

GUJARAT HIGH COURT

State through Dhahyabhai Haribhai

Vs.

Bhikhubhai Ranchhodji Desai

Criminal Ref. No. 42 of 1962

(N.M. Miabhoy and N.K. Vakil, JJ.)

03.09.1963

JUDGMENT

Miabhoy, J.

1. This reference is made under Section 438, Criminal Procedure Code, by the learned Second Extra Additional Sessions Judge, Surat, requesting this Court to quash, under Section 215, Criminal Procedure Code, an order made by the learned Joint Civil Judge, Junior Division, and Judicial Magistrate, First Class, Navsari, committing the three opponents (1), Bhikhubhai Ranchhodji Desai (2) Bai Padmavati Deyaramdas and (3) Lallubhai Laxmidas, to take their trial for various offences punishable under the Indian Penal Code. The reference came up for hearing before Bhagwati, J. on 11th of July 1963. The learned Judge felt that the reference raised an important point of law, and therefore, referred the same for decision to a Division Bench.

2. The facts are as follows : Survey No. 205 situated in the village Chekhad, Navsari Taluka, belongs to a temple known as the Radha-Krishna Pancha Pipla Temple situated in the village Dhaman. That temple has been declared to be a public trust under the Bombay Public Trusts Act, 1950. One Thakordas was the mahant of the temple. One Dayaramdas managed the temple and its properties as the constituted attorney of mahant Thakordas. Thakordas made a gift of survey No. 205 to Bal Padmavati, respondent No. 2. The prosecution alleges that this gift was made to circumvent the trust proceedings. Padmavati agreed to sell this survey No. 205 to Lallubhai Laxmidas, respondent No. 3. She signed a document written on a stamp paper alleged to have been issued on 15th of January 1954 and bearing the same date. That document is Exhibit 83 in the proceedings. This document is a contract of sale by which respondent No. 2 agreed to sell survey No. 205 to respondent No. 3, This document was produced before the Agricultural Lands-Tribunal, Navsari, in a proceeding under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948. That proceeding terminated sometime thereafter. On 20th of June 1961, one Dahyabhai Haribhai of Dhaman Village filed a first information before the P. S. I., Navsari, in which he alleged that the document Exhibit 83 was a forgery. The allegation was that the stamp

paper on which the contract of sale was written was not issued on 15-1-1954 as it purported to have been done, but that the stamp paper was issued sometime between 10th of March 1955 and 25th of September 1959; that a false endorsement was got made on the stamp paper that it was issued on 15th January 1954; that a false entry was made In the stamp register that the stamp was issued on 15th of January 1954, although, in fact, no such stamp paper was issued on that day; that the contract for sale was also written sometime between 10th of March 1955 and 25th of September 1959 and that, although it was signed during the aforesaid period, it was actually antedated by inserting the date of 15th of January 1954.

3. The police investigated into these allegations and after the investigation was over, sent a charge-sheet in the Court of the learned Civil Judge, Junior Division, and Judicial Magistrate, First Class, aforesaid, In the charge-sheet, the police alleged that respondent No. 2 had, without authority, passed a false contract of sale purporting to bear the date 15th of January 1954 with the intention of cheating the temple to which survey No. 205 belonged. It also alleged that a false endorsement had been made on a stamp paper of the value of Rs. 1-8-0 issued by the India Security Press at Nasik in 1955, by antedating the same and that respondent No. 1 had got a false entry No. 2330 made in the stamp register, purporting to have been made on 15th of January 1954 and that he had got an entry made that that stamp paper was sold to respondent No. 3 on behalf of respondent No. 2 and that respondent No. 3 had got a writing written on that stamp paper and respondent No. 2 had executed the false contract of sale thereon and that, thereby, the three respondents had committed the offences punishable under Sections 420, 465, 468, 471 read with Section 109 of the Indian Penal Code, and that each of them should be convicted for the commission of those offences.

4. The learned Magistrate took cognizance of the above offences and issued process of the Court against all the three respondents. He held an inquiry under Chapter XVIII of the Criminal Procedure Code and finding that a prima facie case had been made out against the three respondents, he committed them to take their trial in the Sessions Court at Surat for the offences under Sections 420, 468, 465, 471 read with Section 109, Indian Penal Code. The case was transferred to the learned 2nd Additional Sessions Judge, Surat. The learned Judge framed charges under various sections of the Indian Penal Code. He charged all the respondents primarily for the offences punishable under Section 467 read with Section 34 and/or read with Section 109, Indian Penal Code, on the allegation that all the three respondents had, in pursuance of their common intention, forged the contract of sale. In the alternative, the learned Judge charged respondent No. 1, a stamp vendor, for the offence under Section 467, Indian Penal Code, on the allegation that he had forged an entry in the stamp register and made a false endorsement on the stamp paper and respondents Nos. 2 and 3 with the offence under Section 467 read with Section 109, Indian Penal Code, on the allegation that they had abetted respondent No. 1 in the commission of the aforesaid crime under Section 467, Indian Penal Code. Still, alternatively, he charged respondent No.2 with the offence under Section 467, Indian Penal Code, on the allegation that he had forged the aforesaid contract of sale and charged respondents Nos. 1 and 3

with the offence under Section 467 read with Section 109, Indian Penal Code, on the allegation that these two respondents had abetted respondent No. 2 in the commission of the aforesaid crime under Section 467 of the Indian Penal Code. All the three respondents pleaded not guilty to the charge. The learned Sessions Judge, thereafter, recorded evidence. At the fag-end of the trial, however, the respondents challenged the committal order on a legal ground. The respondents urged that the learned Magistrate had committed an error of law in taking cognizance of the charge-sheet for the aforesaid offences, They contended that the cognizance of the aforesaid offences was barred under Section 195 Sub-Section (1) clause (c) of the Criminal Procedure Code. The contention was that the document, Exhibit 83, bearing date 15th of January 1954, had been produced before the Agricultural Lands Tribunal and that, that being so, the cognizance of any offence in relation to that particular document could only be taken on a complaint filed by the Tribunal and that a charge-sheet without the complaint of the Tribunal was barred. The learned Judge agreed with this submission of the three respondents. Consequently, he made the reference to this Court requesting this Court to quash the committal order on the ground that the cognizance of the offence which the learned Judge was trying was barred under Section 195, Sub-Section (1) clause (c) aforesaid.

5. Therefore, the main question which requires to be decided in the present reference is whether the offences with which the respondents have been charged could or could not have been taken cognizance of by the learned Magistrate aforesaid. In addition to this question, a number of other subsidiary questions were raised in the course of their arguments by the learned advocates appearing for the respondents and the first informant. We propose to indicate these contentions in the course of this Judgment at their proper places.

6. Now, in order to appreciate the argument based on Section 195 (1)(c), Criminal Procedure Code, it is first of all necessary to quote the relevant part of the section which is as follows :-

"195. (1) No Court shall take cognizance-

(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;

(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

(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 insubordinate.

....."

7. It is quite clear from clause (c) aforesaid that the cognizance of the criminal Court is barred there under if the following conditions are satisfied :-

- (1) The offence alleged to have been committed must be an offence described in Section 463 or an offence punishable under Section 471, Section 475 or Section 476 of the Indian Penal Code.
- (2) Such offence must be alleged to have been committed by a party to any proceeding in any Court.
- (3) The offence so alleged to have been committed must be in respect of a document produced or given in evidence in such proceeding.

The clause means that when these three conditions are satisfied, a criminal Court cannot take cognizance of any of the aforesaid offences except on a complaint in writing by such Court or by some other Court to which such Court is subordinate.

8. It is not disputed that no complaint in writing has been made by the Tribunal or by any other Court to which such Tribunal is subordinate. We may mention that at the fag-end of his arguments, Mr. Vidhyarthi indicated that he would challenge the order of reference on the ground that the assumption made therein that a Tribunal was a Court within the meaning of clause (c) aforesaid, was wrong and that, in his submission, the tribunal was not a Court within the meaning of that clause. However, after reading the definitions of the expressions "Court of Justice" and "Judge" in Sections 20 and 19 of the Indian Penal Code, Mr. Vidhyarthi said that he did not wish to press the contention any further. Therefore, we must not be understood to have expressed any opinion on the question as to whether the Agricultural Lands Tribunal acting under Section 32-G of the Bombay Tenancy and Agricultural Lands Act was, or was not, a Court within, the meaning of clause (c) aforesaid. We may mention that Mr. D.U. Shah, the learned advocate for the State conceded that the Tribunal was a Court within the meaning of the aforesaid clause.

9. Now, as regards the offences with which the respondents are charged, there is no doubt whatsoever that the said offences are those which are described in Section 463, Indian Penal Code. The offences charged are under Sees. 466 and 467, Indian Penal Code, and these two offences arise out of the offence which is described in Section 463, Indian Penal Code. Some of the offences charged are those of abetment of the above offences. The Matter offences fall within the purview of Section 195 aforesaid by virtue of Sub-Section (4) of that section. There is no dispute about this and, therefore, tire first condition mentioned aforesaid is satisfied.

10. The second condition is that, those offences must be alleged to have been committed by a party to any proceeding in any Court. Having regard to the aforesaid facts, there is no doubt that respondents Nos. 2 and 3 were parties to the proceedings before the Tribunal. Therefore, so far as they are concerned, there is no doubt that the second condition is satisfied. It is admitted position

that respondent No. 1 was not a party to the proceedings before the Tribunal. However, in *Jashwantlal Bapalal v. Navinchandra Chandulal*¹, a Full Bench of the High Court of Bombay has decided that, if an offence of the kind referred to in Section 195(1)(c) of the Code committed by a party to a proceeding in any Court, the complaint of that Court will be necessary also for prosecuting even a person who is not a party to such proceeding, "provided the offence with which he was charged was the same as was alleged to have been; committed by the person who was a party to the proceeding." The case against the respondent No. 1, therefore, though it does not directly fall within the purview of clause (c) aforesaid, is sought to be brought within that clause by virtue of the principle enunciated in this Bombay decision which, having been recorded on 10th March 1960, is binding on this Court. Therefore, one of the points which require decision in this reference is whether the case against respondent No. 1 does or does not fall within the purview of the principle which was enunciated in the aforesaid

¹62 Bom LR 527

Full Bench decision of the Bombay High Court.

11. The third condition which is necessary to be satisfied is that the offences must be alleged to have been committed in respect of a document produced or given in evidence in the proceeding before the Court. From the facts already recited, it is quite clear that the only document which was produced before the Tribunal was the Contract Exhibit 83. Therefore, it is quite clear that the charges of forgery, in so far as they are based upon that document, Exhibit 83, would come within the purview of clause (1)(c) aforesaid. But the facts already recited show that one of the charges relates to a false entry in the stamp register which was maintained by respondent No.1. That stamp register was never produced before the Tribunal. The charges leveled against the three respondents in respect of that entry in the stamp register are that respondent No. 1 made a false entry in that register and thereby committed the offence under Section 465 and respondents Nos. 2 and 3 abetted respondent No. 1 in committing that forgery and thereby committed the offence under Section 465, read with Section 109 of the Indian Penal Code. Therefore, so far as this set of charges under Sections 465 and 465 read with Section 109 is concerned,, in. so far as it relates to the forging of this stamp register, it does not come within the purview of the third condition aforesaid. The respondents, however, contend that though the charges in relation, to the. aforesaid offences do not come directly within the purview of the expression "a document produced in such proceeding", the stamp register should be held to be falling within that particular description by resort to a principle on which, in the submission of the respondents, the section itself is based. Therefore, another question which requires to be examined in the present case is whether there is any such principle in existence, and if so, whether the stamp register can be said to be a document within the purview of clause (c) aforesaid on the basis of such a principle.

12. As regards the primary charge against all the three respondents under Section 467 read with Section 34, and/or Section 109, Indian Penal Code, and as regards the second alternative charge

under Section 467 against respondent No. 2 and Section 467 read with Section 109 against respondents Nos. 1 and 3, in so far as those charges relate to the contract of sale, Exhibit 83, and on the assumption that the two principles on which the respondents contend and which are mentioned hereinbefore, the contention of the first informant is that the second condition in clause (c) aforesaid is not satisfied in respect of those charges. The contention is that as the proceedings before the Tribunal, in which Exhibit 83 was produced, had already ended before the Tribunal, the second condition which requires that the offence must be alleged to have been committed by a party to any proceeding in any Court, no longer applies and, therefore, clause (c) aforesaid cannot apply to the facts of the present case. The contention is that clause (c) has a limited operation only and that it applies only during the period the proceeding is subsisting. In other words, the contention is that, as soon as the proceedings before the Court in which the document was given in evidence terminate, clause (c) ceases to apply and, under the ordinary law, it is open to any person to file a criminal complaint in respect of the offences mentioned in clause (c) without obtaining the sanction from the Court mentioned therein. In other words, the contention is that the true meaning of the expression "when such offence is alleged to have been committed by a party to any proceeding in any Court" is that the proceeding referred to in clause (c) must be a pending proceeding at the time when the cognizance of the criminal Court is sought. The contention is that, if this is not so, then condition No. 2 aforesaid is not satisfied and it is open to any private party to file a complaint in regard to the document without obtaining the sanction from the requisite Court, in spite of the fact that at a previous point of time such a document was produced in the Court before the termination of the proceedings.

13. This interpretation of the aforesaid condition of clause (c) was mentioned in *Emperor v. Rachappa Yellappa*² but the point was not decided in that case. The same question again was raised in *Emperor v. Mallappa Tejappa*³. In that case, a Division Bench of the Bombay High Court made the following observations at p. 966 (of Bom LR) : (at pp. 14-15 of AIR) on the aforesaid subject :

"But we may say that we are disposed to take the view that the words 'committed by a party to any proceeding in any Court in Section 195(1)(c) imply that the proceeding must be pending at the material time. To hold otherwise might lead to rather absurd results. Between the commission of a forgery and the discovery of it, a long time may elapse, and, in the interval, the document may be produced in many proceedings. It might be highly inconvenient to have to obtain a complaint from each of the Courts in respect of proceedings terminated, possibly, many years before."

if these observations constitute the decision of the Court, then, there cannot be any doubt that that decision is binding on this Court, it being the decision of the Bombay High Court recorded before the 1st of April 1960. The observations have been construed as recording the decision of that Court by the learned referring Judge and has been so construed in cases decided by other High Courts wherein that decision was cited. If the decision is binding, then, it is quite obvious

that this Bench cannot have anything further to say, except that, in case this Bench is inclined to take a different view, it can make a recommendation to the learned Chief Justice to refer the matter to a larger Bench for deciding the correctness of the decision. However, We have carefully considered the question whether the aforesaid observations constitute the decision of the Court. We have come to the conclusion that the observations are obiter dicta. In that case, the prosecution was being challenged on two grounds. Firstly, that the accused against whom the prosecution was launched being a guardian or a next friend of a minor in the suit, was not a party to the proceeding. The second ground was that, as the suit proceedings had terminated, the sanction of the Court in which the document was produced was not necessary. On the first question, the Court decided that the guardian or the next friend was not a party within the meaning of clause (c) aforesaid and, on that ground, the Division Bench held that sanction was not necessary. After having so held, the Division Bench proceeded to say as follows in a passage just before the passage quoted :

"As pointed out in 38 Bom LR 440 : AIR 1936 Bombay 221 the material time in construing Section 195 is the time at which the Court is asked to take cognizance of a criminal offence. In that particular case, it was not necessary to determine whether Section 195(1)(c) would apply if the proceedings in. Court had terminated, so that the accused had only previously been a party to a proceeding, and was no longer a party at the time Section 195(1)(e) was sought to be applied.

²38 Bom LR 440 : AIR 1935 Bom 221

³38 Bom LR 964 : AIR 1937 Bom 14

In the present case it is not really necessary to decide that question either, because we hold that accused No. 3 was not a party to the proceeding at all." The last observation clearly shows that, in the opinion of their Lordships, it was not necessary to decide that sanction was not necessary when the proceedings in which the document was produced had terminated in that view of the matter, in our judgment, the question raised in the present proceedings is an open question and can be decided by this Division Bench.

14. It is difficult to put the construction sought to be placed by the first informant on the aforesaid expression. The expression "by a party is any proceeding in any Court" is the object of the expression "is alleged to have been committed". The idea is expressed in the passive voice. That the meaning sought to be attached by the first informant cannot be given to the above expression will be quite clear if the same idea is expressed in the active voice. When, so rendered, the expression reads, "when a party to any proceeding in any Court is alleged to have committed such an offence". The idea which is sought to be conveyed by the aforesaid expression does not have any relation whatsoever to the idea of the pendency or the termination of any proceeding. The idea sought to be conveyed is as to the class of the offenders. The aforesaid expression is not intended to say anything as to whether the proceeding in the Court should either be pending or should have terminated. The legislative intent appears to be to describe the person alleged to

have committed the offence, and such a person is described as "a party to any proceeding in any Court". The intention appears to confine the application of the section to only the offender who happens to be a party to a proceeding. The language used is general and is intended to include a person who had been a party or is a party to a proceeding. The words "party to a proceeding" are used in an abstract manner to indicate only the class or category of offenders. Therefore, in our judgment, the plain and grammatical meaning of the aforesaid expression is that the person who must be alleged to have committed the crime must be a party to any proceeding in any Court. It is not the contention of the first informant that what is intended to be conveyed is that the person who commits the crime must be, at the time of the commission of the crime a party to any proceeding. Such a contention cannot be urged in view of the decision reported in 38 Bom LR 440 : AIR 1936 Bombay 221 wherein a Division Bench of the Bombay High Court, consisting of Beaumont C.J. and N.J. Wadia, J. held that the relevant date which has got to be considered for the application of clause (c) aforesaid is the date at which the Court is invited to take cognizance of the complaint and not whether the person against whom the offence is alleged, was a party to a proceeding at the time of the commission of the offence.

15. Mr. Vidhyarthi, the learned counsel for the first informant, however, laid emphasis on the expression, "to any proceeding in any Court" and he contended that this expression was intended to convey the idea that, at the date when the cognizance was to be taken, the proceeding must be a proceeding in any Court. In our judgment, such a reading would be faulty for more than one reason. In the first instance, the expression "to any proceeding in any Court" cannot be read disjointedly from that which precedes. The true meaning of any statute cannot be obtained by reading a passage therein in a disjointed manner from the other relevant passages, but, the true meaning can only be obtained by reading the passage as a whole and, as we have already pointed out, reading the aforesaid expression as a whole, the idea which is sought to be conveyed is that the offence must be one which must have been committed by a party to a proceeding in any Court. In our judgment, the Legislature did not have before its mind the idea about the stage at which the cognizance of an offence was to be prohibited, for, the idea was only to designate the class of persons in whose favor the prohibition was to operate. Moreover, in our judgment, even if we were to read the aforesaid expression in the manner suggested by Mr. Vidhyarthi, we cannot agree with him that the meaning sought to be attached by him necessarily follows. In our judgment, such a meaning cannot be derived without the addition of some word or words in the aforesaid expression. In our judgment, in order to assign the meaning which Mr. Vidhyarthi assigns, either the words "a person who is" will have to be added between the words "by" and "a party" so that the clause should read as ". . . when such offence is alleged to have been committed by a person, who is a party to any proceeding . . .", or the word "pending" will have to be added between the words "any" and "proceeding" so that the clause should read ". . . by a party to any 'pending' proceeding . . .". In our judgment, in either case, we would be violating a fundamental canon of interpretation of statutes. It is well known that, unless absolutely necessary, a Court should not add to or subtract anything from a statute and such course of construction is never adopted unless the expression used by the Legislature is ambiguous and the addition of such

words is necessary to carry out the legislative intent. We shall point out in a moment that such addition is not at all necessary to carry out the object underlying the aforesaid legislative provisions. Moreover, in our judgment, it is quite obvious that the section relates not to the date on which any offence is committed but it relates to the date on which the Court has to take cognizance of the offence. Therefore, if the contention of Mr. Vidhyarthi were right, then, the legislature would not have used the expression "by a party to the proceeding in any Court" so as to qualify the expression "such offence alleged to have been committed", but would have used a suitable expression in the first part of clause (c) so as to qualify the expression, "No Court shall take cognizance". In our judgment, if Mr. Vidhyarthi were right, then the clause would have to be re-written as "No Court shall take cognizance during the pendency of any proceeding in any Court of any offence alleged to have been committed by a party to any such proceeding" In the circumstances, in our judgment, the interpretation which is sought to be placed on the aforesaid expression is not only not borne out by the plain and grammatical meaning of that expression, but such an interpretation violates a fundamental canon of construction of statutes inasmuch as the meaning sought to be, given cannot be so given without adding words in or without rewriting the clause.

16. If the contention of Mr. Vidhyarthi were right, then, it follows that the bar which is created by clause (c) is a temporary bar. The bar lasts during the pendency of the litigation in the Court in which the document is produced. As soon as the litigation ends, the bar is removed and the ordinary law applies and, under that law, anybody can make a complaint against a party to a proceeding that an offence under any of the sections mentioned in the clause had been committed by that party. A question can be legitimately asked as to what object the Legislature intended to serve by placing a temporary embargo on a prosecution in relation to such a document. Mr. Vidhyarthi contended that the object of the Legislature, in enacting clause (c), was to bring to a termination criminal prosecutions in relation to such documents as speedily as possible. But it is difficult to see how such an object can be achieved by imposing a temporary embargo. On the contrary, by imposing the embargo and making it subsist during the period of the litigation, the Legislature would be doing exactly the opposite of that which Mr. Vidhyarthi says the Legislature intended to do. Whereas, according to the ordinary law, a criminal complaint could have been filed and the question about the criminal liability of a party to a proceeding in connection with a document produced in such a proceeding could have been got decided by filing an immediate complaint, the Legislature, by specific words, would be preventing the launching of the prosecution, according to Mr. Vidhyarthi's construction,, during the pendency of a litigation before a Court In our judgment, the object which Mr. Vidhyarthi has propounded as the legislative object, cannot be accepted as the object which the Legislature had in mind.

17. In *Bhawani Das v. Emperor*⁴, in which a Division Bench of the Allahabad High Court was called upon to construe the expression "offence committed by a party" as used prior to the amendment of that expression by the amending Act of 1923, Piggot, J. in a passage which has been regarded in several future cases as a classical expression of the object of the Legislature, has

expressed himself as follows on that subject at page 301 :

"Sub-Sections (a) and (b) of Section 195(1) are intended to restrain, private individuals from coming forward to demand the punishment of certain offences against the lawful authority of public servants, or the administration of public justice, except under the authority of the public servant or the Court of justice concerned. The Legislature has seen fit, in sub-clause (c), to extend this prohibition to a certain limited class of offences not exactly ejusdem generis with either of the above. Yet it is clear that when a party to a civil suit forges a document for the purpose of that suit and then produces it in support of his claim, he has committed an offence punishable under Section 193, I.P.C., and for these offences he cannot be prosecuted without the sanction of the Court. It would be something of an anomaly to maintain this prohibition, and yet to permit a prosecution without any sanction for the graver offences of forgery and of using as genuine a forged document. Moreover, the Legislature doubtless intended to prevent the possibility of any such scandal to the administration of justice as is generally understood to have occurred in the historical case of the prosecution for forgery of the Maharaja Nand Kumar (Nuncomar). It was not considered proper to leave it open to the defendant in a civil suit to carry the question of the genuineness of the plaintiff's document of title before a different tribunal by instituting a prosecution against the plaintiff, alleging him to have forged the same or to have made use of it knowing it to be forged. If the Legislature had seen fit to limit the prohibition to the prosecution without sanction of "a party to any proceeding pending in any Court in respect of a document," etc., there could have been no serious doubt as to the meaning of the words; but the prohibition would have ceased to be effective as soon as the suit was decided. It may well be that this was considered practically inconvenient, in view of the possible filing of an appeal after prosecution had been instituted or it may have been thought advisable, as already suggested, to make the prohibition as against parties to a proceeding in a Civil Court, co-extensive with the prohibition in respect of the offences of fabricating false evidence already embodied in Section 195(1)(b)."

⁴ AIR 1916 All 299

In this passage the learned Judge has definitely set out that the object of the Legislature was to make the prohibition in clause (c) co-extensive with the prohibition contained in clause (b) of Section 195(1). If this is the true object, then, it will be noticed that the bar created under clause (b) is a permanent bar and there is nothing in that particular clause which indicates that the bar would be removed the moment the proceedings terminate. Though the learned Judge has not expressed himself definitely as to the second object which he has mentioned in the last part of the above-quoted passage, in our judgment, there is considerable force in the view that one of the objects which the Legislature intended to achieve was to put a permanent bar to a criminal litigation arising out of a document produced in any civil or criminal or any other kind of Court, unless the parent Court has applied its mind whether it is or it is not in the interests of justice that such a question should be decided by a regular criminal Court. It is easy to envisage the conflicts

which would arise if a question regarding the genuineness of a document pending before any Court were again to be permitted to be litigated in another Court even after a decision has been recorded by the parent Court. A party aggrieved by a decision of any Civil, Criminal or any other Court can always get the question about the incriminating nature of the document decided by a regular criminal Court to vindicate his submission that the document was not a genuine one. If the parties were left free to do this, it is easy to conceive that the administration of public justice is likely to be brought to public ridicule. It is in very rare cases that a parent Court will permit prosecution where its own finding is that a document is a genuine one. It is only in such cases where additional evidence produced before it after it has recorded its decision shows indisputably that a fraud had been committed upon the Court, or that the document can never be upheld as a genuine document, that the parent Court will grant sanction of prosecution in a case where it has held the document to be genuine. Even where the parent Court holds a document to be a fabricated one, it will not grant permission for prosecution in all cases. Under Section 476, Criminal Procedure Code, the parent Court is enjoined to consider whether it is expedient in the interests of justice that this should be done, and, in considering this question about the sanction, the Court will not decide the question from the point of view of the vindication of one or the other party, but, with a view to see whether a criminal prosecution of the party concerned does or does not serve the ends of justice. If this is one of the two objects for enacting clause (c), then, it follows that that object cannot be achieved by giving it the limited meaning, for which Mr. Vidhyarthi contends. The object can be achieved only if clause (c) is construed as placing a permanent bar in the way of a criminal prosecution in relation to a document produced before the parent Court except with the permission of that Court.

18. There is another objection also to the construction placed by Mr. Vidhyarthi. It is quite clear that, during the pendency of the litigation, if a criminal prosecution is to be launched, then, it cannot be done without resort to the procedure enjoined by Section 476 and other related sections of the Criminal Procedure Code. Now, if Mr. Vidhyarthi were right, then, an application under Section 476 will necessarily have to be decided before the parent proceeding terminates. That would mean that the parent Court, whilst considering the question of the expediency in the interests of justice, will have to decide the question of granting permission to launch a criminal prosecution without itself deciding the question about the genuineness of the document. In fact, in a majority of cases, the parent proceeding will have to be held up when an application under Section 476 comes to be made, with a view to decide whether there is or is not a prima facie case for grant of such a permission. It is hardly probable that the Legislature could have intended the aforesaid two results, one of holding up the parent proceedings and the other of reaching a decision in the course of the parent proceedings, without finally deciding the question of genuineness, whether there is a prima facie case that the document is forged. In fact, it is difficult to see what useful purpose can at all be served by proceeding in such manner. It is quite clear that any decision which the criminal Court happens to give in relation to the aforesaid document will not be binding on the parent Court and will not have the force of res judicata. In spite of the decision which the criminal Court may have arrived at, the parent Court still will have to record

its own finding on the subject with regard to the alleged forgery and reach its own conclusion. If this is the true position, then, one fails to understand as to why the Legislature should have at all imposed a temporary embargo during the pendency of the parent proceeding.

19. In our judgment, therefore, even if there is any ambiguity in the expression under construction which, in our judgment, there is not, and if the principle of beneficial construction were to be resorted to, having regard to the objects which we have mentioned above and the very inconvenient results which would follow from the construction contended for by Mr. Vidhyarthi, the construction which we have placed would be the only construction which can be placed upon the expression in order to advance the object and to suppress the mischief which the Legislature had in view.

20. If the aforesaid question is considered also in the context of clauses (b) and (c) and the Chapter in which Section 195 occurs, then, in our judgment, it is crystal clear that the construction for which Mr. Vidhyarthi contends, cannot be upheld. Section 195 occurs in Chapter XV which is headed "Of the jurisdiction of the Criminal Courts in Inquiries and Trials." That chapter is divided into several sections. Section 195 occurs in section "B" which is headed "Conditions requisite for initiation of proceedings". Section 190 provides for the ways in which a Magistrate can take cognizance of a criminal offence. Section 193 provides for the ways in which a Sessions Court can take cognizance of criminal offences. Section 194 provides for the ways in which a High Court. can take cognizance of criminal offences. Then comes Section 195. This section appears to be in the nature of a general exception to the provisions contained in the aforesaid sections conferring jurisdiction upon the various criminal Courts to take cognizance of offences. Clause (a) prohibits the cognizance of an offence by the ordinary criminal Court in respect of offences under the Indian Penal Code punishing contempt of lawful authority without the sanction of the parent Court. Clause (b) similarly prohibits criminal Court from taking cognizance of certain other offences mentioned therein without similar sanction, which offences are against public justice. The bar imposed by clauses (a) and (b) are. permanent bars in the sense that, unless the bars are removed, a criminal Court cannot try those offences. It is true that the expression "a party to any proceeding" is not to be found in clauses (a) and. (b). But that expression has been introduced in clause (c) not with a view to convert the permanent bar into a temporary one, but, with a view to describe the class of offenders on whom the protection is sought to be given by clause (c). In that view of the matter, there is no reason why, on the aforesaid aspect of the matter, clause (c) should be construed in a manner different from the clauses (a) and (b) of Section 195(1).

21. There is one more reason why the construction pleaded for by Mr. Vidhyarthi cannot be adopted. There is bound to be a time lag between the termination of a parent proceeding and an appeal or a revision from the decision of the parent Court. If Mr. Vidhyarthi's contention is right, then, as soon as a proceeding in the parent. Court terminates, a private individual will be entitled to launch a criminal prosecution, as, at that time, there will be no proceeding pending before any

Court. Leaving aside the case of a revision application, the moment an appeal comes to be filed, the prohibition contained in clause (c) aforesaid will revive, or, it may be with justification contended that though an appeal is filed, there is no bar under clause (c), because, at the date when the criminal prosecution was launched, there was no proceeding pending and, in the latter contingency, the appellate Court will have no power to stay the further proceedings in the criminal Court although, during the pendency in the trial Court, the cognizance of the criminal Court was barred.

22. We have carefully considered the reason which appealed to the Division Bench in 38 Bom LR 964 : AIR 1937 Bombay 14 for taking a view different from the one we are now taking. In our judgment, the apprehension expressed by their Lordships in that case is not justified. Having regard to the provision contained in clause (c) aforesaid and Section 476, prima facie, it appears to us that, if a proceeding is pending in relation to the same document before more than one Court, it is not necessary that the sanction of all the Courts must be obtained. The words in clause (c) are "any Court" and not "every Court". Even apart from this, even if the apprehension of Their Lordships were to be correct, it is quite clear that the problem will not be solved in the manner suggested by putting the construction which appealed to them. If a document is produced in more than one Court, then, it is crystal clear that a private individual will not be able to launch criminal prosecution in relation thereto unless all those proceedings terminate.

23. We notice that the construction which was placed in 38 Bom LR 964 : AIR 1937 Bombay 14 has not been accepted as the true construction in two other Courts wherein the same question came up for consideration. In *Satya Dev v. Ghansham*,⁵ 38 Bom LR 954 : AIR 1937 Bombay 14 was not accepted as laying the correct law. However, this case is not of much assistance inasmuch as it is based upon the view that 38 Bom LR 964 : AIR 1937 Bombay 14 purported to follow 38 Bom LR 440 : AIR 1936 Bombay 221. As already pointed out, this view is not correct. The second case is *Abdul Majid v. Hukumchand*⁶. In this case also, 38 Bom LR 964 : AIR 1937 Bombay 14 was not followed and we agree with the reasoning which has been given in this case for not following the view in Mallappa's case, 38 Bom LR 964 : AIR 1937 Bombay 14.

24. In view of the above construction, it follows that the cognizance of the primary set of offences and the second alternative set of offences in so far as it relates to the contract of sale, Exhibit 83, referred to above, by the criminal Court is barred so far as respondents Nos. 2 and 3 are concerned.

25. But the question still requires to be considered whether the cognizance in respect of the aforesaid two sets of offences and a part of the third set is barred qua respondent No. 1 and whether the cognizance qua the three respondents is barred in respect of the second alternative set of sections in so far as it relates to the stamp register.

⁵AIR 1953 Him Pra 117

⁶ AIR 1957 Madh-Bha. 12

26. We will discuss the second question first. Now, Mr. Desai, whilst conceding that the 5 charge in respect of the first alternative set of charges in so far as they relate to the stamp register does not fall directly within clause (c) inasmuch as that stamp register itself was not produced before the Tribunal, contends that, by an equitable construction of clause (c), that charge must also be held as coming within the purview of that clause. Firstly, he contends that the charge in relation to the crime with reference to the stamp register is so connected with the principal charge and the charges in relation to the contract of sale, that, if the principle underlying clause (c) were not to be applied to that alternative: charge, then, the object which the Legislature had in view of avoiding a conflict of judicial decisions in relation to one and the same document will be frustrated. He contends that, if the object of the Legislature in enacting clause (c) were that the parent Court should have the final voice whether a person should or should not be prosecuted for an offence in relation to a document produced before it, then, if there is another document which, though not produced, is so connected with the first document that the offence, of forgery in respect of one could not be said to have been committed unless an offence of forgery is committed in relation to the other document, then, a situation is likely to arise wherein the parent Court may hold the document produced to be a genuine one and a criminal Court may hold that the subsidiary document was a forgery. He says that it is on, this particular principle that the Full Bench in Jashwantlal's case 62 Bom LR 527 extended the principle to a non-party in, spite of the fact that a non-party is not expressly included within clause (c). The principle underlying that decision has been thus enunciated by the learned Chief justice at page 532 :-

"The word "offence" is defined in clause (c) of Sub-Section (1) of Section 4 as meaning any act or omission made punishable by any law for the time being in force. It has been urged that where a number of persons join in committing an offence, the act of each person is a distinct act and that the word "offence" in clause (c) means the particular act done by the party to the proceeding before the Court. Every set does not, however, constitute an offence. Some offences, such as that of conspiracy or dacoity, cannot be committed by one person alone. They require the acts of more than one person in order to constitute the offence. In each case, therefore, it will have to be determined whether the offence, with which a person (who was not a party to the proceeding in the Court) is charged and in respect of which he claims the protection, of clause (c), is the same offences as was committed by a party to the proceeding before the Court. If the act committed by him alone constitutes a distinct offence, clause (c) will not apply and no complaint of the Court will be required for prosecuting him for that offence. If, on the other hand, the act committed by him and the act committed by the party to the proceeding together constitute an offence of the kind referred to it clause (c), then a complaint of the Court for his prosecution will be necessary."

In another passage, the principle is explained in the following way at page 531 :-

"Sub-Section (4) makes the provisions of Sub-Section (1) applicable to conspiracies to commit offences named in Sub-Section (1). For an offence of conspiracy there must be at least two persons. If, therefore, the offence, which is committed in relation to a proceeding in any Court, is that of conspiracy to commit an offence of the kind referred to in clause (c), say, that of forgery, and if only one of the conspirators was a party to the proceeding before the Court, then, an anomalous situation will arise, if it is held that a complaint of the Court is required only for prosecuting the conspirator who was a party to the proceeding in the Court and not for the other co-conspirator, who may have played only a minor part in the offence. The offence committed by both the conspirators is the same and there is no reason why the Legislature should have tried to draw a distinction between the two, requiring the complaint of the Court in one case and allowing a private party to prosecute in the other case. The better view, in our opinion, therefore, appears to be that where an offence of the Kind referred to in clause (c) has been jointly committed by several persons, only one of whom was a party to a proceeding in a Court, then the complaint of the Court will also be necessary in order to prosecute the other persons, who had jointly committed the offence, even though they were not parties to the proceeding before it."

The learned Chief Justice also compared the language used in clause (c) with the language used in Sections 197 and 197-AA, and also derived support from the marginal note to clause (c).

27. Now, from the aforesaid reasoning, it is quite clear that the prohibition underlying clause (c) is not extended by the Full Bench on the ground of a likelihood of conflict of decision, but, on the ground that sub-section (4) of Section 195 contemplates the case of a co-conspirator who may be a party to the commission of the offence, but, who may not be a party to the proceeding in which the document was produced. The decision also appears to have been reached because, in Their Lordships opinion, there are some offences which cannot be committed by one person alone and that, in the case of such offences, the parties do not commit a series of offences, but one offence is committed, although, each may be guilty of having committed one out of a series of acts which constitutes an offence. In our judgment, there is a clear distinction between a case in which there is a series of acts the totality of which constitutes an offence and two acts each one of which constitutes a different offence, though, the offence may be punishable under one and the same section of the criminal law. In the present case, in our judgment, the offence which is alleged to have been committed in reference to the stamp register is a distinct offence from the offence which is alleged to have been committed in relation to the contract of sale. The moment the false entry was made in the stamp register, an offence under Section 455 took place, irrespective of the question as to whether ultimately a false document came to be recorded on the stamp paper in relation to which the false entry was made in the stamp register. In the present case, the two sets of offences are joined together not because each constituted a part of the other offence, but they have been joined together because, under Section 235, Criminal Procedure

Code, they could be so joined on account of the fact that both the offences were committed in the course of one and the same transaction.

28. Mr. Desai, however, contends that even so, the two sets of offences must be considered to be so connected together that, for the purposes of clause (c), they must be regarded to be as one offence and not two. We cannot agree with this submission. In our judgment, Section 235, Criminal Procedure Code, itself implies that each offence is a separate offence, although they may have been committed in the course of one and the same transaction. But, Mr. Desai further contends that even if this is so, the above principle must be extended to cases where the two offences are so connected together that one offence is nothing but a step forward in the commission of the second offence, in the commission of which the document came to be forged which ultimately was produced before the Court. We have given our anxious consideration as to whether we should or should not accept this argument. We find difficulty in accepting Mr. Desai's submission. In the first instance, we will not be justified in doing this unless we rewrite clause (c) or alter it materially so as to include within its scope a series of offences connected not only with the document which is produced in the Court, but also in respect of documents which are not so produced. In our judgment, this would be not interpreting clause (c), but entering into the realm of legislation. We do not find any such justification in clause (4) of Section 195 or the definition of the word "offence", as the Full Bench found for extending the ambit of clause (c) aforesaid. In our judgment, the mere fact that one distinct offence happens to be a step forward in the commission of another distinct offence, is no reason why the first should be brought within the ambit of clause (c) simply because the second offence falls within that ambit.

29. Mr. Desai, however, places strong reliance upon the decision reported in *In re V.V.L. Narasimhamurthy*⁷. In that case, it was held that where, on the facts disclosed in the complaint, two offences are made out. one under Section 193, Indian Penal Code, for which a complaint by Court is necessary and the other under Sections 457 and 471, Indian Penal Code, for which a complaint by Court, is not necessary, the party should not be allowed to evade the provisions relating to a complaint by Court. It was held that, in such a case, the Court should not take cognizance of the complaint unless there is a complaint by Court as required by Section 195 (1)(b). It is not necessary to discuss the question as to whether the principle underlying this decision is correct or not, but, even assuming that the principle underlying this decision is correct, in our judgment, the facts of that case are clearly distinguishable from the facts of the present case. It will be noticed that, in that case, the same facts constituted two different offences punishable under two sets of different sections of the Indian Penal Code. It may be that in such a case the prohibition coming within the purview of clause (a) may be extended to a case which may not fall directly within the prohibition contained in clause (b). But, in the present case, the facts constituting the two sets of offences are not the same. The facts which are alleged, in so far they are relevant for proof of the offence committed in relation to the false entry in the stamp register are quite distinct from the facts which are alleged for proof of offence committed in relation to the contract of sale. Mention must also be made of the decision of Their Lordships of

the Supreme Court in *Basil-ul-Huq, v. State of West Bengal*⁷, In that case, a complaint was made for offences under Sections 297 and 500, Indian Penal Code. The contention was that the complaint disclosed offences under Sections 182 and 211, Indian Penal Code, and that that being so, cognizance of the offences under Sections 297 and 500, Indian Penal Code, was barred as cognizance under the latter two Sections 182 and 211 was barred under Section 195, Criminal Procedure Code. Their Lordships held that the cognizance was not so barred. They did so because the offence under Section 297 was alleged to have been committed after the making of the alleged false report which constituted the offences under Sections 182 and 211, Indian Penal Code, and that the

⁷1955 Cri LJ 716 : AIR 1955 Mad 237

⁸ AIR 1953 SC 293

cognizance of the offence under Section 500

was not barred because it constituted a distinct offence from the aforesaid two offences. This decision, in our judgment, is not in any way inconsistent with the view which we are disposed to take. On the contrary, in our judgment, in so far as Their Lordships have decided that cognizance of the offence under Section 500 could be taken, the decision is contrary to the principle for the application of which Mr. Desai contends. But, Mr. Desai strongly relies upon the following observations made by Their Lordships in that case at page 296 :-

"In other words, the provisions of the Section (S. 195) cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195, Criminal Procedure Code."

It is difficult to set how this principle can at all be applied to the facts of the present case. In our judgment, the provisions contained in clause (c) must be strictly construed. It should be so construed because it encroaches upon the jurisdiction of the ordinary criminal Court which has been empowered to punish offences. Section 195 is, as already stated, in the nature of an exception and engrafted by way of an exception to the ordinary powers of the criminal Court. In our Judgment. It will not be proper to construe that section in such a manner as to restrict the jurisdiction of the criminal Court unless such a restriction is expressly provided for or necessarily follows from the language used by the Legislature. Bearing this principle in mind, it is not possible to agree with the submission of Mr. Desai that the prohibition contained in clause (c) aforesaid should, be extended to the first set of alternative offences in the charge in so far as they relate to the commission of the crime in relation to the stamp register.

30. That brings us to the first question as to whether the prohibition applies to the offences alleged to have been committed by respondent No. 1 who was not a party to the proceedings before the Tribunal. Now, so far as the principal charge under Section 467 read with Section 34 is concerned, there is no doubt whatsoever that the case of the respondent No. 1 will fall within the principle enunciated in Jashwantial's case 62 Bom LR 527 (FB) aforesaid, Mr. Vidhyarthi does not raise any dispute about this. But, he seriously contends that as regards the principal charge of abetment of the offence under Section 467 and the second alternative set of charges under Section 467 read with Section 109, Indian Penal Code, the principle enunciated aforesaid does not apply. The contention is grounded on his submission that the abetment of an offence does not fall within the purview of the aforesaid decision of the Full Bench. In this connection, reliance is placed upon the following observations made by the learned Chief Justice at page 533 :-

"In *Fakir Singh v. The Crown*⁹, it was held that there is nothing to prevent the trial
⁹ ILR 10 Lah 442 : AIR 1928 Lah 787
of an abettor of an offence referred to in Section 195(1)(c) of the Criminal Procedure Code, committed by a party to a proceeding in Court, without a complaint by the Court concerned under Section 476 of the Criminal Procedure Code. With respect we agree with the view taken in this case, because the offence of abetment is a distinct and different offence from the offence abetted.

31. In ILR 10 Lah 442 : AIR 1928 Lahore 787, the contention that clause (c) applies even to persons who are not parties to a proceeding was rejected and In re, Narayan Dhonddev, 12 Bom LR 383, was dissented from. In that case, the Division Bench was called upon to decide whether clause (c) aforesaid prohibits the trial not only of the parties, but of the abettors and conspirators as well, when the offence was committed by a party to any proceeding in any Court. The Division Bench, after referring to the two conflicting views on the interpretation of the expression "party to any proceeding", rejected the construction which included non-parties as being contrary to the ordinary canons of construction and expressed itself at p. 445 (of ILR Lah) in the following terms on the ground of anomaly on which the construction was sought to be supported :-

"Counsel contended that it would be extremely anomalous that an actual party should only be prosecuted on the complaint of a Court, whereas a person merely abetting the offence could be prosecuted on a complaint by a private individual. I do not see any great anomaly in the matter myself, but even supposing there is some anomaly that would not justify the Court in departing from a number of rulings laying down a certain construction, and if I may with all respect say so, a natural construction, and adopting a construction which would make the words of no meaning whatsoever." Thereafter, the Division Bench proceeded to consider a limited argument that, in any case, the abettors of a party to the proceeding would be included within the purview of clause (c) and considered the argument which was based upon 12 Bom LR 383. The Division Bench

repelled that argument in the following way :-

"Counsel relied on 12 Bom LR 383 for the proposition that at any rate abettors of a party committing an offence could not be tried except on a complaint by the Court concerned. No doubt that ruling supports him, but with all respect to the learned Judges who decided that case I am unable to agree with the reasoning given by their Lordships. It seems to me that the correct view is laid down in *Emperor v. Ghansham Singh*¹⁰, and *Debilal v. Dhajadhari Goshami*¹¹, and in our own ruling *Emperor v. Bal Mukund*¹², and there is nothing to prevent the trial of an abettor of an offence committed by a party to a proceeding in Court, without a complaint by the Court under Section 476, Criminal Procedure Code."

It will be observed that Fakir Singh's case, ILR 10 Lah 442 : AIR 1928 Lahore 787 was decided on a principle which was directly negated by the Full Bench case in *Jashwantlal*. In spite of this, the teamed Chief Justice Chainani stated that the Full Bench agreed with the view taken in that case. Now, obviously, that agreement could not have been expressed on the basis of the principle on which Fakir Singh's case was decided. The correctness of the case was accepted by the Full Bench, as appears from the passage quoted above, only on the ground that the offence of abetment was a distinct and different

¹⁰(10 Cri LJ 497 (All))

¹² AIR 1928 Lah 510

¹¹(12 Cri LJ 101 (Cal))

offence from the offence abetted.

32. Now, if we turn, to 12 Bom LR 383, we find that not only the case of a conspirator, but the case even of an abettor was intended to be included in clause (c) above. This appears from the following passage from the judgment on which, apparently, reliance was placed in Fakir Singh's case, ILR 10 Lah 442 : AIR 1928 Lahore 787 and which was definitely rejected therein :-

"This reading of the section appears to us to involve no undue straining of the language and to give a more reasonable interpretation than is arrived at by the rival construction; for, upon that construction while the prosecution of the main offender could not be instituted without a sanction, 'any minor aiders or abettors or accessories of his could be prosecuted without a sanction.' That, we think, is hardly a result likely to have been contemplated, and we observe that Sub-Section (5) of Section 195 appears to fend countenance to the view which we have adopted." (Italics (here into above) are ours). From the aforesaid discussion, it appears to us to be clear that the Full Bench in *Jashwantlal*, 62 Bom LR 527 did not approve of the above passage in 12 Bom LR 383 case in so far as it included an abettor of a party to a proceeding in clause (a).

33. Though, in one passage, the Full Bench has stated that "..... it seems To us that the correct view is that Section 195 (1)(c) will apply, even when the person accused of the offence in respect of a document produced in a Court was not a party to the proceeding, in which the document was produced, provided such offence was committed by him jointly with a person who was a party to the proceeding", in a previous and a subsequent part of the judgment, the Full Bench has

enunciated the principle slightly in a different manner by stating that the clause applies "provided the offence with which he is charged is the same as is alleged to have been committed by the persons who were a party to the proceeding". It will be observed that, whereas in one part of the judgment Their Lordships have formulated the test of Joint commission of an offence, in another, they have applied the test of the offence being the same. All the same, in our judgment, it is crystal clear that the Full Bench did not accept the entire principle as enunciated in 12 Bom LR 383 case and formulated the test of either joint commission of an offence or the offence being the same. In that view of the matter, the offence of abetment and the commission of the principal offence being two distinct offences, would not come within the purview of a the principle laid down in the Full Bench case and the aforesaid observations which we have extracted from the judgment in 12 Bom LR 383 case no longer represent the correct law on the subject. However, though it is correct to say that an offence of abetment is distinct from the offence which is abetted, it is important to bear in mind that if the offence of abetment itself is jointly committed by one and the same set of persons, then, the offence will come within the purview of clause (c) if one of the Joint perpetrators of the offence of abetment happens to be a party to a proceeding.

34. It is in the light of the aforesaid principles that the validity of the institution in respect of the offences of abetment with which the three respondents have been charged has got to be considered.

35. The principal charge under Section 467 is levelled against the three, respondents in conjunction with Section 34 and/or Section 109, Indian Penal Code. So far as the charge is under Section 34, it is quite clear that it would fall within the principle enunciated by the Full Bench. The question is whether the joint and/or the alternative charge for the offence under Section 109 falls within that principle or not. Having regard to the aforesaid discussion, in our judgment, this charge will also fall within the principle enunciated by the Full Bench. The offence of abetment of the offence under Section 467 is alleged to have been committed jointly by all the three respondents. Thus, the offence of abetment is alleged to have been committed by them jointly with each other and, therefore, the cognizance of the first set of offences is barred under Section 195, Criminal Procedure Code.

36. The first alternative, set of charges, in so far as they relate to the stamp register, has already been, considered by us and we have held that they do not fall within the mischief of clause (c). In so far as the contract of sale is concerned, the charge against respondent No. 1 is the principal charge under Section 465 and there is an alternative charge under the same section read with Section 109 against respondent Nos. 2 and 3. Respondent No. 1 is alleged to have committed the principal offence under Section 465, Indian Penal Code, as a result of the abetment of respondents Nos. 2 and 3. The offence of abetment being distinct from the principal offence, in our judgment, it would not fall within the purview of the principle enunciated by the Full Bench and the prosecution of the respondent No. 1 under Section 465 in respect of the contract of sale will not fail within the mischief of clause (c).

37. As regards the second alternative set of charges, respondent No. 1 is alleged to have committed the offence under Section 467 read with Section 109, Indian Penal Code. The offence alleged against respondent No. 1 being different from the offences alleged to have been committed by respondents Nos. 2 and 3, the prosecution of the respondent No. 1 in respect of even the contract of sale, being the offence under Section 467 read with Section 109, will not fall within the mischief of clause (c).

38. The result of the aforesaid discussion is that the cognizance of the following offences alleged to have been committed by the respondent No. 1 is not barred by clause (c) aforesaid :-

(1) In the first alternative set of charges, the charge under Section 465, Indian Penal Code relating to the commission of forgery of an entry in the stamp register and the commission of the forgery of the endorsement of supply of stamp paper on the same.

(2) In the second alternative set of charges, the charge under Section 467 read with Section 109, Indian Penal Code.

39. So far as the respondents Nos. 2 and 3 are concerned, the cognizance of the following offence is not barred :-

(1) In the first alternative set of charges, the charge under Section 465 read with Section 109 relating to the commission of the offence of forgery in relation to the false entry in the stamp register and the commission of forgery of the endorsement of supply of stamp paper on the same.

The rest of the offences with which the respondents Nos. 1, 2 and 3 are charged would fall within the mischief of clause (c) aforesaid.

40. On the aforesaid findings, one further point is raised by the learned counsel for the respondents. They urge that inasmuch as some of the offences with which the respondents were charged fall within the mischief of clause (c) aforesaid, the cognizance is also barred of the other offences which do not fall within the purview of that clause. The submission is that, as sanction is necessary in respect of some of the offences, the institution of the prosecution as a whole is incompetent and, that being so, the incompetency will attach not only to the institution of the complaint in respect of the aforesaid offences but it will attach to the complaint as a whole. We cannot agree with this submission for mere than one reason. In the first instance, there is authority for the proposition that such a result does not follow when the cognizance of some offences is bad and that of some other offences is good. In *State v. Laldas*¹³, a similar question arose for decision. In that case a person was convicted for offences some of which were not cognizable by the criminal Court without the proper sanction. The trial in respect of the offences for which sanction was necessary was held to be void. The question arose as to whether the trial

in respect of the other offences was also not void. This contention was repelled by Their Lordships in the following words :-

"Mr. Jahagirdar, however contends that this infirmity makes the trial of all the accused persons in respect of all the offences void. In other words, the whole of the trial is void and the order of conviction and sentence passed by the learned Sessions Judge against the other accused in respect of the other offences also must be set aside for that reason. We find it difficult to accent this contention. There is no doubt that so far as the other accused persons are concerned, they were properly charged and have been, properly tried. The joinder of the persons, and the joinder of the charges against them are wholly consistent with the provisions of the Criminal Procedure Code. The learned Sessions Judge had jurisdiction to try the other offences charged against all the accused including accused No. 7."

In our judgment, the same principle must apply to the present case. It is difficult to understand as to how because some of the offences are barred from the jurisdiction of the learned Magistrate, the cognizance of the other offences should also be held to be barred. In our judgment, if the matter had been brought to the notice of the learned Magistrate at the time the charge-sheet was presented before him, he had the fullest jurisdiction and power to issue a summons in respect of those offences, the cognizance of which he was competent to take. The mere fact that he also simultaneously issued a summing in respect of the offences of which he could not have taken cognizance, could not render his order issuing the process of the Court in respect of the offences cognizable by him invalid. The reference is made to us under Section 215, Criminal Procedure Code. The only question for our consideration is whether the order of the commitment of the learned Magistrate was legal or not. As a result of our aforesaid conclusion, we cannot say that the whole of the order of commitment was bad. All that we can say is that the commitment in respect

¹³⁵⁴Bom LR 955 : AIR 1953 Bom 177

of some of the offences was bad. Therefore, the only proper order which this Court can pass is one of quashing that part of the order which is illegal. It would not be proper for this Court to quash any part of the order which is legally made. Moreover, it is quite clear that, even if we were to quash the committal order as a whole, that would not, in any way, wipe off the proceedings before the learned Magistrate. Our order quashing the commitment order will have the effect of only setting aside the order of commitment and the matter will be relegated to the same position where it was before the order of commitment was passed. In that case, the proceedings will have to be taken by the learned Magistrate afresh and the learned Magistrate will necessarily decide, because of the present Judgment, that his cognizance in respect of the aforesaid offences was barred. But having done so, there will be no reason, whatsoever for the learned Magistrate to refuse to take cognizance in respect of the offences of which he was in law authorized to take. It would be wrong indeed for the learned Magistrate to do so. Therefore, even if we quash the order of the learned Magistrate as a whole, the result, would still to that as will

start the proceedings de novo in respect of the offences of which he is entitled to take cognizance, and if satisfied that there is a prima facie case in respect of those other offences, he will have to commit the respondents over again in respect of those other offences and the Sessions Judge will have to try the three respondents over again in respect of those offences. We fail to see any reason why the proceeding should undergo a second gamut in the aforesaid manner. There is no reason why the proceedings which have already been undertaken should go waste, which would be the result if the aforesaid contention is upheld.

41. It is, however, urged that in law we cannot pass an order of partial quashing of the commitment order. It is contended that the commitment order is one as a whole and that if we are satisfied that a part of it is bad, then, the whole of the committal order must be set aside. For the reasons which we have already given in rejecting the last contention, we must reject this contention also.

42. Mr. Desai and Mr. Oza, however, contended that the trial of all the respondents in respect of offences the cognizance of which was barred by the criminal Court is bound in itself to have caused prejudice to the respondents in respect of the trial of the offences of which cognizance was competent to the criminal Court. In our judgment, this contention also deserves to be rejected. In the first instance, the question as to whether the trial which has already been held is or is not a proper trial is not the question which is before us and which we have to decide. We are not dealing with the question of the, validity or the propriety of the trial held by the learned Sessions Judge. We are dealing only with the question as to whether the commitment order is proper or not. Therefore, it will be wrong for us to consider as to what effect the trial of the respondents of the offences, the cognizance of which was bad, along with the offences, the cognizance of which was good, has upon the trial as a whole. The proper forum in which that question should be raised is the forum of the learned Judge who is trying the respondents. It is for the learned Judge to decide as to whether the joinder of the good and the bad charges has, in fact, caused any prejudice to the respondents. In this connection, we may only note that a similar contention was also raised in 54 Bom LR 955 : AIR 1953 Bombay 177 already referred to, in the following words at p. 961 (of Bom LR) :-

"If the trial of accused No. 7 in respect of the offence under Section 218 along with the trial of the other charges is shown to have caused any prejudice to the other accused or even to accused No. 7 in respect of the other charges framed against him, it would be a different matter. But without the proof of prejudice we do not see on what principle the whole of the trial could be treated as void merely because a part of the trial of one of the accused persons has become void under Section 197."

This view is supported by the decision of Their Lordships of the Federal Court in *Hori Ram Singh v. The Crown*¹⁴, In that case, an order partially quashing the prosecution of an appellant under Section 477-A, Indian Penal Code, was made on the ground that the necessary sanction for

the prosecution under the section was not obtained, but the appeal was allowed to be prosecuted further for the offence under Section 409, Indian Penal Code, for which no sanction was necessary.

43. In the aforesaid view, we cannot agree that the whole of the order of commitment should be quashed.

44. For the aforesaid reasons, we have come to the conclusion that the order of commitment in so far as it relates to the offences other than those which we have enumerated on page 41 (paras 38 and 39 of this report) of this judgment should be quashed and that the trial of the three respondents in respect of the offences enumerated on that page should be proceeded further. Rule made absolute to the aforesaid extent.

45. Before we close this judgment, we may mention that we should not be taken to have impliedly decided that the reference was properly made after the trial had begun and even the trial had almost ended. There appears to be conflict of judicial opinion as to whether, in such a contingency, the order of commitment should or should not be quashed. We do not express any opinion on this controversy. We proceeded to decide this reference because the aforesaid conflict was not brought to our notice and we came to know about it ourselves only at the fag end when we thought it not proper not to express our opinion after having heard lengthy and learned arguments on the points of law involved in the case.

Rule partly absolute.