to have been committed by the defendants on the ¼ *kurukkam* referred to in the plaint having reference to the circumstances of this case, having regard to the size of the holding as a whole and to the size of the area withdrawn from actual cultivation and to the effect of such withdrawal upon the fitness of the holding taken as a whole for profitable cultivation."

RAMA v. ARUNACHALAM.

SADASIVA AYYAR, J.

In compliance with the order contained in the above judgment the District Judge of Ramnad submitted a finding on the issue remitted in the negative.

NAPIER, J.—I concur.

NAPIER, J.

This Second Appeal coming on for final hearing after the return of the finding of the lower Appellate Court upon the issue referred by this Court for trial, the Court delivered the following

JUDGMENT.—We accept the finding and setting aside the decrees of the lower Courts we dismiss the plaintiffs' suit with costs in all Courts payable by the plaintiffs to the first defendant.

SADASIVA AYYAR AND NAPIER, JJ.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Tyabji.

Re K. PARAMESWARAN NAMBUDRI (SECOND ACCUSED), PETITIONER.*

1915. July 29 and August 6.

Criminal Procedure Code (Act V of 1898), sec. 195—False endorsement on a promissory note—Indian Penal Code (Act XLV of 1860), sec. 193, complaint under—Sanction—Necessity.

Where a complaint of false endorsement on a promissory note to prove a payment of Rs. 1,500 was preferred to a Second Class Magistrate but was transferred to a First Class Magistrate and where, between the date of filing of the complaint and its transfer, a suit on the promissory note was filed,

Held, that the sanction of the Civil Court under section 195 (1) (*b*) was necessary before the Court could take action on the complaint;

Held also, that the date of the presentation of the complaint before a Magistrate having no jurisdiction to entertain it was not the date of the institution of the Criminal Proceedings.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the

* Criminal Revision No. 18 of 1915.

Re PARAMESWARAN NAMBUDRI.

order of W. RABJOHNS, the Sub-Divisional Magistrate of Mallapuram, in Calendar Case No. 25 (since renumbered as No. 106) of 1914.

The facts appear from the order of TYABJI, J.

A. Sivarama Menon for the petitioner.

N. Grant, The Acting *Public Prosecutor*, for the Crown.

AYLING, J.

AYLING, J.—The complaint in this case sets out that some time in the month of Chingom, 1087 (Malabar) corresponding to August 1912, the accused persons, the present petitioners, wrote an endorsement on a promissory note, which had been executed in favour of the complainant (present counter-petitioner), purporting to record a payment of Rs. 1,500 towards that promissory note. No such payment according to complainant was ever made and his case is that the endorsement was written with the intention that it might appear in evidence in case he (complainant) brought a civil suit to recover the amount due on the promissory note.

Now assuming that complainant is in a position to make out (1) that the accused wrote the endorsement, (2) that the payment which it purports to record was never made, (3) that the intention of the accused was that the endorsement should appear in evidence in judicial proceedings then the offence of fabricating false evidence defined in section 192, Indian Penal Code, and made punishable by section 193, Indian Penal Code, would seem to be established. The intention above referred to must almost necessarily be a matter of inference but if it were shown that the accused could have had no other object than the appearance of the endorsement in evidence in case a suit should be brought on the promissory note, then I do not think the uncertainty at the time of writing the endorsement as to whether any suit would ever actually be brought affects the completeness of the offence. The question is whether in this case the Joint Magistrate before whom the complaint was presented on 20th February 1914, was precluded from taking cognizance of the offence by reason of section 195 (1) (*b*), Code of Criminal Procedure. I agree with my learned brother that the earlier presentation of the complaint before a Magistrate who had no jurisdiction to entertain it, may be disregarded.

It is admitted that before 20th February 1914, complainant had actually filed a suit on the promissory note (Original Suit

No. 275 of 1912 on the file of the Court of the District Munsif of Walawanad) and got a decree which was at that time under appeal. The question is whether this circumstance renders the sanction of the Civil Court necessary under section 195 (1) (b), Code of Criminal Procedure.

It has been argued before us that it does not, inasmuch as the suit had not admittedly been instituted at the time when the endorsement was written, and the offence committed. I cannot accept this view. The object of this clause of the section seems to be to save the time of Criminal Courts being wasted and accused persons being needlessly harassed by erecting a safe-guard against rash, baseless or vexatious prosecutions for the offences specified. It aims at doing so by providing that where, prior to the institution of the criminal prosecution, a properly constituted judicial tribunal has placed itself in a position to determine whether the facts constituting the offence really exist, the Criminal Court should decline cognizance unless that tribunal has, in effect, certified that in its opinion the complaint is one worthy of investigation. I see no reason why this safe-guard should be limited to cases where the offence is committed *pendente lite* and should not extend to cases of fabrication of false evidence in advance. Its desirability is just as great in the one case as in the other. It is of course necessary that the "proceeding in any Court" referred to in the clause should be actually instituted before the Criminal Court is asked to take cognizance of the offence. If it is not, there is nothing in section 195 to prevent the Court from taking cognizance of the case. And once the Court has lawfully taken cognizance of the case, its jurisdiction is not affected by the subsequent coming into existence of a circumstance which would have barred its jurisdiction, if it had existed at the time of institution.

In my opinion this was a case in which the sanction of the Civil Court was necessary and the complaint should have been dismissed by the Joint Magistrate.

TYABJI, J.—In this case we are asked to revise an order of the Sub-Divisional Magistrate of Malapuram, dated 23rd April 1914, in which he held that he should take cognizance of the complaint before him notwithstanding that no sanction had been obtained under section 195 of the Criminal Procedure Code

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TYABJI, J.

The facts alleged in the complaint are that an endorsement had been falsely made in the handwriting and signature of the second accused to the effect that Rs. 1,500 has been paid in respect of a certain promissory note; and it is admitted before us that if the complainant's story is true, then false evidence was fabricated on or about the 30th of August 1912: the complainant's case is that it was fabricated for the purpose of being used in some stage of a judicial proceeding and that therefore an offence under section 193, Indian Penal Code, was committed.

The complaint was filed in the first instance before a Second Class Magistrate on 19th November 1912; but as he had no jurisdiction to take cognizance of it, it was transferred on the 20th February 1914 to a Magistrate of the First Class. Between the date of the complaint before the Second Class Magistrate and the transfer to the First Class Magistrate's Court, Civil Proceedings were instituted (viz., Original Suit No. 275 of 1912 in the Court of the District Munsif of Walavanad resulting in Appeal No. 40 of 1913 which was disposed of on 13th October 1913). The promissory note is alleged to have been filed as an exhibit in these Civil Proceedings.

It seems to me to be clear that the complaint before the Second Class Magistrate cannot be considered for fixing the date of the Criminal Proceedings as that Magistrate had no jurisdiction to try the offence. If this is correct then the offence is alleged to have been committed on or about 30th August 1912, Civil Proceedings were commenced some time after, and then on 20th February 1914 the complaint was filed before the First Class Magistrate. It is admitted that the sanction of the Civil Court has not been obtained and the question arises whether the omission to do so is fatal to the proceedings in the First Class Magistrate's Court.

Section 195 (1) (*b*) of the Criminal Procedure Code as it has to be read in the present connection provides that no Court shall take cognizance of any offence punishable under section 193 of the Indian Penal Code of fabricating false evidence for the purpose of being used in any stage of a judicial proceeding when such offence is committed in or in relation to any proceeding in any Court except with the previous sanction of the Court. The real point arising in this case is, whether it can be predicated of the offence in question, that "it is committed in or in

relation to any proceeding in any Court," notwithstanding that the offence was complete before any proceeding had been taken in the Civil Courts.

In *Noor Mahomad* v. *Kaikhosru*(1) the Acting Chief Presidency Magistrate, in his reference to the High Court, pointed out that if the clause in question is interpreted very widely it may retrospectively render nugatory many complaints which are valid when filed; and the Court accepting the Magistrate's view was of opinion that when the offence in question is one under section 471 of the Indian Penal Code (use of a forged document) and the document is alleged to have been used outside the Court, no sanction is necessary. According to this case if the document has already been used outside the Court and the charge refers to that offence no sanction is necessary, though subsequently to such use, legal proceedings are instituted and the document is produced or given in evidence in Court, and apparently though such production in Court may have been prior to the complaint. A similar view is expressed by KNOX, J., in *Lalta Prasad* v. *King-Emperor*(2). No authority has been cited to us having reference to section 195 (1) (*b*). The case brought to our notice were all under section 195 (1) (*c*).

Clauses (*b*) and (*c*) agree in some respects, but differ in this—that the offence is identified in clause (*b*) by reference to the fact that it has a direct connection with some proceedings in Court, viz., having been (i) committed in or (ii) in relation to the proceeding; whereas in clause (*c*) the offence has to be connected not with the proceeding, but (i) with a document produced or given in evidence in the proceeding; and (ii) by the fact that the document has been produced or given in evidence by a party to the proceeding.

In the one case it suffices if the offence has reference to the proceeding; in the other it must have reference to a party to the proceeding, and to a document produced or given in evidence by the party. The corresponding portions of the particular expression on which the present decision turns are also not the same; clause (*b*) runs "When the offence is committed" clause (*c*) "When the offence *has been* committed."

(1) (1902) 4 Bom. L R., 268. (2) (1912) 10 A.L.J., 294

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TYABJI, J.

In *Giridhari Marwari* v. *The Emperor*(1) the counsel for the prosecution contended that subsequent legal proceedings altered the circumstances in regard to a charge for forgery (section 463) so that the prosecution could not proceed though the offence was complete, and the complaint had been made, before any legal proceedings had been instituted. But the contention was opposed to the decision in *Noor Mahomad* v. *Kaikhosru*(2) to which I have just referred and the Court did not in *Giridhari Marwari* v. *The Emperor*(1) itself express any opinion on the question. In *Teni Shah* v. *Bolahi Shah*(3) it is merely stated at page 480 : " This forgery is alleged to have been committed in respect of a document produced at a proceeding in this Court ; it comes therefore within the express words of section 195 and before the petitioner could be prosecuted for forgery sanction is required." The case does not take us any further.

These decisions as I have already said are with the reference to clause (c). The offences referred to in clause (b) fall under two classes :—

(i) Some of them (e.g., those under the Indian Penal Code, sections 205 et seq are such as can be committed only in or in relation to legal proceedings ;

(ii) There are others (including the offence under section 193, Indian Penal Code) which may be committed irrespective of legal proceedings.

It is only in regard to an offence falling under the latter head that the qualification " when such offence is committed in or in relation to any proceeding " can have any force.

Again some of the offences falling under the second head are such that the accused must have legal proceedings in contemplation and the offence now in question (fabrication of evidence for the purpose of being used in any stage of a judicial proceeding) is obviously one of this nature.

In regard to offences of the last-mentioned kind while it seems to me that the operation of the clause must be restricted to cases where before any charge is brought against the accused, such legal proceedings have already commenced as the prosecution allege to have been in the contemplation of the accused at the

(1) (1908) 12 C.W.N., 822. (2) (1902) 4 Bom. L.R., 268.
(3) (1902) 14 C.W.N., 479.

time of the commission of the offence, though I can quite see that by interpreting the section in a very strict way when the offence is complete prior to there being any legal proceedings there may appear no necessity for sanction. For it may be said that no act can be done and no offence committed in or in relation to any non-existent proceeding. But, as my learned brother points out, the object of the section is to prevent rash, baseless or vexatious prosecutions in regard to offences for which a safe guard is available. Hence when the offence is of such a nature that at the time of committing it, the accused must have legal proceedings in mind, and prior to his being charged with the commission of the offence, legal proceedings of the same nature have already commenced in any Court, it seems to me that it is most in consonance with the intention of the legislature to require that the sanction of the Court should be obtained. This decision is not opposed to that given in *Noor Mahomad* v. *Kaikhosru*(1). For there the offence was under section 471—the use of a forged document—not an offence in which the accused has necessarily any legal proceedings in mind at the time of committing the offence and the actual offence charged had no reference to any legal proceedings. In my opinion, therefore, the Court cannot in this case take cognizance of the offence.

S.V.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and Mr. Justice Srinivasa Ayyangar.

G. NARAYANASWAMI NAYUDU, RECEIVER OF NIDADAVOLE AND MEDUR ESTATES (PLAINTIFF), APPELLANT,

v.

N. SUBRAMANYAM (DEFENDANT), RESPONDENT.*

1915. July 27 and 28.

29 M.L.J. 478

(Madras) Estates Land Act (I of 1908), sec. 3, cl. (d) and sec. 6—Whole inam village—Minor inams therein—Sarva inam of the temple, whole village described as—Landholder, meaning of, in section 6 of the Act.

Section 3, sub-section (2), clause (*d*) of the Estates Land Act excludes from the definition of "estate," minor inams, i.e., particular extents of lands in a particular village as contrasted with the grant of the whole village by its

(1) (1902) 4 Bom. L.R., 268.

* Appeal No. 75 of 1914.