APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling and Mr. Justice Kumaraswami Sastri.

1918, October, 18, and November, 15, and 1919, February, 26.

GOVINDA IYER (THIRD RESPONDENT), PETITIONER,

v.

REX (PETITIONER), RESPONDENT.*

Criminal Procedure Code (V of 1898), sec. 476—"Offence referred to in section 195," meaning of—Jurisdiction of Court to take action under section 476 whether restricted to limitations imposed by section 195, Criminal Procedure Code.

Held by the Full Bench.—The words in section 476, Criminal Procedure Code, "any offence referred to in section 195" incorporate the conditions laid down by section 195, and a Court can take action under section 476 only under such conditions.

Hence proceedings under section 476 of the Criminal Procedure Code cannot be taken against a person who is neither a party nor a witness in a suit in respect of abetment of forgery of a document exhibited in the suit.

PETITION under section 115 of Civil Procedure Code and under section 107 of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61) to revise the order, dated 12th February 1918, of P. VENKATARAMA AYYAR, the District Munsif of Karur, in Original Petition No. 23 of 1917 (in Original Suit No. 456 of 1916)

This was a petition under section 115 of Civil Procedure Code and under section 107 of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61) by one Govinda Iyer for revision of an order made against him by the District Munsif of Karur under section 476, Criminal Procedure Code, by which he was ordered to be prosecuted for forgery and for using as genuine a forged document filed in Original Suit No 456 of 1916 before the District Munsif. The circumstances under which the order was made were as follow: The petitioner before the High Court was a clerk under a Nattukottai Chetti in whose favour the petitioner's brother had executed a mortgage on his house on 10th December 1914 for Rs. 1,150. No money having been paid, the mortgagee filed a suit in May 1916 for the full amount due on the mortgage. All the proceedings connected with filing of the plaint were conducted by the petitioner who was the clerk of the plaintiff. The first defendant who was the

* Civil Revision Petition No. 130 of 1918.

mortgagor and the fourth defendant who took a mortgage of the same house on the same day (viz., 10th December 1914) for Rs. 1,700 contended that the mortgagor paid Rs. 1,230 on 4th December 1915 to the mortgagee's agent and that the mortgagor got the payment endorsed on the mortgage-deed and that credit was not given in the plaint for such payment. The fourth defendant attested the endorsement. In answer to this the plaintiff pleaded that the payment was false and the endorsement was fraudulent. The petitioner disappeared from the locality some time after the filing of the written statements. After the termination of the suit, the Court took action under section 476, Criminal Procedure Code, calling on the first and fourth defendants to show cause why action should not be taken against them under sections 467 and 471, Indian Penal Code, in respect of the endorsement and calling on the petitioner who was alleged to be the writer of the mortgage-deed to show cause why he should not be prosecuted for abetment of the said offences. The petitioner not having appeared to show cause, the District Munsif made an order under section 476, Criminal Procedure Code, to the effect stated above.

The revision petition came on for hearing in the first instance before PHILLIPS and NAPIER, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.

PHILLIPS, J.—The prosecution of petitioner for abetment of offences under sections 467 and 471 of the Indian Penal Code has been ordered by the District Munsif of Karur, and objection is now taken that the District Munsif acted without jurisdiction inasmuch as petitioner was not a party to the proceedings in which the forged document was produced, the argument being that the words in section 476 of the Criminal Procedure Code "offence referred to in section 195" must be restricted to an offence committed in the manner laid down in section 195. Under section 195 (1) (*c*) the offence must have been committed by a 'party.' If therefore the offence has been committed by a person not a party, section 195 (1) (*c*) is inapplicable, and it is contended that section 476 is also inapplicable. This view has been approved in *In re Ramalingam*(1) by a bench of this Court following *Abdul Khadar* v. *Meera Saheb*(2), but a different view has been held in

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(1) (1917) I.L.R., 40 Mad., 100. (2) (1892) I.L.R., 15 Mad., 224.

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the Bombay High Court [*In re Devaji-valad Bhavani*(1)] and *In re Keshav Narayan*(2) and in the Calcutta High Court [*Akhil Chandra De* v. *Queen-Empress*(3)]. This last case was considered in *Jadu Nandan Singh* v. *Emperor*(4) and distinguished on the ground that the former referred to an offence under section 195 (1) (*c*), and the latter to an offence under clause (*b*) of the same section, but was not dissented from. In this Court there is a dictum of SANKARAN NAIR, J., in *Aiyakannu Pillai* v. *Emperor*(5) that offences in clause (*c*) of section 195 must be committed by a party, while the scope of section 476 is not so restricted, in which he expressly follows *In re Devjai-valad Bhavani*(1), and with this view we respectfully concur, as apparently did the learned Judge who admitted this petition, and consequently we feel constrained to refer the question to a Full Bench.

The fact that some of the decisions quoted relate to section 478 and not to section 476 is not of importance, because section 478 refers to "any such offence," i.e., "any offence referred to in section 195" as mentioned in the two preceding sections. In both sections therefore the sole question to be determined is the meaning of the words, "offence referred to in section 195." The word 'offence' is defined in the Code in section 4, clause (*o*):— 'Offence' means any act or omission made punishable by any law for the time being in force'. So there can be no doubt as to the meaning of that. There remain only the words "referred to in section 195." It is certainly the usual method employed in the drafting of the Code to use the words

"made punishable by sections . . . (enumerating the sections,"

and this form would undoubtedly have been used in section 476 if it had been the first section in which these offences were grouped together, but it is not, for we have the words in section 195 itself in clauses (*a*) and (*b*) which run as

"any offence punishable under sections 172 to 188" and "any offence punishable under sections 193, 194, etc."

The use of different language in this section seems to be thus sufficiently explained by the fact that section 476 was referring to section 195, and it is difficult to see what language would be more appropriate if the legislature did not wish to repeat

(1) (1894) I.L.R., 18 Bom., 581. (2) (1912) 14 Bom. L.R., 968.
(3) (1895) I.L.R., 22 Calc., 1004. (4) (1910) I.L.R., 37 Calc., 250.
(5) (1909) I.L.R., 32 Mad., 49 at p. 57.

the long list of sections given in section 195. Legislation by reference is stated to be due to considerations of brevity, and the same reason will explain the non-recapitulation of this long list of sections. We see no reason why any other explanation is required. To read those words as incorporating the conditions contained in section 195 for the taking of cognizance is, in our opinion, undoubtedly an extension of the natural meaning of the words "referred to in section 195." It would be easy to find words appropriate for importing those conditions if that had been intended, but they are not used. If section 476 had contained only the sentence,

"when any . . . Court is of opinion that there is ground for inquiring into any offence referred to in section 195, such Court after making, etc.,"

we should have been of opinion that the words "referred to" were nothing more than a substitute for enumeration. But there is the still further difficulty in the way of the construction put on these words by ABDUR RAHIM, J., *In re Ramalingam*(1) which is this, that the incorporation of the conditions to be found in section 195 introduces conditions into section 476, which partly cover the same ground as the conditions to be found in that section. It cannot be denied that the conditions in section 195 and those specifically referred to in section 476 are in *pari materia*. The language in section 476 is,

"and committed before it or brought under its notice in the course of a judicial proceeding."

This is analogous to the provision in section 195 (1) (*b*) where the words are,

"when such offence is committed in or in relation to any proceeding in any Court,"

and the words in clause (*c*),

"when such offence has 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 would be strange if the legislature intended to introduce the narrower requirements of clauses (*b*) and (*c*) of section 195, and yet incorporate into the section the wider language we have in section 476. Further than that, the suggested construction of the section requires the clause to be read as follows.

(1) (1917) I.L.R., 40 Mad., 100.

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"When any Court is of opinion that there is ground for inquiring into any offence punishable under sections 193, etc., when such offence is committed in or in relation to any proceeding in any Court and when committed before it or brought under its notice in the course of a judicial proceeding, etc."

That is with reference to offences in clause (*b*). With reference to the offences in clause (c) the result is still more extraordinary. It would read . . .

"into any offence described in section 463 or punishable under sections 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, when it is committed before it or brought under its notice in the course of a judicial proceeding, etc."

It seems to us, with due deference to the view taken in *In re Ramalingam*(1) that to read section 476 like that is to commit the legislature to inconsistency in some respects and tautology in others. We are therefore thrown back on what we consider to be the natural meaning of the words "referred to," and are of opinion that they are only words of description.

We therefore refer for the consideration of the Full Bench the following question:—

Do the words in section 476 *of the Code of Criminal Procedure, "any offence referred to in section* 195, *incorporate the conditions laid down in section* 195 *for taking cognizance of the offence by a Court?*

ON THIS REFERENCE

Dr. Swaminathan for petitioner.—As the petitioner was neither a party nor a witness in the judicial proceedings, no order can be made against him under section 476, Criminal Procedure Code; see *In re Ramalingam*(1) and *Abdul Khadar* v. *Meera Saheb*(2). Reference was made to *In re Devaji-valad Bhavani*(3). The words in section 476, "offence referred to in section 195, Criminal Procedure Code," import all the limitations that are contained in section 195, Criminal Procedure Code. If the Court cannot give sanction under section 195, it cannot also take action under section 476. The heading of the chapter in which section 476 occurs is "Administration of

(1) (1917) I.L.R., 40 Mad., 100. (2) (1892) I.L.R., 15 Mad., 224.
(3) (1894) I.L.R., 18 Bom., 581.

Justice." In the old Code of 1861, sections 476 and 195 were all dealt with together and now owing to the fact of section 476 appearing at a long interval after section 195, the words "referred to in section 195" are used.

E. R. Osborne, Public Prosecutor.—When section 476 gives a right to the Court to institute a prosecution, it is not limited by the qualifications mentioned in section 195 which will apply to a complaint by a *private party*.

The OPINION of the Full Bench was delivered by

WALLIS, C.J.—I am of opinion on the construction of the section that the words "any offence referred to in section 195" refer to offences within the scope of section 195, and not to all offences against sections of the Indian Penal Code enumerated in section 195 whether or not they are within the scope of that section. The preponderance of authority is in favour of this view, beginning with *Abdul Khadar* v. *Meera Saheb*(1). PARKER and SHEPHARD, JJ., gave no reasons for their decision in that case, but they were no doubt familiar with the history of the section, and knew that the words

"committed before or brought under its notice in the course of a judicial proceeding"

were first introduced into the section in the Code of 1882 as a further limitation on its operation, and that the corresponding sections of the Codes of 1861 and 1872 were clearly limited to cases coming within the operation of the sections corresponding to section 195 of the present Code. In the Code of 1872 section 471 (now 476) was immediately preceded by sections 467, 468 and 469, which in 1882 were consolidated and transferred as section 195 to an earlier part of the Code. Section 471 began thus :—

"When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiry into any charge mentioned in sections 467, 468 and 469, the Court, after making such preliminary inquiry, etc."

The marginal note

"Procedure in cases mentioned in sections 467, 468 and 469,"

meaning, of course, procedure in cases mentioned in those sections where such proceedings were taken by a Civil or

(1) (1892) I.L.R., 15 Mad., 121.

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Criminal Court, in my opinion, correctly represents the effect of the section. There appears to me to be no sufficient reason for holding that section 471 of the Code of 1872 or the corresponding section of the Code of 1861, intended to give all Courts, Civil or Criminal, an unlimited power of originating prosecutions under all the sections of the Indian Penal Code mentioned in the sections referred to, or that the substitution of the words "any offence referred to in section 195" for "any charge mentioned in sections 467, 468 and 469" had that effect. On the contrary the power conferred on the Court by section 471 of the Code of 1872, even as restricted with reference to the preceding sections, was apparently considered too wide, and was further limited in 1882 by imposing the restriction that the offence must have been

"committed before it or brought under its notice in the course of a judicial proceeding."

The attention of the learned Judges, who decided *Akhil Chandra De* v. *Queen-Empress*(1), and of the referring Judges in this case was not called to the fact that sections 195 and 476 of the present Code were not enacted for the first time in their present form, in which case they might have been expressed differently and other cases, such as the present, included, or to the fact that the awkwardness or tautology to which they refer was the result of introducing a further limitation into the section by the words added in 1882. In some cases covered by section 195, the new restriction was no doubt unnecessary, as pointed out by the referring Judges, but as a matter of drafting it was the easiest course to make the new restriction in general terms even at some risk of tautology. I may add that, where sections are repealed and re-enacted in slightly different form, there is a presumption against implied as contrasted with express alterations in the scope of the section. I would answer the question in the affirmative.

AYLING, J.

AYLING, J.—I agree.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree.

N.R.

(1) (1895) I.L.R., 22 Calc., 1004.