GUJARAT HIGH COURT

State of Gujarat

Vs.

Ali Bin Rajak

Criminal Reference No. 59 of 1966

(N.M. Miabhoy C.J., J.B. Mehta and A.D. Desai, JJ.)

04.05.1967

JUDGMENT

A.D. Desai, J.

1. I regret my inability to agree on the construction of Section 195(1)(c) of the Criminal Procedure Code. The facts have been stated in the judgment of the learned Chief Justice and I need not restate them.

2. The reference has been made on the ground that the decision in the case of *Noor Mohamad Cassum v. Kaikhosru Afaneckjee*[1] to the effect that sanction under Section 195(1)(c) of the Criminal Procedure Code for an offence under Section 471 of the Indian Penal Code is not necessary in respect of a use made of the document outside the Court, is not approved in the subsequent decisions in *Emperor v. Sanjiv Ratnappa*[2] and *Emperor v. Rachappa Yellappa*[3] The relevant part of Section 195 is as under:

> "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 is subordinate.

(2) In Clauses (b) and (c) of Sub-section (1) the term "Court" includes a Civil. Revenue or Criminal Court, but does not include a Registrar or a Sub-Registrar

[11]4 Bom. L.R.268 [33]8 Bom. L.R.440

[23]4 Bom. L.R. 1090

under the Indian Registration Act, 1877.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate;

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

The provisions of the section bar the cognizance by any Court of the offences mentioned therein except on a proper complaint. It makes a distinction between complaints by a public servant and by a Court. Again, there is a difference between Clauses (b) and (c) of the section. Clause (b) refers to offences that are alleged to have been committed in, or in relation to, any proceeding in any Court; whereas Clause (c) refers to a document produced or given in evidence by a party to the Proceedings. The offence is identified in Clause (b) by reference to the fact that it has a direct connection with some proceedings in a Court i.e. having been committed in, or in relation to the proceedings. In Clause (c), the offence has been identified not with reference to the proceedings but with reference to a document produced or given in evidence in the proceeding to which the person committing the offence is a party. Section 476 of the Criminal Procedure Code prescribes the procedure for making complaints by the Courts.

3. Two different and divergent interpretations have been placed before us on the meaning and effect of Section 195(1)(c) of the Code. Mr. Trivedi contended that when an offence described in Section 463 or an offence under Section 471 is alleged to have been committed by a party to a proceeding and in respect of a document produced or given in evidence in the proceedings, a complaint by the Court would be necessary to prosecute the person. The argument was that the material and relevant date to be considered under the section is the date on which the Court is invited to take the cognizance of the complaint and in order to attract the provisions of the sub-clause, two ingredients are to be satisfied viz. (i) the offence mentioned in the sub-clause must be alleged to have been committed by a party to the proceedings (ii) and in respect of a document produced or given in evidence in the proceeding. The offence mentioned in the section might have been committed prior to the date of cognizance but if the Court is satisfied of the above

ingredients, the complaint could be filed only by the Court. For this proposition, reliance was placed on the decisions of *Emperor v. Sanjiv Ratnappa*[4] *Emperor v. Rachappa Yellappa*[5] *Nalini Kama Laha v. Anukul Chandra Laha*[6] *Thadi Subbi Reddi v. Emperor*[7] *Hayat Khan v. Emperor*[8] *Re. Parmeswaran Nambudri*[9] *Satya Dev Bushehari v. Ghansiam,*[10] and *Harprasad v. Hans Ram*[11] The same view is also taken in *King Emperor v. Raja Mustafa Ali Khan*[12]

[4]34 Bom. L.R. 1090 [6] I.L.R. 44 Gal. 1002 [8] A.I.R. 1932 Sind 90 [10] AIR 1953 Him Pra 117
[5]38 Bom. L.R. 440, [7] A.I.R. 1930 Mad. 869 [9] I.L.R. 39 Mad 677 [11] A.I.R. 1966 All
[12](1905) Oudh. Cases 313

4. Mr. Nanavati contended that sub-clause would apply only to cases where an offence mentioned in the sub-clause is alleged to have been committed by a party as such to a proceeding in any Court in respect of a document which has been produced or given in evidence in such proceeding. The argument in short was that the offence mentioned in the sub-clause must have been committed during the pendency of the proceeding by a party to the proceeding and in respect of a document produced and given in evidence and on these conditions being satisfied the provisions of the section would apply and the complaint could be filed by the Court only. Reliance was placed on the decision of *Noor Mohamad Cassum v. Kaikhosru Maneckjee*[13] *Emperor v. Kushal Pal Singh*[14] and *Lalta prasad v. Emperor*[15]

5. The question is which of the two interpretations should be accepted. Section 195 bars the Court from taking cognizance of the offences mentioned in the sub-clauses unless the conditions laid down in these clauses are satisfied. The complaint in such cases is to be filed by the Court mentioned in the Sub-clauses (b) and (c). The Magistrate has to examine the facts of the complaint before him when he is taking cognizance of an offence upon receiving a complaint. Thus, the relevant date to determine his power of taking cognizance is the date when the complaint is presented to him. The Court has to ask itself whether it is debarred from taking cognizance by reason of the provision of Section 195 of the Code. The Supreme Court in *M.L. Shelhi v. R.P. Kapur and Anr*[16]*.,* has on this point held as under:-

> "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 these clauses are satisfied. In the cases of an offence punishable under Section 211, Indian Penal Code 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-section (1) of Section 195 is thus clearly a limitation on the power of the Court to take cognizance under Section 190. Consequently, it is at the stage when a Magistrate is taking cognizance under Section 190 that he must examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by Clause (b) of Sub-section (1) of Section 195 Criminal Procedure Code"

Therefore, at the date when the Court is called upon to take cognizance, the Court has firstly to see whether the person who is alleged to have committed the offence is a party to the proceeding in which the document was produced or given in evidence. It has further to investigate whether the offence alleged to be committed is in respect of a document produced or given in evidence in the proceeding. If these conditions are satisfied the Court in which the document is tendered in evidence can file a complaint. But it is said that the words "when" any proceeding in any Court in respect of a document produced or given in evidence in such proceeding" must be read together and the true

[13]4 Bom. L.R. 268 [15]34 All. 654
[14]53 All. 804 (F.B) [16] AIR 1967 S.C. 528

construction of the phrase is that the offence alleged to have been committed must have taken place during the course of the very proceedings. I am unable to accept this construction. The phrase qualifies the word "offence" and the offence must be alleged to have been committed by a party to any proceeding in any Court. The alleged offence must be in respect of any document produced or given in the proceeding. The offence, in this sub-clause must have connection with the document and not with the proceeding. A comparison of the language used in Sub-clauses (b) and (c) of Section 195(1) also negatives a construction that the offence must be alleged to have been committed in the very proceeding in which the document is produced. In Sub-clause (b), the language used is "committed in, or in relation, to any proceeding in any Court." The Legislature could have incorporated the offence mentioned in Sub-clause (c) in Sub-clause (b) or used the same or similar words in Sub-clause (c). Moreover, if such a meaning is given to the sub-clause, it can have little effect. As has been observed by Beaumont, *C.J. in Emperor v. Rachappa (supra)* that:-

> "But it is suggested that the words 'committed by a party to any proceeding in any Court, mean that the alleged offence must have been committed by a person who was at the date of the committal of the offence a party to the proceedings in a Court, and must also have been in respect of a document produce evidence in such proceeding. If that is the meaning of the section, it seems to me that it can have but little effect, because people who are minded to launch false cases, and to support their cases by forged documents, do not, as a rule, launch the case first and then forge the documents on which they propose to rely. They prepare the ground beforehand. They forge their documents first, and then launch their proceedings based on those documents. So that if the section is only to apply to a person who commits forgery, whilst he is a party to a proceeding, or documents, used in those proceedings, the section will very rarely have any application. That view of the matter has appealed to most of the High Courts in India and there is a long current of authority in which it has been held that if at the time when the Court is asked to take cognizance of a complaint the accused is a party to proceedings in a Court in which the document has been produced or used in evidence, then the bar contained in Section

195(1)(c) applies. That view prevailed in the cases of *Emperor v. Bhawani Das*[17] *Nalini Kanta Laha v. Anukul Chandra Laha*[18] *Teni Shah v. Balahi Shah*[19] *Kanhaiya Lal v. Bhagwan Das*[20] and *Khairati Ram v. Malawa Ram*[21] and in a case in the Court of the Judicial Commissioner in Sind, *Hayat Khan v. Emperor*[22] I think also that the reasoning adopted in those cases was approved by the Madras High Court *in Re Parameshwaran Nambudri* [23]though that was actually a case under Sub-clause (b)..xxxx..xx. The great majority of offences which fall to be dealt with under Section 476 are committed in relation to proceedings in Court rather than in proceedings in Court. I should think that only rarely would a case arise in which a forged document produced or given in evidence in Court had not been forged in relation to the Court proceedings."

Therefore, the correct interpretation of Section 195(1)(c) of the Code is that where an

[17](1915) I.L.R. 38 All. 169 [19](1909) 14 C.W.N. 479 [21](1924) I.L.R. 5 Lab. 55
[18](1917) I.L.R. 44 Cal. 1002 [20](1925) I.L.R. 48 All. 60 [22](1932) A.I.R. Sind. 90
[23](1915) I.L.R. 39 Mad. 677

offence mentioned in the sub-clause has been committed by a party to a proceedings and in respect of a document produced or given in evidence in the proceeding, the case can be instituted by the Court in which the document is produced or given in evidence in the Court or some other Court to which such Court is subordinate irrespective of the fact that the alleged offence was committed prior to its use in the proceedings. The same view has been taken in the cases cited by Mr. Trivedi and referred to here-in-above.

6. In support of the other view, reliance was placed on the decision in *Emperor v. Laha Prasad (supra)* and particularly on the following observation:

> "As I read Section 195, Clause (c), Courts are prohibited from taking cognizance of an offence described in Section 463 when such offence has been committed by a party to any proceeding in any Court in respect to a document produced or given in evidence in any such proceeding. The section does not remove from the cognizance of Criminal Courts an offence described in Section 463 when such an offence has been committed by an ordinary individual. Suppose, for instance, this very document had never been put into the Civil Court and suppose further that it is a forgery: Is the person who forged it to be free from all prosecution? I do not by this mean to say that I have any reason for saying this document is a forged document. I know nothing about it. As long as the prosecution is confined to offences connected with this document committed prior to its production in Court, such prosecution is within the law and requires no sanction. Sanction is required for offences committed by a party to a proceeding in any Court, in respect to a document produced or given in evidence in such proceeding."

There is an apparent fallacy in this reasoning. Sub-clause (c) is not at all attracted in the case of any "ordinary individual" i.e. to a person who is not a party to any proceeding in any Court and, therefore, the question of the removal from the cognizance of the criminal Court of an offence described therein does not arise. Again, the said sub-clause does not remove from the cognizance of the criminal Court any offence of the description mentioned therein, if the said offence is committed in respect of a document which is not produced or given in evidence in any proceeding in any Court. It is thus clear that the reasons on which the learned Judge deciding that case assigned for the construction of the section as canvassed by Mr. Nanavati are erroneous and irrelevant.

7. It was also suggested that the second proviso to Sub-section (3) of Section 195 also supports the construction that the offence mentioned in the Sub-clause (c) of the section must have been committed in the course of the very proceeding. Under Sub-clauses (b) and (c) of Section 195(1), the complaint is required to be filed by the Court, or some other Court to which such Court is subordinate. Sub-section (2) of Section 195 defines the term "Court" and Sub-section (3) thereof provides that "a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appeal able decrees or sentences of such former Court, or in the case of a Civil Court from whose decree no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate". To this provision there are two provisos. The first relates to cases in which appeals lie to more than one Court. The second proviso lays down that "where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

8. This sub-section and provisos thereto apply both to Sub-clauses (b) and (c) of Section 195(1) of the Code. It is said that the words "according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed" clearly point out that the offence must have been committed in the very proceedings. In my opinion, the argument is not well founded. The material words used in the proviso are "the case or proceeding in connection with which the offence is alleged to have been committed" and not "the case or proceeding in the course of which the offence is alleged to have been committed". The language of the proviso is clear and unambiguous and it is not permissible to assign to it a meaning which is not born out by its plain language. Again, the words "in connection with" are of a wider import and cannot be construed to mean that the offence must have been committed in the very proceedings in which the document is tendered. The reference in the said proviso is to the nature of case or proceeding in connection with which the offence is alleged to have been committed. Reading Section 195(1)(c) with the said proviso it is clear that if the proceeding in which the document is tendered in evidence is essentially a civil proceeding, then Court in which it is tendered shall be deemed to be subordinate to the civil Court. In the other hand if the proceeding in which the document is tendered in evidence is the essentially a revenue proceeding, then the Court in which the

document is tendered shall be deemed to be subordinate to the Revenue Court. The suggestion that the proviso helps the construction of Section 195(1)(c) placed by Mr. Nanavati cannot, therefore, be accepted.

9. It was next suggested that the provisions of Section 195(1)(c) and Section 476 are co-extensive, the former enjoining necessity of a complaint by the Court, the latter prescribing the procedure for making such complaints and strong reliance was placed on *Emperor v. Kushal Pal Singh (supra).* The argument was rejected by Beaumont C.J. in *Emperor v. Rachappa (supra)* in the following words:-

> "The judgment points out that under Section 476 the Court can only take action in relation to an offence which appears to have been committed in or in relation to a proceeding in that Court, and if Section 195(1)(c) applies to offences bearing no relation to proceedings in Court, then there may be cases which fall under Section 195 and in which the bar exists, but in which the method for removing the bar specified in Section 476 does not exist. The argument is that the two sections should be co-extensive, but with all respect to the learned Judges, the construction which they place upon Section 195(1)(c) does not make the sections co-extensive. If Section 195(1)(c) is limited to offences committed by a party as such to a proceeding in Court, then such offence can only be committed in such proceeding, whilst Section 476 covers offences committed not only in, but in relation to any proceeding in any Court. The great majority of offences which fall to be dealt with under Section 476 are committed in relation to proceedings in Court, rather than in proceedings in Court. I should think that only tardy would a case arise in which a forged document produced or given in evidence in Court had not been forged in relation to the Court proceedings If such a case were to arise, the complaint under Section 195(1)(c) would have to be made under the normal process for lodging complaints, and not under the special process provided in Section 476. The Allahabad Court notes that in that event there will be no appeal against a decision to lodge a complaint or a refusal to lodge a complaint such as is given by Section 476 when the case arises under Section 476. That may be so, but in such a case, if the High Court thought that injustice had been done, it could always act in revision. In my opinion, the reasoning of the full bench in *Emperor v. Kushal Pal Singh*[24] cannot be supported. In my view the provisions of Section 195(1)(c) apply if at the time when the complaint is lodged the accused person is a party to a proceeding."

Such an argument was also repelled by *Sulaiman, J. in Kanhaiyalal v. Bhagwan Das (supra)* who observed as under:-

> "The learned Vakil for the complaint argues that this interpretation of Section 195 is not correct because it would conflict with the provisions of Section 476. His contention is that Section 476 is confined to cases where an offence has been committed in or in relation to any proceeding in that Court and he argues that Section 195. must be deemed to be co-

> extensive with that section. I am unable to accept this contention. The expression "committed in or in relation to any proceeding in that Court" which occurs in Section 476 and also occurs in Section 195(b) does not occur in Section 195(e) where the words are "alleged to have been committed by a party to any proceeding in respect of a document produced or given in evidence in such proceeding." I am of opinion that there would be no conflict between the two sections whatsoever. Section 476 speaks of "Civil, Revenue or Criminal Court." It does not refer to any Court other than such Courts, whereas Section 195 refers to Courts in general. To my mind it is clear that the expression "Court" in Section 195 is of a wider scope, than the expression "Civil, Revenue or Criminal Court" in Section 476. This is made particularly clear by the amendment of Section 195(2) which was made by Act XVIII of 1923. It reads "in Clauses (b) and (c) of Sub-section (1) the term 'Court includes a Civil, Revenue or Criminal Court." Obviously, therefore, the word 'Court' is of a wider meaning. It is therefore, quite clear that Legislature, intends that if an Offence has been committed in or in relation to any proceeding in any Civil, Revenue or Criminal Court, that Court alone can start proceeding but that if offences mentioned in Sub-clause (c) are committed in respect of a document produced or given in evidence in such proceeding then also no Court shall take cognizance of them except on the complaint in writing by such Court."

I agree with the aforesaid observations of Beaumont C.J. and Sulaiman, J. I am of the opinion that in Noor Mohamad's case (supra) Sub-clause (c) of Section 195(1) of the Code was wrongly construed.

10. This construction of Section 195(1)(c) of the Code also derives great support from the Legislative intent behind enacting the section. The provisions of Section 195 have been enacted with a view to avoid multiplicity of proceedings. When a document is produced or given in evidence in a Court, it is for that Court to decide whether it is genuine or

[24](1931) I.L.R. 53 A. 804, P. B

forged. If a private party is allowed to lodge a complaint on the basis that the document was forged and if the complaint is entertained without affording an opportunity to the Court before whom the document had been produced to give its opinion, it will lead to an anamolous situation and sometimes to contradictory findings by two competent Courts. On the legislative intent for enacting the section, this Court in the case of *State v. Bhikhubhai, V Guj*[25]. has expressed itself thus:

> "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 present 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 genuine one. It is only in such cases where additional evidence produced before it after it has recorded its decision shows indisputedly that a fraud had been committed upon the Court, or that the document can never be up-held 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 interest 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 nor does not serve the ends of justice."

The apprehended conflict of decisions would result whether or not the alleged forgery was anterior or subsequent to the production of the document in any proceeding in any Court. I, therefore, see no reason to restrict the applicability of Section 195(1)(c) to the cases of subsequent forgery only.

11. In the aforesaid view of the matter, I hold that the correct interpretation of Section 195(1)(c) is that on the date on which the criminal Court takes cognizance of the offence mentioned in the clause, the Court has to satisfy itself whether the offence in respect of which it is called upon to take cognizance is alleged to have been committed by a party to a proceedings in any Court and whether the alleged offence is in respect of a document produced or given in evidence in such proceedings. If these conditions are satisfied, the Criminal Court will have jurisdiction to entertain the complaint only if it is filed by the Court in which it is tendered in evidence by the party to the proceeding or by some other Court to which such Court is subordinate, irrespective of the fact whether the alleged offence of forgery was committed before the proceedings were initiated or thereafter.

12. The case should, therefore go back to the Division Bench for disposal according to law in the light of the aforesaid observations.

[25] L.R. 229

Per Miabhoy, C.J. for himself and Mehta, J.:

13. This Full Bench has been constituted on a reference made by a Division Bench consisting of Divan, J. and V.R. Shah, J. to consider the correctness of the decision recorded in *Noor Mahomad Cassum v. Kaikhosru Mcmeckjee reported in*[26] The correctness of this decision was doubted, first by Broomfield, J. in *Emperor v. Sanjiv Ratnappa reported in*[27] page 545 wherein, the learned Judge, after noticing that the above case bad not been followed by some other High

Courts and that there were contrary decisions of some other High Courts, observed that "it may perhaps be necessary at some other time to consider whether the law was correctly stated on the facts of that case." The same decision was further doubted by a Division Bench consisting of Beaumont, C.J. and N.J. Wadia, J. in *Emperor v. Rachappa Yellappa reported in*[28] The decision in Noor Mahomad Cassum's case was that, under Section 195(1)(c) of the Criminal Procedure Code (hereafter called the Code), as it then stood, sanction for prosecuting a party to a proceeding for an offence under Section 471 of the Indian Penal Code was not necessary "in respect of a use made outside" the Court in which the document was subsequently produced. The two Bombay cases in which the correctness of Noor Mahomad Cassum's case was doubted were cases under Section 466 of the Indian Penal Code but in which the offences were committed before the production of the allegedly fabricated documents in the Court in which it was contended that the sanction of the Court in which those documents were produced was necessary. If Noor Mahomad Cassum's case was correctly decided, then, as we shall presently point out, the decisions recorded in the above two Bombay cases would be incorrect and vice versa. However, the learned Judges who decided the latter two cases felt that the language used by the Legislature in Section 195(1)(c) of the Code was so clear and wide that it was not possible for them to reach any conclusion other than the one which they had come to and, therefore, they recorded conclusions contrary to those which otherwise they would have had to record on the basis of the ratio contained in Noor Mahomad Cassum's case. But, the learned Judges preferred to distinguish the two sets of cases on the ground that Noor Mahomad Cassum's case dealt with an offence under Section 471, whereas, they had to deal with an offence under Section 466, Indian Penal Code, leaving it for the future time to overrule Noor Mahomad Cassum 's case, if and when a direct case under Section 471 arose for decision.

14. The question which arises for decision of this Full Bench is of considerable importance. It relates to the interpretation of Section 195, Sub-section (1), Clause (c) of the Code. As we shall presently show, the inter predation of the latter clause has evoked diversity of views and considerable difference of judicial opinion, not only in the High Court of Bombay, but, also in a number of other High Courts where the same or similar question arose for decision.

15. Before we undertake discussion of the point raised for our decision, it will be convenient to mention the facts which have given rise to the case in which this Full Bench has been constituted. Hargovind Kalidas obtained a decree against Ali Bin Rajak of Junagadh, in the Court of the learned Civil Judge, Junior Division, Visavadar, District Junagadh.The former is the complainant in the case and the latter the accused. Hargovind filed an execution application bearing No. 19 of 1963 for recovering his decretal dues, in

[26]4 B.L.R., page 268 [28]38 B.L.R. page 440

[27] A.I.R. 1932 Bom

the course of which, the Court attached an amount payable by the Mamlatdar, Dhari, to Ali Bin Rajak under an annuity card. A garnishee order was served by the Civil Court upon the Mamlatdar, Dhari. Ali Bin Rajak thereafter appeared before the Mamlatdar and stated that he had paid up the decretal amount to Hargovind. The Mamlatdar required Ali Bin Rajak to produce the

receipt for the payment. Thereupon, Ali Bin Rajak produced before the Mamlatdar, on 27th July 1964, a receipt, dated 23rd May 1964, purporting to be signed by Hargovind. Thereupon, the Mamlatdar paid the amount due under the annuity card to Ali Bin Rajak and made a report to the Civil Court at Visavadar, enclosing the receipt produced by Ali Bin Rajak. The Civil Court called upon Hargovind to show cause why his Darkhast should not be disposed of. Hargovind, however, contended that no amount was ever paid to him by Ali Bin Rajak, and alleged that the receipt produced before the Mamlatdar was forged. Thereupon, the Civil Court issued a notice to the Mamlatdar, calling upon him to show cause why he should not be held up for contempt of Court. The Mamlatdar regretted his action in making the payment without the order of the Court and explained how he had been made to rely upon the word of Ali Bin Rajak and the produced receipt. However, the Mamlatdar got the amount produced by Ali Bin Rajak and forwarded the same to the Civil Court. The amount was produced by Ali Bin Rajak under protest and subject to his right to recover the same. Thereafter, Hargovind lodged a first information with the Police Station at Dhari. On the completion of the investigation, the P.S.I. sent a charge-sheet on 28th of February 1965, alleging that Ali Bin Rajak had been guilty of commission of certain offences. The case was enquired into by the learned Magistrate, First Class, Dhari who, finding a prima facie case, committed Ali Bin Rajak to take his trial in the Sessions Court at Amreli. The charges which were framed by the learned Magistrate were two in number. One of the charges was under Section 467 of the Indian Penal Code be quashed, that the accused be discharged of the offence under that section and that the committal order in respect of Section 420 of the Indian Penal Code. This reference came up for hearing before Shelat, J. in the first instance. That learned Judge, by his order pronounced on 1st February 1967, referred the matter to a Division Bench. The reference came up for hearing before Divan, J. and V.R. Shah, J. and, as already indicated, those learned Judges made the present reference by their order pronounced on 22nd February 1967, for the reasons already indicated, to a Full Bench.

16. The question which arises for decision of the Full Bench is whether the Criminal Court can take cognisance of the offence alleged to to have been committed on 24th of July 1964, by its anterior user before the Mamlatdar, Dhari, without a complaint from the Civil Court in which the document was subsequently produced by reason of the Tact that the accused was a party to the civil proceeding when the document was produced before the Mamlatdar, and the document happened to be subsequently produced in the civil Court inspite of the fact that the user in regard to which the offence is alleged to have been committed was mad; before the Mamlatdar before the date of its" production in the Civil Court.

17. It will be convenient at first to read Section 195, on the interpretation of one of the clauses of which the answer to the above question depends. Section 195 reads 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, 199, 200, 205, 207, 208, 209, 210, 211 and 223, 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.

(c) of any offence described in Section 463 or punishable under Section 417, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party in any proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

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

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate;

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of Sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences; and attempts to commit them.

(5) Where a complaint has been made under Sub-section (1), Clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint."

Sub-section (1) is the material section. It prohibits a Criminal Court from taking cognizance of the offences mentioned in Clauses (a), (b) and (c) thereof. The offences mentioned in Clause (a) are described in the marginal note as "contempt of lawful authority of public servants". The offences mentioned in Clause (b) are described in the marginal note as "certain offences against public justice. " The offences mentioned in Clause (c) are described in the marginal note as "certain offences relating to documents given in evidence. " The circumstances under which the cognizance's of the offences are barred are mentioned in each of the clauses in relation to the offences mentioned therein. The prohibition contained in Sub-section (1) is not absolute. In

regard to the offences mentioned in Clause (a), the sub-section says that, cognizance shall not be taken except on a complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. In regard to the offences mentioned in Clauses (a) and (b), the clauses say that, cognizance of those offences shall not be taken "except on the complaint in writing of such Court or of some other Court to which such Court is subordinate. "Sub-section (2) defines the term "Court" as used in Clauses (b) and (c), the definition being inclusive. It says that, the term "Court" includes a Civil, Revenue or Criminal Court. Sub-section (3) explains the circumstances in which one Court shall be deemed to be subordinate to another. Proviso (b) to Sub-section (3) indicates the subordination of one Court to another when appeals lie both to a Civil and a Revenue Court from the decrees or sentences of the subordinate Court.

18. Now, a perusal of Clause (c) of Sub-section (1) shows that the offences dealt with by that clause are those described in Section 463 or punishable under Sections 471, 473, 475 and 476 of the Indian Penal Code. There cannot be any dispute about the interpretation of this particular part of the clause. In fact, there is none so far as this case is concerned. The circumstances under which Clause (c) becomes applicable which would debar a Criminal Court from taking cognizance of the above offences have been mentioned in that clause as follows:

> "..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.."

The controversy which has arisen in the present case depends upon the correct interpretation of this part of Clause (c). This part can be read in two ways. One way of reading it is to divide it into two parts, each part being read disjunctively from the other. The second way in which it can be read is that, the two parts are read conjunctively and as one composite sentence. In whatever way it is read, it is quite clear that, of necessity, the clause must be read in conjunction with the opening words of Sub-section (1), "No Court shall take cognizance". Therefore, if the above part of Clause (c) is read in either of the two ways along with the commencing part of Sub-section (1), it will lead to the following result. Each time the question arises about the application of Clause (c), the question has to be answered with reference to the time when the Criminal Court is invited to take cognizance of the offence concerned. Every time a Criminal Court is invited to take cognizance of the offence or offences, a question has got to be asked, whether, the offence concerned "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." If the above part is read disjunctively, then, two questions require to be asked. The first question is whether the person who is alleged to have committed the offence a party to any proceeding when the Court is invited to take cognizance of the offence. The second question which requires to be asked is, is the document, in regard to which the offence is alleged to have been committed, produced or given in evidence in such proceeding? On the other hand, if the sentence is read conjunctively as one composite sentence, the question which will have to be asked will be whether the 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? It is obvious that, different result will follow according as the clause is read in one or the other way. If the clause is read in the first way, then, the clause will apply, no matter when the offence is alleged to have been committed, if the person committing the offence is a party to a proceeding and the document happens to be produced or given in evidence in such proceeding, at the time when cognizance is invited to be taken by the Criminal Court. On the other hand, if it is read in the second way, then, cognizance of the Criminal Court will be barred only if the offence is alleged to have been committed in respect of a document already produced or given in evidence in a proceeding, provided, the offence is alleged to have been committed by a party to such proceeding. Under the second reading, anterior offences do not come within the mischief of Clause (c). The only offences which come within the mischief are those which are committed by a party in regard to a document which is already produced or given in evidence in the proceeding in which the person accused is a party. The first reading will make the scope of Clause (c) wider than the second reading. Under the second reading, Clause (c) is confined only to these cases where the offences mentioned in the clause are committed in respect of documents produced or given in evidence in a Court proceeding after they are so produced or given in evidence. On the other hand, the first reading makes the clause applicable to cases of documents in respect of which offences are committed which happen to be produced or given in evidence in any Court proceeding subsequent to the time when the offences in regard to them have been committed. The scope of Clause (b) is restricted to offences which are alleged to have been committed "in or in relation to any proceeding in any Court." The first reading makes the scope of Clause (c) wider than the scope given to Clause (b) by the aforesaid expression. The second reading, however, make the scope of Clause (c) narrower than the scope of Clause (b), inasmuch as, in that contingency, under Clause (c) the offence must necessarily be restricted to a document produced or given in evidence in any Court proceeding. The question for consideration is, which of the above two possible interpretations is proper.

19. Before we arrive at a final conclusion, it would be useful to consider the interpretations which appealed to the various Judges who have had occasion to deal with the interpretation of Clause (c). A number of cases were cited before us at the Bar. Whilst a few cases have accepted what may be called the restricted view of Clause (c), quite a large number of then have accepted what may be called the wider view. However, unfortunately, these cases in which the restricted view has been accepted, do not give, except one or two Allahabad cases, detailed reasons as to why that view is being accepted. The cases in which the wider view has been taken deal with the matter more extensively, though, even in this class, quite a large number have accepted the interpretation, not on the construction of the language of Clause (c), but, merely on the basis of previous authorities.

20. We propose first to consider the reasons which have appealed to those learned Judges who have taken the wider view. One of the best expositions is to be found in the judgment of Beaumont C.J. in Rachappa's case at page 445 of the report 38 B.L.R. This is what Beaumont

C.J. has said in that case:

> "Now reading that section apart from authority, I think the relevant date which has to be considered is the date at which a Court is invited to take cognizance of the complaint. At the moment the Court has to ask itself whether it is debarred from taking cognizance by reason of the provisions of Section 195, and in cases falling under Section 463 or Section 471 of the Indian Penal Code, the Court has to see whether the offence in respect of which it is asked to take cognizance is alleged to have been committed by a party to any proceeding in any Court, and in respect of a document produced or given in evidence in such proceeding. Now in this case the offence had been committed by a person who at the date of the complaint, was a party to a proceeding, and therefore the words of the section would seem to apply."

After making the above observations, the learned Chief Justice proceeds to consider the contention which was raised in that case for the narrow construction and proceeds to refute the same in the following words at page 406:

> "But it is suggested that the words 'committed by a party to any proceeding in any Court' mean that the alleged offence must have been committed by a person who was at the date of the committal of the offence a party to proceedings in a Court, and must also have been in respect of a document produced or given in evidence in such proceeding. If that is the meaning of the section, it seems to me that it can have but little effect, because people who are minded to launch false cases, and to support their cases by forged documents, do not, as a rule, launch the case first, and then forge the documents on which they propose to rely. They prepare the ground beforehand They forge their documents first, and then launch their proceedings based on those documents So that if the section is only to apply to a person who commits forgery, whilst he is a party to a proceeding, of documents used in those proceedings, the section will very rarely have any application That view of the matter has appealed to most of the High Courts in India, and there is a long current of authority in which it has been held that if at the time when the Court is asked to take cognizance of a complaint the accused is a party to proceedings in a Court in which the document has been produced or used in evidence, then the bar contained in Section 195(1)(c) applies."

Thereafter, the learned Chief Justice quotes a number of cases of other High Courts in which the view which appealed to him was taken. Now, the first criticism which occurs to one's mind is that the argument which was advanced in support of the narrower view before the learned Chief Justice was more based on the contention that the expression "committed by a party to any proceeding in any Court" meant that the alleged offence must have been committed by a person who was, at the date of the commission of the offence, a party to the proceedings in Court and that the second portion of the above part of the clause was read disjunctively by Learned Counsel

who appeared in that case. The learned Chief Justice was not invited to read the expression as a whole. The second criticism which one can offer is that, the refutation proceeds upon a priori considerations on the assumption that the narrower operation of the clause was not intended by the Legislature. It is true that, such a consideration is not out of place. But as the learned Chief Justice himself has observed at page 448, the interpretation which appealed to the Devision Bench in Noor Mahomad Cassum's case has an element of common sense in it and and avoids hardship which would occur in an example of a sub-mortgagee which the learned Chief Justice has given at page 448. But, the learned Chief Justice has rejected such a consideration at the same page in the following words:

> "At the same time, it is difficult to see how the decision (decision in Noor Mahomad Cassum's case) can be reconciled with the wide language of Section 195(1)(c)."

N.J. Wadia J. has also expressed himself similarly at pages 448 and 449. The learned Judge, after quoting a number of authority supporting the interpretation which appealed to the Division Bench, states"..on the plain language of the section itself that view would appear to be correct. "Still later on, the learned Judge says "The words of the section as they stand seem to me to imply no such restriction. "Now, in our judgment, though this authority has considered the main objection which appealed to the Full Bench of the Allahabad High Court in *Emperor v. Khushal Pal Singh, reported in*[29] page 104, based on Section 475 of the Code and refuted the same, the decision mainly proceeds on the ground that the language of Clause (c) is wide and does not admit of any narrower interpretation. As we have already indicated, the clause is capable of a second interpretation, and the assumption underlying the decision that the clause is capable of only one interpretation is not correct. It is true that, some considerations pointed out in this case are weighty, but, at the same time, there are other considerations which are equally weighty and which require to be considered any final view can be expressed. We propose to deal with this aspect a little later. We only note that, the assumption that the wide language of Clause (c) is capable of only one interpretation was not accepted by a Division Bench of the Calcutta High Court consisting of Tennon and Beachcroft JJ. in *Nalini Kanta Laha v. Anukul Chandra Laha reported in*[30] In that case, their Lordships pointed out that the language of Section 195(1)(c) is by no means clear and would seem to admit of two constructions-one propounded by the prosecution and the other by the defence. However, in that case, their Lordships have given two reasons for not accepting the narrower construction. Firstly, they have stated that, that construction unduly limits the scope of Clause (c). Secondly, they have relied upon three authorities in support of their conclusion. The first is that of *Teni Shah v. Bolshi Shah*[31] This case, however, does not give any reason whatsoever for accepting the wider view Nor does it indicate that the narrower view is possible. Another case which is relied upon is the case of Re. Paramesh waran Nambudri reported in I.L.R. 39 Madras, page 677. But that was a case under Clause (b) of Sub-section (1) and, as the judgments of Ayling and Tyabji JJ. show, their conclusion was based on the language used in Clause (b) and not Clause (c). In fact, Tyabji J. at page 681 points out, after referring to Noor Mahomad Cassum 's case and Lalta Prasad's case, both of which were

under Clause (c), that no authority was cited before the Bench having reference to Clause (b) The third case cited is the case of *Emperor v. Bhawani Das, reported in* [32]before the Division Bench consisting of Tudball J. and Piggott J., in which the judgment was delivered by Piggott J. The precise point which their Lordships were called upon to decide in this case was whether the words "by a party to any proceeding" referred to the date of the commission of the alleged offences or to the date on which the allegation was brought to the notice of the Criminal Court invited to take its congnizance of such commission. The learned Judge at first points out the difference between Clauses (b) and (c) and notes that, in Clause (c) there are no words equivalent to the expression "or in relation to" in Clause (b). The learned Judge then refers to *Girdhari Marwari v. King Emperor reported in*[33] and *King Emperor v. Raja Mustafa Ali Khan, reported in*[34] and concludes "It

[29]53 All [31](1909) 14 C.W.N. page 479 [33](1908) C.W.N. page 823
[30]44 Cal. 1002 [32]38 All page 169 [34](1905) 8 Oudh Cases page 313

seems to me, by implication, strongly in favour of the applicant's contention that sanction is required in the present case. "Then, the learned Judge refers to Noor Mahomad Cassum's case and Lalta Prasad's case, and offers certain criticism in regard to both which it is not necessary to reproduce here. Then, at page 175 comes the following passage which may be reproduced as constituting the ratio of the case:

> "The interpretation sought to be put on Section 195(1)(c) on behalf of the prosecution in the present case, does not seem to be to follow inevitably from the working of the section or to be consistent with its apparent purpose. 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 seem fit, in Sub-clause (c), to extend this prohibition to a certain limited class of offences not exactly ejusdem generics 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 offences punishable under Section 193 of the Indian Penal Code, 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 of 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 seem 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 the suit was decided. It may well be that this was considered practically inconvenient, in view of the possible filing of an appeal after a 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 offence of fabricating false evidence already embodied in Section 195(1)(b). At any rate, I am decidedly of opinion that the Legislature employed the words 'on offence committed by a party to any proceeding" with reference not to the date of the commission of the alleged offence, but with reference to the date on which the cognizance of the Criminal Court was invited. The argument that an offence cannot with propriety be said to have been committed by a party to a proceeding on a date anterior to the institution of such proceeding seems to me to lose much of its force when the point is clearly grasped that the expression offence committed by a party' is loosely used for 'offence alleged to have been committed by a party' To my mind the provisions of the sub-section under consideration require to be interpreted as applying to the case of any person who, at the time when a Criminal Court is invited to take " cognizance of the matter, can rightly be described as a party to any proceeding in any court' in which the document in question has been produced or given in evidence, that is to say, who is or has been a party to such proceeding. It does not appear to me that this interpretation does any real violence to the language of the sub-section and I am confident that it is in accordance with the general practice of the courts."

While some of the above observations are undoubtedly weighty and require serious consideration, in our judgment the above passage does not take into account certain other relevant considerations which we shall presently mention. The above observations are more prompted by the argument which was advanced at the Bar which was to the effect that the words "offence committed" which occurred before the amendment of Clause (c) in 1923 by the substitution of the words "alleged to have been committed" for "committed" were over-emphasized at the Bar. In our judgement, the above passage suffers from two infirmities. The first is that, the learned Judge has assumed that Clauses (b) and (c) are inter-related and that, Clause (c) is intended to be given a scope which is co-extensive with the one which is intended to be given to Clause (b), and secondly that, it proceeds on a priori consideration that the Legislature necessarily intended to extend the prohibition to all documents which happened to be produced before a court, no matter when the offence in regard to such documents was committed by the person concerned, provided he becomes a party to the proceeding at the date when the cognizance of the Court is invited. The view taken in *Kanhaiya Lal v. Bhagwan Das*[35] is based upon the view taken in the cases of Bhawani Das and Teni Shah, which we have already noticed. The other cases in which the wider view was accepted and which were cited before us were as follows: *Hayat Khan v. Emperor, reported in*[36] page 90. However, this case does not contain any independent reasons and follows the cases of Nalini Kanta, Bhagwan Das and Parameswaran, which we have already noticed and the case of *Thadi Subbi Peddi v. Emperor reported in*[37] The latter case also follows the case of Parameswaran and the other cases which we have already

noticed and does not contain any independent reason. The case of *Khairati Ram v. Malwa Ram reported in*[38] also does not contain any reasons and proceeds on the cases of Bhawani Das, Nalini Kanta and Tent Shah. Those were the only cases which were cited before us in support of the wider view.

21. That taken us to Noor Mahomad Cassum 's case. In that case, the accused was being produced on the allegation that he had made use of a forged cheque in a sale transaction before the cheque was produced in the Bombay Court of Small Causes. The prosecution was launched without the sanction of the latter Court. The contention that sanction of the Court was necessary was taken at the Bar and, thereupon, the learned Chief Presidency Magistrate made a reference to the High Court of Bombay, stating that, in view of the wide language of Clause (c), the contention appeared to be valid. A Division Bench consisting of Candy and Fulton JJ. passed a short order in which they expressed the opinion that the sanction of the Court was not necessary inasmuch as the complaint was in respect of the use of the cheque made outside the Court. Almost all the Judge who have differed from this particular case have offered the criticism that, in the absence of any discussion, it was difficult to envisage what reasons impelled the learned Judges to take the view aforesaid. Piggot J. in Bhawani Das case 38 Allahabad, 169 formulated the

[35]48 All page 60 [37] A.I.R. 1930 Madras, page 369
[36] A.I.R. 1932 Sind [38] A.I.R. 1925 Lahore, page 866

reasons which might have appealed to the learned Judges and criticized them in the following words at page 170:

> "The only case about which I have felt any difficulty is the Bombay case of *Noor Mahomad Cassum v. Kaikhosru Maneckjee* to which I have already referred. The decision in that case is unsupported by reasoning, and it is impossible to say with certainty what view the learned Judges intended to take of the provisions of Section 195(1)(c) of the Code of Criminal Procedure as a whole-1 feel the strongest possible doubts as to whether they would have accepted the general proposition contended for on behalf of the prosecution in the present case. Had they taken this view they might well have informed the Chief Presidency Magistrate that no offence anterior in date to the institution of a certain proceeding could with propriety be said to have been committed by a party to that proceeding. I am inclined to the opinion that they had present to their minds some such analogy as I have myself suggested between the prohibition with regard to the manufacture or use of false evidence in Sub-section (1)(b) and the extension of that prohibition to major offences in Sub-section (1)(c). They were trying to distinguish between offences committed by 'a party to any proceeding' in respect to the said proceeding and any offence which he may have committed in the course of a transaction wholly independent of that proceeding. Personally I doubt if the case was rightly decided, and I am inclined to the opinion suggested by the Chief Presidency Magistrate, that the wording of Section 195(1)(c) was 'wide enough' to cover even the case which was then before the court. If it were attempted to apply any such distinction to the facts of the

present case, then the necessity or otherwise for sanction would have to depend on whether or not the prosecution was in a position to prove that Bhawani Das, at the time when he abetted this forgery intended that the document should be produced or given in evidence in the subsequent civil suits."

The same question arose before Knox J. of the Allahabad High Court in the case of *Emperor v. Lalta Prasad reported in*[39] This learned Judge took the same as in Noor Mahomad Cassum's case without referring to the same. The judgment is exceedingly short, but, in our judgment, it contains the germ of the narrower interpretation which we have indicated above. This is what the learned Judge says at page 655:

"The section does not remove from the cognizance of Criminal Courts an offence described in Section 463 when such an offence has been committed by an ordinary individual. Suppose, for instance, this very document had never been put into the civil court and suppose further that it is a forgery-is the person who forged it to be free from all prosecution? I do not by this mean to say that 1 have any reason for saying this document is a forged document, I know nothing about it. As long as the prosecution is confined to offences connected with this document committed prior to its production in Court, such prosecution is within the law and requires no sanction. Sanction is required for offences committed by a party to a proceeding in any Court, in respect to a document produced in evidence in such proceeding."

However, the most detailed consideration of this subject about the narrower view is to be

[39] I.L.R. 34 All

found in the Full Bench case of *Emperor v. Kushal Pal Singh reported in*[40] At page 810, Mukerji J., who spoke for the Court, puts the matter thus as regards the interpretation of Clause (c):

"Coming to the language of Clause (c) of Sub-section (1), Section 195, it may be interpreted in two ways. It may be read that when an offence which is described in Section 463 (we are concerned with that section alone, here) is alleged to have been committed by a person, who has, subsequently to the commission of the offence, become a party to any proceeding in any court, a complaint would be necessary in order to prosecute him. Another way of reading it is to say that the offence would be cognizable without a complaint, except when it is committed by a person, who is already a party to a proceeding in court, in respect of a document produced or given in evidence in such proceeding. The question is, which of the two interpretations should be accepted."

The learned Judge thereafter notes what he calls the present policy of law which undoubtedly is that, there can be no complaint by a private person and all the complaints that can be filed in respect of offences mentioned in Section 195(1), Clauses (b) and (c), must be filed by the Court. The learned Judge then considered the provisions contained in Section 476 of the Code and

comes to the conclusion that, if the wider interpretation were given to Clause (c), then, there will be a segment of cases in regard to which, though a complaint by the Court would be necessary under Clause (c), the Court will not be able to follow the procedure laid down in Section 476 in regard to such segment. This is one of the reasons which the learned Judge has given for accepting the narrower view. This view has been answered by Beaumont C.J. in Rachappa's case 38 B.L.R. 440 at pages 446 and 447 of the report. The learned Chief Justice there has pointed out that, though there will be some cases which will not be amenable to the procedure laid down in Section 476 if the wider interpretation is accepted, quite a large majority of such cases would be covered under Section 476 and that, in regard to the uncovered cases, the normal process for lodging complaints would be required to be followed. In our judgment, the criticism of Beaumont C. J. is valid. Section 476 applies only to those cases which are specifically referred to therein. It is an enabling section. There is nothing in that section which disables a Court from filing a criminal complaint not covered by that section. Moreover, there is one more and weighty reason which has been given to the above objection by Sulaiman J. in *Kanhaiya Lal v. Bhagwan Das reported in*[41] At page 65, the learned Judge notes, on the basis of Sub-section (2) of Section 195, that the term "Court" as used in that sub-section is wider than the expression "Civil, Revenue and Criminal Courts" which are the three Courts in regard to which procedure is prescribed by Section 476. In regard to these Courts other than Civil, Revenue or Criminal Courts, the objection raised by Mukerji J. will subsist. In that view of the matter, we do not think we can accept the narrower interpretation on the ground that, in some cases, the procedure laid down under Section 476 will not be applicable.

22. In the aforesaid state of the case law, the question arises for our consideration as to which of the two aforesaid interpretations should be accepted. In sons cases, a distinction has been made between a case in which Section 463 is involved and a case which is

[40]53 All page 804

[41]48 All page 60

punishable under Section 471. For example, in Abdul Gani's case, reported in A.I.R. 1916 Cal. page 711, the Calcutta High Court held that, sanction was necessary for the offence under Section 476 on the basis of Teni Shah's case, but that, no such sanction was necessary for the offence under Section 471 on the basis of Noor Mahomad Cassum's case. As rightly pointed out by Sulaiman J. in *Kanhaiyalal v. Bhagwandas*[42] it is not easy to follow this distinction. We agree with the learned Judge that, if an antecedent user of a forged document punishable under Section 471 does not come within the purview of Clause (c), then, the antecedent forgery or any other offence in regard to such a document must also escape the provisions contained in Clause (c).

23. However, in our judgment, none of the cases which we have discussed aforesaid, has taken note of the provisions contained in proviso (b) to Sub-section (3). In oar judgment, that provision throws a considerable light on the subject in hand and indicates the legislative mind in regard to Clause (c) aforesaid. Sub-section (3), as already indicated, indicates the superior Court which has

the power of filing a complaint in regard to an offence committed in regard to a subordinate Court. Proviso (b) is as follows:

> "Provided that-
> (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

Now, in our judgment, there is no doubt that this proviso (b) applies not only to cases dealt with by Clause (b) of Sub-section (1), but, also Clause (c). In our judgment, if the Legislature intended the wider interpretation to be given to Clause (c), it is hardly probable that it would have worded proviso (b) in the manner that it has done. That proviso undoubtedly indicates that, in a case where there is more than one Court to which a Court is subordinate, then, it is the nature of the case or proceeding which determines the forum of the superior Court, and the nature of that case or proceeding must be "in connection with which the offence is alleged to have been committed." Apart from this, in our judgment, the marginal note to Clause (c) provides some indication about the legislative mind. The marginal note makes reference "to certain offences relating to documents given in evidence" The emphasis in Clause (c) appears to be in regard to prosecution of offences relating to documents produced in Court or given in evidence in Court. This reading of Clause (c) appears to accord well with the policy of the law as embodied in Clauses (b) and (c) together. It will be noticed that, the offences which are enumerated in Clause (b) are all offences in connection with the administration of justice. The idea behind Clause (b) appears to be to give to the parent Court a voice in regard to the prosecution of an offence alleged to have been committed in or in relation to any proceeding in Court, As pointed out by Piggott J. in Bhawani Das' case (38 Allahabad, 169), the offences mentioned in Clause (b) and those mentioned in Clause (c) overlap, the offences mentioned in Clause (c) being more serious than those mentioned in Clause (b). In our judgment, there is a policy common to both Clauses (b) and (c). The idea seems to be to uphold the purity of the administration of justice and to see that an offence which

[42]48 All. 60

happens to be committed in the course of a proceeding is not taken advantage of without the knowledge and sanction of the parent Court. In this connection, we must bear in mind one important policy which underlies the administration of criminal justice. That policy is that, ordinarily, unless the Legislature has provided to the contrary, every citizen has a right to approach a Criminal Court to make a complaint in regard to a criminal act. To put the same idea another way, every Criminal Court has got jurisdiction to take cognizance of a criminal offence, whatever may be the source from which the cognizance is invited. Section 195, from one stand-point, is restrictive of this wide jurisdiction of Criminal Courts. Having regard to the fact that the effect of this section is to restrict the jurisdiction of the ordinary criminal Court, in our judgment, the provision contained in Section 195 requires to be strictly construed. There does not appear to be any good reason why the Legislature should have restricted the right of a citizen to move a

Court for punishment of an offence which was committed outside the Court and which has no relation whatsoever to the administration of justice. If the Legislature has restricted the offences, some of which are mentioned in Clause (b) "in or in relation to any proceeding", there does not appear to be any good reason as to why the Legislature should have extended the scope of the offences mentioned in Clause (c) so wide as to lead to such a conclusion, as shown by Beaumont C.J. in the illustration of a sub-mortgagee given by him in Rachappa 's case. It is not as if the interpretation which appealed to the learned Judge in Noor Mahomad Cassum 's case leads to any absurdity. On the contrary, Beaumont C.J. himself has recognized that that view has an element of common sense in it. Moreover, the narrower view, in our judgment, is more in accordance with the provisions of the Code as a whole and avoids some of the difficulties which arise and which have been mentioned in certain cases. For example, the narrower view would avoid the Civil, Revenue and Criminal Courts having to resort to two kinds of procedure, one in regard to those which fall within the purview of Section 476 and another in regard to those which fall outside the same. According to the narrower interpretation, the bar of Clause (c) would apply only to those cases where the offences mentioned therein are committed in regard to documents produced or given in evidence in a proceeding. It would avoid also the difficulty mentioned by Broom-field J. of sanctions of several Courts having to be taken if a document happens to be produced in more than one Court. The operation of Clause (c), according to the narrower construction, would be confined only to the commission of offences in respect of those documents which are produced or given in evidence. Such an interpretation would also be in accordance with the grammar of the aforesaid clause. The expression "produced or given in evidence" which qualifies "documents" indicates that, the document is one which is already produced or given in evidence. The term "such" in the expression "in such proceeding" also emphasizes the same thing. The aforesaid reading also would be more in consonance with proviso (b) to Sub-section (3). Under the circumstances, in our judgment, though we are conscious of the fact that the authorities of the Bombay and several High Courts, specially those dealing with offences connected with Section 463, take the wider view, on the whole, we have come to the conclusion that the narrower view which was expressed but without any reason in Noor Mahomad Cassum 's case is the correct view and, therefore, we propose to answer the query put by the Division Bench by holding that, that case was correctly decided. The result of this decision is that the decision reported in *Emperor v. Rachappa Yellappa* [43]was incorrect.

[43]38 B.L.R. page 440

ORDER

24. In accordance with the opinion of the majority, the case will go back to the Division Bench to be dealt with in accordance with law in light of this judgment.

Order accordingly.