M. L. Sethi

Vs

R. P. Kapur & Anr.

Criminal Appeal No. 110 of 1965

(Raghuvar Dayal, V. Ramaswami-I, V. Bharagava JJ)

23.09.1966

JUDGMENT

BHARGAVA, J.

This appeal filed under certificate granted by the High Court at Allahabad is directed against on order passed by that Court dismissing a revision application by which the appellant, M. L. Sethi, desired the vacation of an order passed by the Sessions Judge of Saharanpur upholding two orders of the Additional District Magistrate (Judicial), Saharanpur, dated 6th August, 1963 and 5th October, 1963. By these orders, the Magistrate dismissed two applications presented by the appellant for dismissing a complaint pending before him for commission of offences under sections 211, 204 and 385 of the Indian Penal Code. A further prayer was made for an order by this Court quashing the proceedings pending in the Court of that Magistrate.

The facts necessary for deciding this appeal may be stated briefly. On December 10, 1958, the appellant lodged a report with the Inspector-General of Police, Chandigarh against R. P. Kapur (hereinafter referred to as "the respondent") and his mother-in-law charging them with commission of offences punishable under sections 420, 109, 114 and 120-B, I.P.C. It does not appear to be necessary to give the details of the allegations made in that report. The charge in that First Information Report was based on the allegation that the respondent and his mother-in-law, by conspiring together, cheated the appellant and his wife of a sum of Rs. 20,000/- by persuading the appellant to take a sale-deed of some land on certain false representations and on suppression of facts indicating that on the date when the sale-deed by the respondent's mother-in-law was executed in favour of the wife of the appellant, the title of the former had already been extinguished, as the land had been acquired by the Government under the Land Acquisition Act. The offence was registered as a cognizable offence and investigation was started.

On April 11, 1959, the respondent filed a complaint in the Court of Judicial Magistrate, 1st Class, Chandigarh, against the appellant for commission of offences under sections 204, 211 and 385 I.P.C. In this complaint, the respondent alleged that the land was sold by his mother-in-law to the appellant's wife as a favour to the appellant and that at that time, no misrepresentations at all were made in respect of any facts. The complaint added that the appellant was fully aware of the land acquisition proceedings; but because of fixation of low rate of compensation in the acquisition proceedings, the appellant suffered a loss of nearly Rs. 13,000/-. The appellant, being a clever criminal lawyer, went to the respondent's mother-in-law, Smt. Kaushaliya Devi, and demanded the sum of Rs. 13,000/-, and when she refused, he threatened her with dire consequences of criminal proceedings against her and her son-in-law, the respondent. A similar threat of criminal proceedings was also later given to the respondent himself by the appellant; and thereafter, the First Information

Report was lodged with the Inspector-General of Police by the appellant on December 10, 1958. The charge in the complaint further was that the allegations made in the First Information Report by the appellant were false to his knowledge and were contradicted by the appellant's own letters, writings and other correspondence. It was also stated that the false report to the police was made with made with the knowledge and intention of putting the respondent in fear of injury to his fair name and reputation in service and otherwise and of being put under arrest and harassment in a criminal trial and thereby to induce him to deliver to the appellant Rs. 13,000/- and submit to other terms that the appellant may choose to impose. The last allegation was that the appellant was guilty of the offence under s. 204, I.P.C., for secreting five documents which were enumerated in the complaint, and this offence was alleged to have been committed, because if these documents had been presented in time, the Police would not have entertained the complaint which led to a harassing investigation against the respondent.

This complaint filed by the respondent against the appellant, as well as the proceedings instituted by the Police on the basis of the First Information Report were transferred under the orders of this Court to the Court of the Additional District Magistrate, Saharanpur. The case against the respondent and his mother-in-law based on the First Information Report ended in an order of discharge passed by the High Court of Allahabad on December 10, 1962, when the charge framed against the respondent and his mother-in-law by the trying Magistrate was quashed. On the record, the material available relating to the proceedings based on the F.I.R. dated December 10, 1958, is that it was on July 18, 1959 for the first time that the respondent was arrested in connection with that report and the challan by the Police for trial of the respondent was presented to the Court on July 25, 1959. There is no material to show that between December 10, 1958, when the First Information Report was lodged, and July 18, 1959 when the respondent was arrested in connection with it, there was, at any stage, any order passed by any Magistrate in connection with the investigation that was going on.

As we have mentioned earlier, the revisions before the Sessions Judge, and the High Court, arose out of two orders made by the Additional District Magistrate on August 6, 1963, and October 5, 1963. The first order was made on an application presented by the appellant on May 6, 1963 in which he contended that no offence was disclosed on the allegations made in the complaint and on the statement of the complainant recorded by the Magistrate at Chandigarh, and, further, that, in any case, the trial was barred on account of want of requisite previous sanction as provided in s. 195 of the Code of Criminal Procedure. It was also alleged that the facts were so inter-mixed that the trial of any other offence separate from the offence under s. 211, I.P.C., was not permissible or possible, so that the Magistrate was requested not to proceed with the trial and to withdraw the order summoning the appellant; and in the alternative, the prayer was that the appellant may be discharged under s. 253, Cr. P.C., as the charge against him was groundless.

The second order of the Magistrate dated 5th October, 1963, was passed on the application of the appellant dated August 12, 1963, in which it was prayed that the Court may not take cognizance of the complaint as instituted, and the trial under s. 252, Cr. P.C. may not proceed. The prayer was again based on the ground that cognizance of the offence under s. 211, I.P.C. could not be taken in view of the provisions of s. 195(1)(a) & (b), Cr. P.C., under which the Court was empowered to proceed in respect of that offence only when there was a complaint in writing by the authority concerned. The Additional District Magistrate by his two orders, rejected the contention that s. 195, Cr. P.C., barred this particular complaint which had been filed against the appellant. The main ground for these orders was that no proceedings were pending in any Court when the complaint against the appellant was filed in the Court of the Magistrate at Chandigarh for the offences under

sections 204, 211 and 385, I.P.C. and consequently, s. 195, Cr. P.C., was inapplicable. That is the view of the Addl. District Magistrate which has been upheld both by the Sessions Judge and the High Court; and consequently, the appellant has now come up to this Court in this appeal.

On behalf of the appellant, the first submission made by his counsel, Mr. Frank Anthony, was that the making of a report of a cognizable offence with the police is both institution of a criminal proceeding as well as charging a person with having committed an offence, so that, in this case, when the appellant lodged his First Information Report on December 10, 1958, with the Inspector-General of Police, it must be held that he had instituted a criminal proceeding against the respondent, as well as he had charged him with having committed the offences mentioned in that report within the meaning of s. 211, I.P.C. In support of this proposition, learned counsel relied on a Full Bench decision of the Calcutta High Court in Karim Buksh v. The Queen-Empress (I.L.R. 17 Cal. 574.), and a Full Bench decision of the Kerala High Court in Albert v. State of Kerala and Another (A.I.R. 1966 Kerala 11.). It was urged that, on this interpretation, when the respondent filed a complaint against the appellant under s. 211, I.P.C., together with other offences, the provisions of s. 195, Cr. P.C., become attracted. It appears to us that in this case it is not at all necessary to go into the question whether, whenever a complaint of a cognizable offence is filed, it must be held that the complainant is instituting or causing to be instituted a criminal proceeding, or is merely charging the person named in the report with having committed the offences mentioned therein, because, during the course of argument in the appeal before us, no contention was put forward that no offence under s. 211, I.P.C., was made out and that the complaint of the respondent against the appellant was wrongly being treated as in respect of a charge under s. 211. Up to the stage of the revision before the High Court, some attempt was made on behalf of the appellant to plead that the facts alleged by the respondent in his complaint to the Court did not constitute an offence under s. 211, I.P.C. committed by the appellant; but, in this Court, Mr. Frank Anthony on behalf of the appellant gave up this plea and, in fact, proceeded to urge before us that the complaint of the respondent against the appellant did specifically include in it a charge under s. 211, I.P.C. On behalf of the respondent and the State Government also there was no suggestion that the complaint against the appellant was not in respect of the offence under s. 211, I.P.C. It is consequently unnecessary at this stage to go into the question whether the facts given in the complaint, or the facts which may ultimately be found proved after the trial, do or do not constitute an offence under s. 211, I.P.C. and if they do, whether those facts show that the appellant had instituted a criminal proceeding against the respondent or had only charged him with having committed the offences mentioned in his report. That is a point which may have to be decided at the conclusion of the trial of the appellant; and consequently, we refrain from going into this question at this stage.

The only point that falls for determination by this Court is whether, in this case, cognizance of the complaint, which included an offence under s. 211, I.P.C., filed by the respondent against the appellant, was rightly or wrongly taken by the Courts. The complaint, as we have mentioned earlier, was filed by the respondent in the Court of the Judicial Magistrate at Chandigarh on April 11, 1959, and on the same day, cognizance of the offence was taken by that Magistrate under s. 190, Cr. P.C., whereafter that Magistrate proceeded to record the statement of the respondent under s. 200, Cr. P.C. Before this cognizance was taken, the appellant had already lodged his first Information Report against the respondent with the Inspector-General of Police on December 10, 1958. In connection with that report, investigation by the Police must have been going on, though none of the judgments of the lower Courts mentioned what particular steps had been taken in that investigation up to the 11th April, 1959, when this complaint was filed by the respondent against the appellant. The facts found only mentioned that in connection with that First Information Report of the appellant, the respondent was arrested on July 18, 1959, and subsequently, the charge-sheet was submitted by the

Police to the Court of the Magistrate on July 25, 1959. This arrest and submission of the charge-sheet were both subsequent to the filing of the complaint by the respondent. In these circumstances, we have to examine whether the Magistrate at Chandigarh was competent to take cognizance of this complaint on April 11, 1959, in view of the provisions of s. 195 of the Code of Criminal Procedure.

In dealing with this question of law, the important aspect that has to be kept in view is that the point of time at which the legality of the cognizance taken has to be judged is the time when cognizance is actually taken under s. 190, Cr. P.C. Under the Code of Criminal Procedure which applies to trials of such cases, the only provision for taking cognizance is contained in s. 190. Section 195, which follows that section is, in fact, a limitation on the unfettered power of a Magistrate to take cognizance under s. 190. Under the latter section cognizance of any offence can be taken by any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police-officer; and (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed. In the present case, the Judicial Magistrate at Chandigarh had before him the complaint filed by the respondent, and if s. 190 stood by itself, he was competent to take cognizance of it under clause (a) of sub-s. (1) of that section. This power of taking cognizance was, however, subject to the subsequent provisions contained in the Code of Criminal Procedure including that contained in s. 195. Sub-s. (1) of s. 195, which is relevant for our purposes, is reproduced below :-

> "195(1). No Court shall take cognizance -
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> (a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;
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> (b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or
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> (c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate."

This sub-section thus bars any Court from taking cognizance of the offences mentioned in clauses (a), (b) and (c), except when the conditions laid down in those clauses are satisfied. In the case of an offence punishable under s. 211, I.P.C., the mandatory direction is that no Court shall take cognizance of any offence punishable under this section, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate. This provision in clause (b) of sub-s. (1) of s. 195 is thus clearly a limitation on the power of the Court to take cognizance under s. 190. Consequently, it is at the stage when a Magistrate is taking cognizance under s. 190 that he must examine the facts of the complaint before him and determine whether his power of taking

cognizance under s. 190 has or has not been taken away by cl. (b) of sub-s. (1) of s. 195, Cr. P.C. In the present case, therefore, at the time when this complaint was filed by the respondent in the Court of the Judicial Magistrate at Chandigarh, it was necessary and incumbent on that Magistrate to examine whether his power of taking cognizance of the offence was limited by the provisions of s. 195(1)(b). He had, therefore, to determine whether cognizance of this complaint charging the appellant with commission of an offence under s. 211, I.P.C., could not be taken by him, because that offence was alleged to have been committed in, or in relation to, any proceeding in any Court, and if he found that it was so, whether a complaint in writing by such Court or some other Court to which such Court was subordinate was necessary before he could take cognizance. Consequently, in deciding this appeal, this Court has to examine whether on the date when cognizance was taken by the Judicial Magistrate at Chandigarh such cognizance was barred under s. 195(1)(b), Cr. P.C., because the offence punishable under s. 211, I.P.C., included in the complaint was alleged to have been committed in, or in relation to, any proceeding in any Court.

In the interpretation of this cl. (b) of sub-s. (1) of s. 195, considerable emphasis has been laid before us on the expression "in or in relation to", and it has been urged that the use of the expression "in relation to" very considerably widens the scope of this section and makes it applicable to cases where there can even in future be a proceeding in any Court in relation to which the offence under s. 211, I.P.C., may be alleged to have been committed. A proper interpretation of this provision requires that each ingredient in it be separately examined. This provision bars taking of cognizance if all the following circumstances exist, viz., (1) that the offence in respect of which the case is brought falls under s. 211, I.P.C.; (2) that there should be a proceeding in any Court; and (3) that the allegation should be that the offence under s. 211 was committed in, or in relation to, such a proceeding. Unless all the three ingredients exist, the bar under s. 195(1)(b) against taking cognizance by the Magistrate, except on a complaint in writing of a Court, will not come into operation. In the present case also, therefore, we have to see whether all these three ingredients were in existence at the time when the Judicial Magistrate at Chandigarh proceeded to take cognizance of the charge under s. 211, I.P.C., against the appellant.

There is, of course, no doubt that in the complaint before the Magistrate a charge under s. 211, I.P.C., against the appellant was included, so that the first ingredient clearly existed. The question on which the decision in the present case hinges is whether it can be held that any proceeding in any Court existed when that Magistrate took cognizance. If any proceeding in any Court existed and the offence under s. 211, I.P.C., in the complaint filed before him was alleged to have been committed in such a proceeding, or in relation to any such proceeding, the Magistrate would have been barred from taking cognizance of the offence. On the other hand, if there was no proceeding in any Court at all in which, or in relation to which, the offence under s. 211 could have been alleged to have been committed, this provision barring cognizance would not be attracted at all.

In this case, as we have already indicated when enumerating the facts, the complaint of which cognizance was taken by the Judicial Magistrate at Chandigarh was filed on April 11, 1959, and at that stage, the only proceeding that was going on was investigation by the Police on the basis of the First Information Report lodged by the appellant before the Inspector-General of Police on December 10, 1958. There is no mention at all that there was, at that stage, any proceeding in any Court in respect of that F.I.R. When examining the question whether there is any proceeding in any Court, there are three situations that can be envisaged. One is that there may be no proceeding in any Court at all. The second is that a proceeding in a Court may actually be pending at the point of time when cognizance is sought to be taken of the offence under s. 211, I.P.C. The third is that, though there may be no proceeding pending in any Court in which, or in relation to which, the

offence under s. 211, I.P.C., could have been committed, there may have been a proceeding which had already concluded and the offence under s. 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under s. 195(1)(b) would come into operation. If there be a proceeding actually pending in any Court and the offence under s. 211, I.P.C., is alleged to have been committed in, or in relation to, that proceeding, s. 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of s. 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under s. 211 I.P.C., was committed in, or in relation to, that proceeding. The fact that the proceeding had concluded would be immaterial, because s. 195(1)(b) does not require that the proceeding in any Court must actually be pending at the time when the question of applying this bar arises.

In the first circumstance envisaged above, when there is no proceeding pending in any Court at all at the time when the applicability of s. 195(1)(b) has to be determined, nor has there been any earlier proceeding which may have been concluded, the provisions of this sub-section would not be attracted, because the language used in it requires that there must be a proceeding in some Court in, or in relation to, which the offence under s. 211, I.P.C. is alleged to have been committed. In such a case, a Magistrate would be competent to take cognizance of the offence under s. 211 I.P.C., if his jurisdiction is invoked in the manner laid down in s. 190 of the Code of Criminal Procedure.

Mr. Frank Anthony on behalf of the appellant urged before us that even in those cases where there may be no pending proceeding in any Court, nor any proceeding which has already concluded in any Court, the bar of s. 195(1)(b) should be held to be applicable if it is found that subsequent proceeding in any Court is under contemplation. We do not think that the language of cl. (b) of sub-s. (1) of s. 195 can justify any such interpretation. A proceeding in contemplation cannot be said to be a proceeding in a Court. When there is mere contemplation of starting a proceeding in future, there is no certainty that the proceeding will come into existence. It will always be dependent on the decision to be taken by the person who is contemplating that the proceeding be started; and any interpretation of the law, which will make the applicability dependent on a future decision to be taken by another person, would, in our opinion, be totally incorrect. The applicability of this provision at the sweet will of the person contemplating the proceeding will introduce an element of uncertainty in the applicability of the law; and such an interpretation must be avoided. In this case, apart from this circumstance, the language used clearly lends itself to the interpretation that the bar has been placed by the Legislature only in those cases where the offence is alleged to have been committed in, or in relation to, any proceeding actually pending in any Court, or any proceeding which has already been taken in any Court. There is nothing in the language to indicate that the Legislature also intended to lay down this bar if a proceeding in a Court was still under contemplation and if and when that proceeding is taken, it may be found that the offence alleged to have been committed was, in fact, committed in, or in relation to, that proceeding. In this connection, the question of time when the applicability of this provision has to be determined, assumes importance. It appears to us that at the time when in the present case the Judicial Magistrate at Chandigarh had to determine the applicability of this bar, he could not be expected to come to a decision whether any proceeding in any Court was under contemplation in, or in relation to, which the offence under s. 211, I.P.C., of which he was asked to take cognizance, was alleged to have been committed. In fact, it would be laying on the Magistrate a burden which he could not be expected to discharge properly and judicially as no Magistrate could determine in advance of a proceeding in a Court whether the offence under s. 211, I.P.C., of which he is required to take cognizance, will be an offence which will be found subsequently to have been committed in relation to the contemplated

proceeding to be taken thereafter. This interpretation, sought to be placed on this provision on behalf of the appellant, cannot, therefore, be accepted.

In this connection, reliance was placed by learned counsel for the appellant on a series of cases decided by various High Courts. In Re Vasudeo Ramchandra Joshi (A.I.R. 1923 Bom. 105.), the High Court of Bombay quashed proceedings for prosecution of a lawyer who had instigated some witnesses to give false evidence. It appears that a pleader was defending an accused person in a proceeding pending before a Magistrate against his client in respect of a charge under s. 401, I.P.C. On April 1, 1922, an application made by the pleader on behalf of the accused for bail was refused. Then, the statements of three witnesses were recorded under s. 164, Cr. P.C., on April 18, 1922, and from these statements it appeared that on April 10, these witnesses had an interview with the pleader who had instigated them to give false evidence. On April 15, another case against the pleader's client in respect of a dacoity was sent up to the Magistrate, and the allegation against the pleader was that it was in connection with this case of dacoity which was sent up to the Magistrate on April 15, that the pleader had instigated the witnesses to give false evidence. On June 2, the witnesses were actually examined before the Magistrate in this dacoity case which was sent up on April 15; and then on June 7, a complaint was filed by the Police Officer against the pleader charging him with having abetted the giving of false evidence. It was in these circumstances that the High Court held that the provisions of s. 195(1)(b), Cr. P.C., were applicable and the case against the pleader on the charge filed by the Police Officer was not maintainable when there was no sanction by the Magistrate who was enquiring into the dacoity case in relation to which the witnesses were instigated to give false evidence. On the facts, it is clear that that case is distinguishable from the case before us. In that case, the charge by the Police Officer was filed on June 7, and on that date a proceeding was already pending before the Magistrate in relation to which the witnesses had been instigated to give false evidence. The provisions of s. 195(1)(b) were, therefore, clearly applicable. Dealing with this matter, one of the learned Judges of the High Court held that "the words are very general, and are wide enough, in my opinion, to cover a proceeding in contemplation before a Criminal Court, though it may not have begun at the date when the offence was committed. If that is so, it is plain that sanction was necessary in the present case, and, therefore, the proceedings which have been undertaken are null and void without such sanction." These views expressed by Crump, J., had been relied upon by learned counsel in support of his proposition that even if an offence is committed in relation to a proceeding which is in contemplation, the provisions of s. 195(1)(b), Cr. P.C., are attracted. We do not think that any such general proposition can be inferred from that decision. It is to be noted that in that case though it was held that the offence of instigation of witnesses to give false evidence was committed when proceedings before a criminal Court were still under contemplation in which the witnesses were to appear, the actual complaint for that instigation was filed after the Magistrate was already seized of the proceeding in which the witnesses were instigated to give false evidence. On the date on which the complaint was filed by the Police Officer charging the pleader with instigation of giving false evidence, there was already a pending proceeding before the Court in relation to which that offence had been committed. Consequently, the observations in that case should be interpreted as limited to laying down that the provisions of s. 195(1)(b), Cr. P.C., will be attracted even if the offence charged was committed while the proceeding was in contemplation and that there was no decision by the Court that the sanction under s. 195(1)(b) would be necessary even in those cases where the proceeding is still under contemplation on the date when the complaint is filed before the Court for commission of the offence mentioned in s. 195(1)(b).

In Ghulam Rasul v. Emperor (A.I.R. 1936 Lah. 238.), the Police investigated a report that a certain person had stolen the complainant's watch from his car, and in the investigation, the Police came to

the conclusion that the report was false and that the watch had been removed by the complainant himself. The case was accordingly reported to the Magistrate for cancellation; and then the Police prosecuted the complainant under ss. 193 and 211, I.P.C. The learned Judge of the Lahore High Court in dealing with the case held : "I am clear that the words in this sub-section 'in relation to any proceeding in any Court' apply to this case of a false report or a false statement made in an investigation by the police with the intention that there shall, in consequence of this, be a trial in the Criminal Court, and I find support for this view in the case of Chuhar Mal-Nihal Mal v. Emperor (A.I.R. 1929 Sind 132.)." The decision in the words in which the learned Judge expressed himself appears to support the argument of learned counsel for the appellant in the present case; but we think that very likely in that case, the learned Judge was influenced by the circumstance that the case had been reported by the Police to the Magistrate for cancellation. He appears to have held the view that the Magistrate having passed an order of cancellation, it was necessary that the complaint should be filed by the Magistrate, because s. 195(1)(b) had become applicable. If the learned Judge intended to say that without any proceeding being taken by the Magistrate in the case which was investigated by the Police it was still essential that a complaint should be filed by the Magistrate simply because a subsequent proceeding following the police investigation was contemplated, we consider that his decision cannot be accepted as correct.

In Balak Ram and Others v. Emperor (A.I.R. 1942 Oudh 100.), it was held that a person who sets the criminal law in motion by making a false charge to the police of a cognizable offence by definitely charging a person with having come to his house for the purpose of dacoity, and insisting for investigation, institutes criminal proceedings within the meaning of s. 211, and that criminal proceedings are just as much instituted within the meaning of s. 211 when first information of a cognizable offence is given to the Police under s. 154, Cr. P.C., as when a complaint is made direct to a Magistrate under s. 200, Cr. P.C. We do not think that these comments made in that case can be interpreted as laying down that criminal proceedings instituted by lodging a First Information Report of a cognizable offence to the Police amount to institution of a criminal proceeding in a Court. What the Court in that case was deciding was that there can be criminal proceedings apart from proceedings instituted by a complaint in Court for purposes of s. 211, I.P.C. That decision does not in any way attempt to lay down that a proceeding in investigation is a proceeding in a Court.

In Ramdeo v. The State and Another (A.I.R. 1962 Raj. 149.), the question arose about the applicability of s. 195 to a complaint made for an offence under s. 182, I.P.C., by a Police Officer for giving false information to him in a report lodged by an informant. In that connection, the Court considered the scope of s. 195 and held that an offence under s. 211, I.P.C., in connection with a false charge made before the Police is an offence committed in relation to proceedings in a Court contemplated at the time of lodging information with the Police. But in that case again the complaint by the Police was held to be incompetent only on the further basis that the proceedings under contemplation at the time when the offence under s. 211, I.P.C., was committed by lodging the report, were actually instituted later. This institution of that case took place before the Police lodged the complaint for the offence under s. 182, I.P.C. Thus, this was again a case where a proceeding was actually pending in a Court at the time when cognizance of the offence under s. 182 was taken, and it was held that the charge under s. 182 was covered by a charge under s. 211, I.P.C. and that the latter offence had been committed in relation to the proceeding which had come into existence in the Court at the time of taking cognizance.

In Har Prasad v. Hans Ram and Others (A.I.R. 1966 All. 124.), a private complaint was filed before a Magistrate disclosing commission of offences under ss. 467 and 471, I.P.C., at a time when there were no proceedings pending in any Court. These offences were committed for the purpose of using

the forged documents in the Court of the Tahsildar who was to deal with subsequent mutation proceedings and they were, in fact, so used subsequently. It was in these circumstances that the Court held that the words "in respect of" in s. 195(1)(c) were wide enough to include even a document which was prepared before the proceedings started in a Court of law but was produced or given in evidence in that proceeding. It was further held that in this view of the matter, although the document was fabricated before the proceedings started in Tahsildar's Court and although two of the opposite parties were not impleaded in the mutation proceedings, it must be held that the cognizance of the offence was barred by s. 195(1)(c). Once again, it will be noticed that all that the Court disregarded was the fact that the substantive offence mentioned in s. 195 was committed for a proceeding which was under contemplation, but the proceedings in Court for that offence were held barred by s. 195 only because subsequently, proceedings in the Court of the Tahsildar were actually taken and the documents concerned were used in it and were found to have been forged in relation to those proceedings. On the date on which the cognizance was taken, the proceeding, in relation to which the offence had been committed, was already pending.

In The Queen v. Subbanna Gaundan and Others ((1862 & 1863) I Madras High Court Reports, 30.), it was found that some persons were convicted under s. 211, I.P.C., for falsely charging the complainant with having committed the offence of highway robbery, knowing that there was no just or lawful ground for such charge. The charge had been preferred before an Inspector of Police, who disbelieved and refused to act upon it. It was held that to constitute the offence of preferring a false charge contemplated in s. 211, I.P.C., it was not necessary that the charge should be before a Magistrate. In that connection, the Court further held that it is enough in a case like that one if it appears that the charge was still not pending and that an indictment for falsely charging could not be sustained if the accusation were entertained and still remained under proper legal enquiry. Reliance is placed on the last dictum that an indictment for falsely charging, as in the present case, cannot be sustained while the accusation made in that alleged false charge is still under proper legal enquiry. In the present case, there is no doubt that at the stage when the complaint was filed by the respondent against the appellant for the offences under ss. 204, 211 and 385, I.P.C., enquiry on the First Information Report lodged by the appellant was still being conducted by the Police. In such a case, there may be no justification for the Police bringing a charge of false information being given to it until the investigation is completed. But we do not find any requirement anywhere in law that the person affected by the false charge could not file his complaint in Court until the Police had decided that the charge was false. The discretion of the person affected by the false charge was not to be fettered or tied down to the view taken by the Police.

The case of Gati Mandal v. The Emperor (27 Cr. L.J. 1105.) is again of no help, because in that case also the only principle that was laid down was that a Magistrate had no jurisdiction to order a prosecution for making a false complaint, till the complaint was dismissed. That case does not relate to the right of a private person to file a complaint at a stage when no case is pending in any Court against him and no question of intervention of any Court under s. 195, Cr. P.C., arises.

In Fakir Mohamed v. Emperor (A.I.R. 1927 Sind 10.), it was held that if there is no complaint by a public servant as required by s. 195, the defect cannot be said to be an error, omission or irregularity in a complaint, because the complaint was never made. Before an error, omission or irregularity in a complaint can be cured, the complaint must exist, and consequently, the provisions of s. 537, Cr. P.C. cannot apply. In such a case, the trial without a complaint as required by s. 195 would be void. These comments brought to our notice do not have any particular bearing on the question that we are called upon to examine. In the same case, the Additional Judicial Commissioner of Sind interpreted the effect of s. 195, Cr. P.C. He was of the view that "section 195, though it forms a part

of the Code of Procedure, in reality contains a provision of the substantive law of crimes. For s. 195 does not deal with the competency of the Courts, nor lays down which of several Courts shall, in any particular matter, have jurisdiction to try the case; and yet the language of s. 195 is apt to these matters, and it forms part of the Chapter entitled 'of the jurisdiction of the Criminal Courts in enquiries and trials'. Section 195 in reality lays down that the offences therein referred to (or rather the acts constituting those offences) shall not be deemed to be any offences at all, except on the complaint of the persons or the Courts therein specified; it enhances the connotation of those offences and limits the scope of their definition. This limitation of the definition is brought about by saying that no Court shall take cognizance of the offences unless this condition, requisite for initiation of proceedings, is satisfied".

Relying on these observations, learned counsel for the appellant urged before us that in this case also, we should hold that no offence under s. 211 could come into existence and no charge for that commission could be brought against the appellant, unless there was a complaint by a Court under s. 195, Cr. P.C. We are unable to agree with the view expressed by the learned Additional Judicial Commissioner that s. 195, Cr. P.C., really lays down that the offences therein referred to shall not be deemed to be any offences at all, except on the complaint of the persons or the Courts therein specified. An offence is constituted as soon as it is found that the acts which constitute that offence have been committed by the person accused of the offence. It remains an offence whether it is triable by a Court or not. If a law prescribes punishment for that offence, the fact that the trial of that offence can only be taken up by courts after certain specified conditions are fulfilled does not make that offence any the less an offence. The limitation laid down by s. 195, Cr. P.C., is, in fact, a limitation only on the power of Courts to take cognizance of, and try, offences and does not in any way have the effect of converting an act, which was an offence, into an innocent act. We cannot, therefore, subscribe to the view expressed in that case. There is the further circumstance that in the case before us we have held that the provision contained in s. 195(1)(b) was not applicable at the time when the Judicial Magistrate at Chandigarh took cognizance of the offence, and consequently, this principle sought to be laid down by the Additional Judicial Commissioner of Sind has no application.

In Gunamony Sapui v. Queen Empress ((1898-99) 3 C.W.N. 758.), the High Court of Calcutta dealt with a case in which a complaint had been lodged by one Syambar, accompanied by Gunamony, charging certain persons with murder and other offences. The Police, after investigation, made a report to the effect that the information was false, and thereupon, the Magistrate directed proceedings to be taken against Syambar and Gunamony to show cause why they should not be prosecuted. Syambar, who had made the report, then appeared before the Magistrate, and repeating the information contained in his report to the Police he asked for an enquiry, which was ordered by the Magistrate. Once again, a report was made by the police that the complaint was false. Thereupon, the Magistrate, without putting and end to that complaint of Syambar by dismissing it under s. 203, or passing any other order as he might think fit, instituted proceedings against Gunamony under s. 211, I.P.C. On these facts, the High Court held that the proceedings against Gunamony must be quashed, because there was no final order by the Magistrate on the complaint of Symabar dismissing his complaint, and that complaint was still pending. On the analogy to this case, it was urged by learned counsel that in this case also, the proceedings against the appellant should be quashed on the ground that, at the stage when the respondent filed his complaint against the appellant, the proceedings being taken by Police on the report of the appellant had not come to an end. We do not think that the two cases can be compared. In that case, the proceedings were in Court and the Court filed a complaint for bringing false charge or institution of false criminal proceedings without putting an end to those proceedings. In the case before us, there were no

proceedings before any Court on the basis of the report lodged by the appellant at the time when the respondent filed his complaint. It was not at all necessary that the proceedings being taken by the Police should terminate before the Court could competently take cognizance of this complaint filed by the respondent against the appellant.

In K. Ramaswami Iyengar v. K. V. Panduranga Mudaliar (A.I.R. 1938 Mad. 173.), a learned Judge of the Madras High Court, dealing with the principle underlying s. 195, Cr. P.C. held : "Where an act amounts to the offence of contempt of the lawful authority of public servants (ss. 172-188, I.P.C.), or to an offence against public justice such as giving false evidence (s. 193, et seq., I.P.C.), or to an offence relating to documents actually used in a Court (s. 471 etc.), private prosecutions are barred absolutely, and only the Court, in relation to which the offence was committed, may initiate proceedings. This salutary rule of law is founded on commonsense. The dignity and prestige of courts of law must be upheld by their presiding officers, and it would never do to leave it to parties aggrieved to achieve in one prosecution gratification of personal revenge and vindication of a Court's honour and prestige. To allow this would be to sacrifice deliberately the dispassionate and impartial calm of tribunals and to allow a Court's prestige to be the sport of personal passions." We are unable to interpret these views expressed by the Madras High Court as implying that private prosecutions for the offences mentioned in clauses (b) & (c) of sub-s. (1) of s. 195, Cr. P.C., are barred absolutely and under no circumstances can such offences be brought before courts by private persons. In the case of cl. (b), there is the clear limitation that private prosecutions are barred only if the offence mentioned in that section was alleged to have been committed in, or in relation to, any proceeding in any Court. If the offence was not committed in, or in relation to, any proceeding in any Court, a private complaint is clearly permissible. The question of upholding the dignity and prestige of courts of law only arises after there are proceedings in the Courts and not at the stage when no such proceedings have been instituted or have come into existence in any Court. In the present case, we have already indicated that the cognizance of the complaint filed by the respondent against the appellant was taken at a stage when there was no proceeding in any Court of law, and consequently, at that stage, there could be no question of dignity or prestige of a court of law being upheld or of a private complaint being barred.

In Emperor v. Hardwar Pal (I.L.R. 34 All. 522.), the complaint in question was held to clearly constitute an offence under s. 182, I.P.C., but the High Court accepted the view held in earlier cases that the facts in the complaint also constituted an offence under the first part of s. 211, I.P.C. The High Court was called upon to decide whether in those circumstances cognizance of the complaint for the offence under s. 182, I.P.C., on the complaint of the Police Officer concerned could be competently taken when the case related to false information report made to the police on the basis of which a case was sent up to Court and was tried by a Magistrate. The Court held that the complaint under s. 182, I.P.C., could not be proceeded with, because, on the basis of the alleged false report, the Police made an inquiry and sent up some accused for trial, and the offence, which had been committed under the first paragraph of s. 211 by falsely implicating an accused in the report, was one committed in relation to a proceeding in court. It was held to be obvious that there was considerable relation between the first report and the proceeding in Court, for the latter was the result of the former. The report led to the police inquiry and the inquiry to the proceeding in court. Consequently, the offence committed was one under s. 211 in relation to a proceeding in court and sanction of the Court was necessary. This case, again, does not, therefore, indicate that any view was taken contrary to our opinion expressed above.

Two other cases brought to our notice are A.T. Krishnamachari v. Emperor (A.I.R. (1933) Mad. 767.), and Badri v. State (I.L.R. [1963] 2 All. 359.). In the former case a statement was recorded

under s. 164, Cr. P.C. by a Magistrate in relation to a case which was subsequently tried on that matter. Even though the Court, which tried the case, had not recorded the statement under s. 164, it was held that it was competent for that Court, on an application under s. 476, to make a complaint against the person in respect of a statement made by him to another Magistrate under s. 164, Cr. P.C. This was again a case where the statement under s. 164, Cr. P.C., was found to relate to a proceeding that subsequently came into existence in a Court, and the question of filing the complaint for the offence of making that false statement or of taking cognizance in respect of that offence only arose after that proceeding in Court had already come into existence.

In the case of Badri v. State (I.L.R. [1963] 2 All. 359.), where an offence under s. 211, I.P.C., was alleged to have been committed by the person making a false report against the complainant and others to the Police, it was held that it was an offence in relation to the remand proceeding and the bail proceedings which were subsequently taken before a Magistrate in connection with that report to the Police, and, therefore, the case was governed by s. 195(1)(b), Cr. P.C., and no cognizance of the offence could be taken except on a complaint by the Magistrate who held the remand and bail proceedings. We do not consider it necessary to express any opinion whether the remand and bail proceedings before the Magistrate could be held to be proceedings in a Court, nor need we consider the question whether the charge of making of the false report could be rightly held to be in relation to those proceedings. That aspect need not detain us, because, in the case before us, the facts are different. The complaint for the offence under s. 211, I.P.C. was taken cognizance of by the Judicial Magistrate at Chandigarh at a stage when there had been no proceedings for arrest, remand or bail of the respondent and the case was still entirely in the hands of the Police. There was, in fact, no order by any Magistrate in the proceedings being taken by the Police on the report lodged by the appellant up to the stage when the question of applying the provisions of s. 195(1)(b), Cr. P.C., arose. These two cases are also, therefore, of no assistance to the appellant. On the same ground, the decision of the Bombay High Court in J. D. Boywalla v. Sorab Rustomji Engineer (A.I.R. (1941) Bom. 294.) is also inapplicable, because in that case also orders were passed by a Magistrate on the final report made by the Police after investigation of the facts in the report in respect of which the complaint under s. 211, I.P.C., was sought to be filed.

In support of his proposition that no criminal complaint under s. 211, I.P.C., can be filed by a private person if the First Information Report is under investigation and relates to a cognizable offence, Mr. Anthony urged that we should examine the scheme of the Code of Criminal Procedure relating to investigation contained in ss. 154 to 173 of that Code and should hold that this scheme itself envisages that, invariably, the proceedings of investigation will terminate in a judicial order by a Magistrate, and while such proceedings are pending, it should not be permissible for a private person to file the complaint on the ground that the report under investigation was a false one. It is perfectly correct that when a report of a cognizable offence is made, a duty is cast on the Police Officer in charge of the station to investigate that case, and in certain cases of serious offences, immediate report has to be sent to the Magistrate who has power to take cognizance of the offences. There is, however, nothing in these sections to indicate that the Magistrate is required to intervene in the investigation until the investigation is completed and the investigating officer arrives at some conclusion in accordance with s. 169 or s. 170, Cr. P.C. After arriving at this conclusion under either of those two sections, he has to submit a report to the Magistrate empowered to take cognizance of the offence under s. 173. If his conclusion is covered by the provisions of s. 170, Cr. P.C., the report submitted by the investigating officer will necessarily show that a cognizable offence has been committed and such a report will satisfy the requirements of s. 190(1)(b), Cr. P.C. On that report, therefore, the Magistrate concerned can take cognizance and proceed with the trial of the case. On the other hand, if the report is based on conclusions envisaged in s. 169, Cr. P.C., the report will

contain facts found by the Police Officer, and would normally indicate that no such offence was committed of which he could recommend a trial by the Magistrate. Even on the receipt of such a report, the Magistrate is, of course, competent to take cognizance under s. 190(1)(b) if he is of the opinion that the facts stated in the report of the Police constitute an offence. On the other hand, if those facts do not constitute an offence, no cognizance of the case can be taken by the Magistrate, though he can order further investigation. If he does not choose to order further investigation, all that the Magistrate has to do is to make an order under sub-s. (3) of s. 173, Cr. P.C., discharging the bond if the accused has been released by the Police on his bond.

This scheme of investigation and its termination contained in these sections of the Code of Criminal Procedure came up for consideration in several cases. In Appa Ragho Bhogle and Others v. Emperor (16 Cr. L.J. 161.) it was held that a case which was investigated by the police under authority of a Magistrate under s. 155, Cr. P.C., could not be disposed of without the order of the Magistrate in some form or another after a report was submitted to him. In State v. Vipra Khimji Gangaram (A.I.R. (1952) Sau. 67.), it was held that where information relating to the commission of a cognizable offence is given to an officer in charge of a Police Station under s. 154 Cr. P.C., and is followed by investigation by him, he is bound under s. 173(1) to forward his final report to a Magistrate empowered to take cognizance of the offence on a police report. This Court also in H.N. Rishbud and Inder Singh v. The State of Delhi ([1955] I. S.C.R. 1150.), examined the scheme of these provisions of the Code of Criminal Procedure and held that upon the completion of investigation, the investigating officer has to submit a report to the Magistrate under s. 173, Cr. P.C., in the prescribed form, furnishing various details, whether it appears to him that there is no sufficient evidence or reasonable ground, or whether he finds that there is sufficient evidence or reasonable ground to place the accused on trial. Similar observations were made by the Bombay High Court in State and Others v. Murlidhar Govardhan and Others (A.I.R. (1960) Bom. 240.). In two of these cases, viz., State v. Vipra Khimji Gangaram (A.I.R. (1952) Sau. 67.), and State & Ors. v. Murlidhar Govardhan & Ors. (A.I.R. (1960) Bom. 240.) the Courts further held that when a Magistrate passes an order on the proceedings under s. 173, Cr. P.C., that order is a judicial order made by him. For purposes of considering the effect of these cases in the case before us, it is not at all necessary to express any opinion on the correctness of the view that the order passed under s. 173, Cr. P.C., by the Magistrate is a judicial order when he either discharges the bond under sub-s. (3) of s. 173 or takes cognizance under s. 190(1)(b), Cr. P.C. Even if it be accepted that the final orders to be made by the Magistrate are judicial orders, the only conclusion that follows is that at the last stage, on receipt of the report under s. 173, the Magistrate has to act in his judicial capacity. Until that stage is reached, there is no intervention by the Magistrate in his judicial capacity or as a Court. Consequently, until some occasion arises for a Magistrate to make a judicial order in connection with an investigation of a cognizable offence by the police, no question can arise of the Magistrate having the power of filing a complaint under s. 195(1)(b), Cr. P.C. In such circumstances, if a private person, aggrieved by the information given to the police, files a complaint for commission of an offence under s. 211, I.P.C., at any stage before a judicial order has been made by a Magistrate, there can be no question, on the date on which cognizance of that complaint is taken by the Court, of the provisions of s. 195(1)(b) being attracted, because, on that date, there would be no proceeding in any Court in existence in relation to which the offence under s. 211, I.P.C., can be said to have been committed. The mere fact that on a report being made to the police of a cognizable offence, the proceedings must, at some later stage, end in a judicial order by a Magistrate, cannot, therefore, stand in the way of a private complaint being filed and of cognizance being taken by the Court on its basis.

The last submission made on behalf of the appellant was that a very anomalous position can arise if

a private person is allowed to file a complaint that the report to the police against him is false before investigation is completed. It was urged that there can be cases where a report may be lodged against a person for commission of a serious offence like murder, and while investigation is still going on, the accused may file a complaint against the person, who lodged the report, under s. 211, I.P.C., for making a false report. Subsequently, when the police prosecute that accused, there would, simultaneously, be two trials in one of which the person accused of the murder would be under trial, while in the other case the person, who lodged the First Information Report, would appear as the accused. It was suggested that a person accused of a serious crime should not be given the advantage of putting his complainant in jeopardy by instituting a case against him for the offence under s. 211, I.P.C. We are unable to hold that it is necessary to interpret the law in such a way as to necessarily avoid such a situation. There appears to be no difficulty in both cases being tried together in the same Court or one after the other by different Courts. In fact, even if we were to accept the submission made on behalf of the appellant, a similar situation can still arise. There may be a case where the police may report to the Magistrate that the First Information Report was false, and in such a case, according to the submissions made by learned counsel for the appellant, the Magistrate receiving the report under s. 173, Cr. P.C., would be competent to file a complaint against the informant for the offence under s. 211, I.P.C., in exercise of his power under s. 195(1)(b), Cr. P.C. At the same time, there would be no bar to that informant filing a complaint direct in the Court of the Magistrate on the basis of his F.I.R., so that, again, there can be two trials in the Court in one of which the informant would be the accused, and in the other, the person charged in the First Information Report would be the accused. The situation will not, therefore, differ whether we accept the submission made on behalf of the appellant, or do not do so. This aspect is, therefore, not at all helpful in interpreting the scope of s. 195(1)(b), Cr. P.C. We, consequently, hold that in this case the complaint, which was filed by the respondent, was competent and the Judicial Magistrate at Chandigarh, in taking cognizance of the offence, only exercised jurisdiction rightly vested in him. He was not barred from taking cognizance of the complaint by the provisions of s. 195(1)(b), Cr. P.C.

In this case, one more point that was canvassed before us was that the two offences under sections 204 and 385, I.P.C., which were included in the complaint of the respondent, were so inter-mixed with the offence under s. 211, I.P.C., that a trial for those two offences could not proceed if the trial for the offence under s. 211, I.P.C. was barred by s. 195(1)(b), Cr. P.C. That question need not be dealt with by us in view of our decision that cognizance of the offence under s. 211, I.P.C., has been rightly taken and the trial for that offence is not vitiated. The appeal fails and is dismissed.

V.P.S.

Appeal dismissed.

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