

BOMBAY HIGH COURT

Emperor

Vs

Mallappa Tejappa Bidikar

(Broomfield and Wassoodew, JJ.)

13.07.1936

JUDGMENT

Broomfield, J.

1. In our opinion the learned Additional Sessions Judge, Belgaum, was wrong in holding that a complaint from the Mamlatdar, Khanapur, was necessary in this case. His reason for making the order was that accused No. 3, one of the persons alleged to have abetted the forgery of a sale-deed which was the subject-matter of the criminal case committed for trial before the Additional Sessions Judge, had instituted an assistance suit before the Mamlatdar as the guardian of a minor in whose favour the sale-deed was passed.

2. Section 195 (2) (c) of the Criminal Procedure Code provides that :-No Court shall take cognizance of any offence described in section 463 or punishable under section 471, section 475 or section 476 [of the Indian Penal 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.

3. The sale-deed, it appears, was produced in the assistance suit, which, I may mention, had been disposed of before the committing Magistrate took cognisance of the criminal complaint of forgery. Section 195 (i) (c) cannot apply unless one of the accused was a party to some proceeding in Court. Accused No. 3 was merely the guardian or next friend of the minor plaintiff in that proceeding. The guardian or next friend is not a party, as has been held in *Rup Chand v. Dasodha¹ Khodabux v. Budree Narain Singh² and Regina v. Padala Venkatasami³*

4. The learned advocate who appears to oppose this application by the Crown has conceded that strictly speaking the guardian or next friend cannot be regarded as a party. But he urges that when the word " party " is used in Section 195 (I) (c), it is not used in a strict or technical sense but is used generally to mean or include any person participating in or interested in litigation. Once, however, one were to take the view that the word is used in such a general sense, it would

be difficult to know where to draw the line. We are of opinion that there are no good grounds for holding that the word " party " is used in this section in any unusual or extended sense, and we respectfully agree with the observations of Rankin C. J. to that effect in *Prabhat-ranjan Barat v. Umashankar Chatterji*⁴

5. It is suggested that there is another objection to the order of the learned Additional Sessions Judge. As I have mentioned, the civil proceeding in which the sale-deed was produced had terminated at the time the Magistrate took cognizance of the criminal complaint. As pointed out in *Emperor v. Rachappa Yellappa*⁵, 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 (i) (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 (2) (c) was sought to be applied. 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. 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 (I) (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.

6. We set aside the order of the Additional Sessions Judge, and direct that he do proceed with the trial of the case.

Cases Referred.

1(1907) I.L.R. 30 All. 55

2(1881) I.L.R. 7 Cal. 137

3(1881) I.L.R. 3 Mad. 3

4(1930) I.L.R. 58 Cal. 727, 733

5(1936) 38 Bom. L.R. 440