KERALA HIGH COURT

Krishnan Nair

Vs.

State of Kerala

Criminal Revn. Petn. No, 335 of 1960, in Criminal Appeal No. 74 of 1960

(P. Govinda Menon, J.)

12.08.1961

JUDGMENT

P. Govinda Menon, J.

1. This revision petition has been filed against the order of the Additional Sessions Judge of Quilon confirming the conviction and sentence passed on the accused by the Assistant Sessions Judge of Quilon in Sessions Case 14 of 1960.

2. The accused was the defendant in O. Section 237/56 of the Pathanamthitta Munsiff's Court. The suit was filed on the foot of a promissory note executed by the accused. The accused denied execution of the promissory note, but the suit was decreed against the accused on 30-8-57.

3. The accused obtained through his counsel a copy of the judgment for the purpose of filing an appeal and the appeal was filed on 18-2-58. It was numbered as A. Section 47 of 1958. Later it was found out that the last sheet in the printed judgment produced along with the appeal memorandum had been changed and another sheet was attached to the judgment showing when the copy was applied for and granted. The signature of the examiner who has to certify to the correctness of the entries was seen to be forged. Ext. P7 is the judgment.

4. The plaintiff thereupon filed a petition before the Sub Court bringing these facts to the notice of the court. Ext. P2 is the petition and Ext. P1 is the affidavit in support of the petition. The petition and the affidavit were sent to the Pathanamthitta Munsif's court for enquiry. The report of the Munsiff Ext. P3 was referred to the High Court and the High Court ordered that he may proceed according to law.

5. The Munsiff then filed a complaint before the First Class Magistrate of Kottarakara. The case was taken on file and after inquiry, was duly committed to the Court of Sessions. The learned

Assistant Sessions Judge who tried the case found the accused guilty under Section 466 and Section 471 read with Section 438 Indian Penal Code. On appeal the learned Additional Sessions Judge of Quilon found that the charge of forgery cannot be said to have been made out, but he found that there was user of the forged document and convicted the accused under Section 471 read with Section 466 Indian Penal Code.

6. In revision the only point that is taken is that the court cannot take cognizance of this offence without a complaint of the Kottarakara Sub Court where the document had been produced and absence of such a complaint is fatal to the prosecution and is an illegality which vitiates the trial and conviction.

7. Section 195 provides that no court shall take cognizance of offences dealt with under sub-clauses (a), (b) and (c) except upon complaints of the persons therein mentioned. Sub-clause (a) need not be referred to. Sub-clause (b) refers to offences punishable under various sections of the Penal Code, those sections including offences of perjury and fabrication of evidence, and provides that no court can take cognizance of offences of that nature when such offences are alleged to have been committed in or in relation to any proceeding in any court except on the complaint of such court. So that under that clause the offence must have been committed in connection with proceedings in the court which has to lodge the complaint.

8. Then we come to sub-clause (c), which is the material sub-clause for our present purpose. That sub-clause provides that no court shall take cognizance of any offence described in Section 463, that is forgery, or punishable under Section 471, that is using a forged document, 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.

9. The relevant date which has to be considered is the date on which a court is invited to take cognizance of the complaint. At that 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, 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, in a court and the document had been produced or given in evidence in such proceeding and therefore the words of the section would clearly apply.

10. It has been uniformly 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. In *Bhawani Das v. Emperor*[1], a Division Bench of the Allahabad High Court held that the words "when such

offence has been committed by a party to any proceeding in any court" used in Section 195(1) (c) refer not to the date of the commission of the alleged offence, but to the date on which the cognizance of the criminal court is invited, and that when once a document has been produced or given in evidence before a court, the sanction of that court, or of some other court to which,

[1] ILR 38 All 169 : (AIR 1916 All 299)

that court is subordinate, is necessary before a party to the proceedings in which the document was produced or given in evidence can be prosecuted, notwithstanding that the offence alleged was committed before the document came into court, at a date when the person complained against was not a party to any proceeding in court.

11. The view which the Allahabad High Court took in that case has been followed by that court in a subsequent decision in *Kanhaiya Lal v. Bhagwan Das*[2], In the case in *Nalini Kanta Laha v. Anukul Chandra Laha*[3], it was held that where before a complaint fed been made, a document had been produced in a court by a party to a proceeding before it, sanction of such a court is necessary for his prosecution in respect of an antecedent forgery and antecedent user of the document. The same view has been taken by the Lahore High Court in *Khairati Ram v. Malawa Ram*[4], The reasoning adopted in this case was approved by the Madras High Court in In re, Parameswara Nambudiri, ILR 39 Madras 677 : (AIR 1916 Madras 72) though that was a case under sub-clause (b)

12. The power of the court to make a complaint is derived from Section 476 Criminal Procedure Code and the offence must be one referred to in Section 195, subsection (1), Clause (b) or Clause (c) which appears to have been committed in or in relation to a proceeding in that court. This latter qualification is to be found in Clause (b) of Section 195 (1) but not in Clause (c). Its absence from Cl (c) cannot however, affect the jurisdiction conferred by Section 476, so that whether the offence be one mentioned in Clause (b) or Cl (c), it must appear to have been committed in or in relation to a proceeding before the court that makes the complaint. The question is whether an offence of this character committed after the proceeding had terminated could be said to have been committed in or in relation to the proceeding in that court. It is, of course, not open to argument that the offence was committed "in" the proceeding. Then was it committed "in relation to" as contended by the learned Public Prosecutor. The answer must depend upon the intention with which that very general phrase must be presumed to have been used. The object of these provisions of the Code is to give the court, and not a private party, power to make a complaint where the offence has entered as a component into some judicial proceeding. The offence need not have been committed before the court, and it may have been committed before the proceedings began. But it seems to me indispensable that it must in some manner have affected those proceedings (see heading of Chap. XXXV of the Code) or been designed to affect them, or come to light in the course of them, and that an offence committed after the close, is wholly outside the scope of the provisions. It is, therefore, clear that the learned Munsiff of Pathanamthitta had no jurisdiction to file a complaint about the offence committed in the court of the Subordinate Judge of Kottarakara.

13. A criminal court has no jurisdiction to entertain a complaint which does not conform to the requirements of Sections 195 and 476 Criminal Procedure Code and in this view the absence of such complaint from a proper authority is fatal to the prosecution and is an illegality which vitiates the trial and conviction.

[2] ILR 48 All 60: (AIR 1926 All 30)

[3] ILR 44 Cal 1002: (AIR 1918 Cal 792)

[4] ILR 5 Lah 550: (AIR 1925 Lah 266)

14. Under Section 537 Clause (b) as it stood before 1923 the want of or any irregularity in any sanction required by Section 195 or any irregularity in the proceeding under Section 476 did not per se vitiate the trial unless it had in fact occasioned a failure of justice. Clause (b) to Section 537 has been omitted and it has to be held that the effect of the omission shows that the intention of the legislature is that non-compliance with the provisions of the section vitiates the entire proceedings. Such proceedings are void under Section 530 Clause (b). This was "the view taken in *Janki Prasad v. Emperor*[5] I am in respectful agreement with this view and since the court had entertained the case without a complaint from the Kottarakara Sub Court as the law requires entire proceedings are void. Accordingly this revision petition is allowed and the conviction and sentence passed on the accused are set aside.

Revision allowed.

[5] AIR 1926 All 700