Income-tax Officer and if the reasoning in that case is taken to be correct, as it must be, the Income-tax Officer also must be held to be not a court - unless any different conclusion is justified from the provisions of s. 37(4) of the Act.

It will not be out of place to mention here what the Constitution Bench of this Court said in *Jaswant Sugar Mills v. Lakshmi Chand* ((1963) 2 S.C.R. 850) as regards the nature of the functions of Income-tax Officers. The question for the court's decision in that case was whether a Conciliation Officer under cl. 29 of the Government Order under ss. 3 and 8 of the U.P. Industrial Disputes Act was a "Tribunal" within the meaning of Art. 136 of the Constitution and the Court held that it was

not such a tribunal. As illustrations of other authorities whose primary function is administrative even though they have the duty to act judicially, Shah J. speaking for the Court said :-

"The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income-tax and Sales Tax Officers are illustrations prima facie of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial."

It is true that the question whether an Income-tax Officer was a court or a tribunal was not directly for decision in Jaswant Sugar Mills case ((1963) Supp. 1 S.C.R. 242). It is clear however that as a part of the reasoning which the court applied for coming to the conclusion that the Conciliation Officer is not a Tribunal this Court was of opinion that an Income-tax Officer is also not a "Tribunal". Obviously, if it is not even a Tribunal it cannot be a court.

It is not seriously disputed by Mr. Desai who appeared before us for the respondent that looking at the functions of an Income-tax Officer it is not possible to say that the Income-tax Officer is a court specially after this Court's decision in Jagannath Prasad's case ((1963) 2 S.C.R. 850) mentioned above. His main contention is that even though the Income-tax Officer was not originally a court within the meaning of s. 195 of the Code of Criminal Procedure, the deeming provision in s. 37(4) has made him a court. Section 37(4) runs thus :-

"Any proceeding before any authority referred to in this section shall be deemed to be judicial proceeding within the meaning of ss. 193 and 228, and for the purposes of s. 196 of the Indian Penal Code (45 of 1860)."

The authorities mentioned in the section are the Income-tax Officer, the Appellate Assistant Commissioner, Commissioner and the Appellate Tribunal. The direct effect of sub-section 4 of s. 37 therefore is that proceedings before an Income-tax Officer "shall be deemed to be a judicial proceeding" within the meaning of s. 193 and s. 228 and for the purposes of s. 196 of the Indian Penal Code. As we read the section it at once leaps to the eye that there is no mention in this of s. 195 of the Code of Criminal Procedure. In introducing this deeming provision in 1956 Parliament did not think it necessary to extend the deeming provision for the purpose of s. 195. If Parliament intended this provision to produce the consequence that the authorities in the section should be deemed to be a court within the meaning of s. 195(2) of the Code of Criminal Procedure, it is reasonable to expect that Parliament would have added the words "and shall be deemed to be a court within the meaning of s. 195(2) of the Code of Criminal Procedure", or "shall be deemed to be a court for the purpose of s. 195 of the Code of Criminal Procedure" or some similar phraseology. The omission to use any such words is all the more remarkable when we notice that on several occasions before 1956 Parliament had in expressing an intention that a particular authority should be a court for the purpose of s. 195 added express words to give effect to that intention.

Thus, in the Payment of Wages Act, which was enacted in 1936, s. 18 after stating that every authority appointed under sub-s. (1) of s. 15 shall have all the powers of a civil court under the Code

of Civil Procedure for certain purposes, proceeded to say that "every such authority shall be deemed to be a civil court for the purposes of s. 195 and Chapter XXXV of the Code of Criminal Procedure, 1898." Again, in s. 23 of the Workmen's Compensation Act which confers on the Commissioner for workmen's compensation all the powers of a civil court under the Code of Civil Procedure, 1908 the legislature added in 1929 the following words :- "and the Commissioner shall be deemed to be a civil court for all the purposes of s. 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898". It is worth noticing also that in several other statutes Parliament after stating that certain proceeding shall be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code proceeded to say that for certain purposes it shall also be deemed to be a court. The Evacuee Property Act of 1950 after stating that the enquiry by the custodian shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code, goes on to say "and the Custodian shall be deemed to be \_\_ a court within the meaning of ss. 480 and 482 of the Code of Criminal Procedure, 1898." Another instance of similar legislature is to be found in. 17 of the Evacuee Interest (Separation) Act, 1951, which after stating that any proceeding before the competent officer or the appellate officer shall be judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code adds "and the competent Officer or the appellate officer shall be deemed to be a civil court within the meaning of s. 480 and s. 482 of the Code of Criminal Procedure, 1898". The Displaced Persons' (Compensation and Rehabilitation) Act, 1954 uses exactly similar words in s. 26. That section first confers on every officer appointed under the Act the same powers in respect of certain specified matters for the purpose of making any enquiry or hearing any appeal under the Act as are vested in a Civil court under the Code of Civil Procedure and then proceeds thus "any proceeding before any such officer shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code and every such officer shall be deemed to be a civil court within the meaning of s. 480 and 482 of the Code of Criminal Procedure, 1898." Similarly, the Industrial Disputes Act, 1947 after providing in sub-section (3) of section 11 that every enquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal, shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code adds in sub-s. (8) of the same section the provision that "every Labour Court, Tribunal or National Tribunal shall be deemed to be a civil court for the purposes of s. 480 and s. 482 of the Code of Criminal Procedure, 1892." This sub-section was added in 1950.

In clear contrast with these are the statutes which after saying that certain proceedings shall be judicial proceeding refrain from adding that the authority will be deemed to be a court. One such statute is the Sea Customs Act, which in s. 171A(4) lays down that every enquiry under that section shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code and stops there. A somewhat similar provision, though in different phraseology, appears in s. 51 of the Administrator-General's Act, (III of 1913) which runs thus :-

"Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding."

The learned Solicitor-General, who appeared before us on behalf of the appellant, strongly urged that if the intention of the legislature had ever been that the Income-tax Officer or other authorities mentioned in s. 37 should be deemed to be a court for the purpose of s. 195 of the Code of Criminal Procedure it would have taken care to express that intention in clear phraseology. In any case, argues learned counsel, when in 1956 the old section 37 was wholly recast Parliament which at least then had before it a well established pattern of legislative forms in the numerous statutes mentioned

above for expressing an intention that an authority shall be deemed to be a court for the purpose of s. 195 or any other provision of the Code of Criminal Procedure, there could be no conceivable reason for the failure to follow that pattern. In our opinion, there is considerable force in this argument.

On behalf of the accused-respondent Mr. Desai suggests that the words actually used, viz., "that proceeding before the authority shall be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code" were by themselves sufficient to give effect to an intention that that authority shall also be deemed to be a court within the meaning of s. 195 of the Code of Criminal Procedure. According to the learned Counsel, a judicial proceeding within the meaning of s. 193 of the Indian Penal Code can only be before a court. For this proposition we can find no support either in principle or authority. It seems clear to us on the contrary that proceedings before tribunals which are quasi judicial and not a court may well be considered to be judicial proceedings within the meaning of s. 193 of Indian Penal Code. Though the words "judicial proceedings" have been used in numerous sections of the Indian Penal Code, it has not defined the words, though the words "court of justice" as also the words "a judge" have been defined. The Code of Criminal Procedure in which also the phrase "judicial proceeding" occurs in several sections has defined it in s. 4(m) thus : "Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath". This definition of judicial proceeding was included in the Code of Criminal Procedure, 1898, from the very beginning. The fact that for all these years since 1898 Parliament has not thought fit to give any definition of the words "judicial proceeding" in the Indian Penal Code is some justification for thinking that the words "judicial proceeding" in the Indian Penal Code may reasonably be held to have the same meaning as in the Code of Criminal Procedure. In other words, it would be reasonable to think that in the Indian Penal Code also the word "judicial proceeding" has been used to include "any proceeding in the course of which evidence is or may be legally taken on oath". That would be within the meaning of the words "judicial proceeding" proceeding before many quasi-judicial authorities which are not courts, e.g., a Customs Officer or Sales Tax Officer.

It is unnecessary for our present purpose to attempt an exact definition of the words "judicial proceeding" as used in s. 193 or in any other section of the Indian Penal Code. Even without any such definition however it appears clear that the phrase "judicial proceeding" is wide enough to include not only proceedings before courts but proceedings before certain other tribunals. It is pertinent to point out that if a proceeding before any other authority except a court could not be a judicial proceeding within the meaning of s. 193 of the Indian Penal Code, it would not have been necessary for Parliament in the Evacuee Property Act, 1950, in the Evacuee Interest (Separation) Act, 1950, and in the Displaced Persons' (Compensation and Rehabilitation) Act, 1954, to add, after laying down that the proceedings before certain authorities shall be judicial proceedings within the meaning of s. 193 and s. 228 of the Indian Penal Code the further words, that "the authority shall be deemed to be a civil court" for certain purposes of the Code of Criminal Procedure. It is especially interesting to note in this connection the provisions of s. 11(3) and s. 11(8) of the Industrial Disputes Act to which we have already referred. Under s. 11(3) as originally enacted every enquiry or investigation by a Board, Court or Tribunal shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code. When Parliament added to this section sub-section (8) what was enacted was that every tribunal shall be deemed to be a civil court for the purpose of s. 480 and s. 482, Criminal Procedure Code, 1898. After the amendment by the Act 36 of 1956 the concluding portion of s. 11(3) ran thus :- "Every enquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code." The same Act substituted in s. 8

the words "Labour Court, Tribunal or National Tribunal" for the words "Tribunal". In spite of the fact however that every enquiry or investigation by a Board has to be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code Parliament refrained from saying that a Board shall also be deemed to be a civil court for the purpose of s. 480 and s. 482 of the Code of Criminal Procedure. This emphasises the fact that the legislature did not think that the necessary effect of legislating that a proceeding before an authority shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code would be that that authority shall also be deemed to be a court. To say now that the legislature in providing in s. 37(4) of the Indian Income-tax Act that a proceeding before the specified authorities shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code, intended also to say that such authority shall be deemed to be a court within the meaning of s. 195 of the Code of Criminal Procedure would be to impute to the legislature and intention of which it itself had no knowledge.

Learned counsel for the accused-respondent then drew our attention to the use of the words "judicial proceeding" in s. 476 and s. 479A of the Code of Criminal Procedure and argued that in these sections the words "judicial proceeding" have been used as equivalent to proceeding in a court. That may well be so. Section 476 lays down procedure in cases mentioned in s. 195(1)(b) and (c) of offences that appear to have been committed in or in relation to a proceeding in a court. It was quite correct therefore to refer to such proceeding in a later part of the section as judicial proceeding. Section 479A lays down the procedure in certain cases of offences of giving false evidence in civil, revenue or criminal courts and necessarily speaks of the proceeding before these courts as judicial proceeding. It is difficult to see how the use of the words "judicial proceeding" in these sections support the contention that "judicial proceeding" can only be a proceeding before a court. There can be no doubt that every proceeding before a court is a "judicial proceeding". It does not follow however that every judicial proceeding is a proceeding before a court.

Mr. Desai drew a grim picture of what would happen if the authority a proceeding before which was deemed to be a judicial proceeding within the meaning of s. 228 of the Indian Penal Code was not at the same time considered a court within the meaning of s. 195. He rightly points out that one consequence will be that if any person offers any insult or causes any obstruction to a public servant when he is sitting in any such judicial proceeding and thus commits an offence under s. 228 of the Indian Penal Code it will be possible for persons other than the public servants to institute a criminal case for such offence. This, says the learned counsel, would be a very undesirable thing. We fail to see why this should be considered to be undesirable. But assuming this is so, that is not to our mind a consideration which should compel us to give the words "judicial proceeding" a meaning which they do not bear.

It may be mentioned here, as already stated, that under s. 171A(4) of the Sea Customs Act, 1874, every enquiry before a Customs Officer "shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code". In spite of this, the Constitution Bench of this court held in its recent decision in *Indo-China Steam Navigation Co. Ltd. v. Additional Collector of Customs* ((1964) 6 S.C.R. 594) that a Customs Officer is not even a Tribunal. After discussing several previous decisions of this Court Gajendragadkar C.J., speaking for the Court observed thus :-

"The result therefore is that it is no longer open to doubt that the Customs Officer is not a court or tribunal."

It is difficult to see how if the presence of the words "shall be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code" in s. 171A (4) have not the effect of making a Customs Officer a court or tribunal, the presence of similar words in s. 37(4) in the Indian Income-tax Act, can have that effect.

In our opinion, the words used in s. 37(4) of the Income-tax Act furnish no reason to alter the legal position that is inescapable on a consideration of the functions of the Income-tax Officer that he is not a court within the meaning of s. 195 of the Code of Criminal Procedure.

We would therefore, allow the appeal, set aside the order passed by the High Court and direct that the Presidency Magistrate, Bombay, should now dispose of the case in accordance with law.

#### ORDER

In accordance with the opinion of the majority, this appeal fails and is dismissed.

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