

## APPELLATE CIVIL.

*Before Mr. Justice Cargenven.*

PENDYALA SUBBARAYUDU (FIRST RESPONDENT),  
 PETITIONER,

1931,  
 October 27.

v.

GUDI VADA GOPAYYA (PETITIONER), RESPONDENT.\*

*Code of Criminal Procedure (Act V of 1898), secs. 476 and 195 (1) (b), (c)—Offence committed “in or in relation to any proceeding in any Court”—Meaning of—Termination of proceeding in which document produced but document remaining in custody of Court—Forgery in respect of such document—Jurisdiction of Court to complain under sec. 476.*

The offence of forgery of an endorsement of payment on a mortgage bond, committed after the termination of the proceeding in which the bond was produced, but while the document was among the Court records, cannot be said to have been committed “in or in relation to the proceeding” within the meaning of section 476 of the Code of Criminal Procedure, and the Court which disposed of the proceeding has no jurisdiction to take action under section 476 in respect of that offence.

An offence cannot be said to have been committed in relation to a judicial proceeding unless it has entered as a component into that proceeding, or unless in some manner it has affected that proceeding or been designed to affect it or come to light in the course of it. An offence committed after the close of the proceeding is wholly outside the scope of the provision and the circumstance that the document was still in the custody of the Court does not make the offence one committed in relation to the proceeding which had previously terminated.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the District Court of Guntur, dated 16th July 1931 and made in Appeal Suit No. 357 of 1930 preferred against the order of the

SUBBARATUDU  
v.  
GOFAYYA. Court of the District Munsif of Guntur, dated 23rd  
June 1930 and made in Original Petition No. 19 of 1929  
in Original Suit No. 1136 of 1927.

*K. S. Jayarama Ayyar* for petitioner.

*K. N. Ganpati* for *Public Prosecutor* (*L. H. Bewes*)  
for the Crown.

*Ch. Raghava Rao* for respondent.

*Cur. adv. vult.*

### JUDGMENT.

This petition is preferred against an order of the District Judge of Guntur directing under section 476-B of the Code of Criminal Procedure that a complaint be made under sections 193 and 467 of the Indian Penal Code against the petitioner. The facts may be briefly stated as follows:—The petitioner had executed a mortgage deed to the respondent for Rs. 8,000, and subsequently he filed a suit (Original Suit No. 1136 of 1927) against third parties and applied for an interim injunction, in which application the respondent, under summons, produced the document in Court. The production was on 7th January 1928, and an order granting the injunction, and thus terminating the proceeding in which the mortgage bond was produced, was passed two days later, on the 9th, but the bond was not taken back from the Court's custody by the mortgagee. Then some time later the respondent obtained a money decree against the petitioner in Original Suit No. 164 of 1925, and proceeded to bring the mortgaged property to sale, subject to his own mortgage. The petitioner applied for a postponement of the sale, and in connexion with the application asserted that the respondent had not given him credit for a sum of Rs. 6,000 which he had paid towards discharge of the mortgage debt. This statement led to

an examination of the document, which was still among the Court records, and it was found to bear an endorsement which the respondent denounced as a forgery which must have been committed after he produced the deed in Court on 7th January 1928. He accordingly applied to the District Munsif before whom the document had been produced for an order complaining of the alleged act of forgery. The application was dismissed, but on appeal the learned District Judge has directed that a complaint should be filed under sections 193 and 467, Indian Penal Code.

SUBBARAYUDU  
v.  
GOPAYYA.

The question is whether the circumstances were such as to give the Court jurisdiction to complain under sections 476 and 195 of the Code of Criminal Procedure. It is necessary to observe in the first place, that the application was made in Original Suit No. 1136 of 1927, and that that must be taken to be the "proceeding" for the purposes of these sections. As a matter of fact the document was not even produced in the execution proceedings in Original Suit No. 164, so that, so far as that proceeding is concerned, no question of the applicability of section 195 (1) (c) of the Code of Criminal Procedure could arise. Nor, I think, as the District Munsif observes, could it be said, with reference to section 195 (1) (b), that the offence was committed "in or in relation to" that proceeding. The question accordingly is whether the complaint of the Court which disposed of the interlocutory application in Original Suit No. 1136 was an act within its competence.

The power of the Court to make a complaint is derived from section 476 of the Code of Criminal Procedure, and the offence must be one referred to in section 195, sub-section 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

SUBBARAYUDU  
v.  
GOPALYA.

is to be found also in clause (b) of section 195 (1), but not in clause (c). Its absence from clause (c) cannot however affect the jurisdiction conferred by section 476, so that I conclude that whether the offence be one mentioned in clause (b) or clause (c), it must appear to have been committed in or in relation to a proceeding before the Court that makes the complaint. And this appears to be reasonable upon general considerations. Clause (c) of section 195 (1), if read without reference to the terms of section 476, would debar a Court from taking cognizance of any offence of forgery committed by a party to a proceeding in respect of a document produced or given in evidence in that proceeding, whether or not the act of forgery bore any relation to the proceeding or not, and consequently whether or not the Court before which the proceeding took place had any opportunity or occasion to deal with the circumstances into which the act of forgery entered. I do not think that that can be the intention of the clause. The connection between the act and the proceedings must be something more than casual or accidental. The learned District Judge in the present case has indeed accepted the condition that the offence must appear to have been committed in or in relation to the proceeding. He holds that it is satisfied by the circumstance that the document, when the forgery was committed, was in the custody of the Court. Now, as has been said, the document was filed in Court by the respondent on 7th January 1928, and two days later the proceeding in which it was filed came to an end. It is not known when the act was committed, but since it did not come to light until more than a year had elapsed it may be presumed to relate to the period of time after the proceeding had been disposed of. The question is whether an offence of this character, committed after

the proceeding has terminated, but while the document SUBBARAYUDU  
v.  
GOPAYYA. is still among the Court records, can be said to have been committed "in or in relation to the proceeding". The expression is, no doubt, capable of a very wide construction,—a good deal wider than the words as they stood before amendment—"committed before it or brought under its notice in the course of a judicial proceeding", application of which would certainly be decisive in the present case.

It is of course not open to argument that the offence was committed "in" the proceeding. Was it committed "in relation to" it? The answer must depend upon the intention with which that very general phrase may 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 the heading of Chapter 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 their close is wholly outside the scope of the provisions. The mere fact that the document is still in the custody of the Court may impose upon the presiding officer, as the executive head of his establishment, certain responsibilities, but they are different in kind from those of a Court acting judicially, and I do not think that the inquiry which it may be his duty to make is such as is contemplated in section 476. Documents sometimes remain in the custody of a Court for a number of years, and to relate them for this purpose to the proceeding in which they were filed

SUBBARAYUDU  
v.  
GOPAYA. would be, I think, to extend these requirements of the Code beyond reasonable limits. I am, therefore, led to the conclusion that there was no jurisdictionary basis in this case for taking action under section 476 of the Code of Criminal Procedure. I allow the petition, set aside the order of the District Judge and restore that of the District Munsif. The petitioner will have his costs in this Court.

K.N.G.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.*

1931,  
February 11, IN RE ATHI AMBALAGARAN AND SIX OTHERS (PROSECUTION  
12. WITNESSES IN SESSIONS CASE NO. 15 OF 1931), APPELLANTS.\*

*Code of Criminal Procedure (Act V of 1898), s. 476—Perjury in respect of contradictory statements made before committing Magistrate and in Sessions Court—Action under s. 476 regarding—Jurisdiction to take.*

The Sessions Court has jurisdiction, under section 476 of the Code of Criminal Procedure (Act V of 1898), to file a complaint for perjury against a witness examined before it in respect of contradictory statements made by him before itself and before the committing Magistrate.

A statement made by a witness at the preliminary enquiry is one made in relation to the subsequent proceedings in the Sessions Court.

*Narayanan Nadan v. Palaniappa Nadan*, (1917) M.W.N. 141, approved.

It is neither desirable nor necessary for the committing Magistrate also to file a complaint in such cases.

Observations to the contrary in *In re Ganesh Mull*, (1932) I.L.R. 55 Mad. 178 and in *Rex v. Veeraiya Moopan*, (Criminal Appeals Nos. 46 and 47 of 1931), dissented from.

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\* Criminal Appeals Nos. 570 of 1931 and 5 to 11 of 1932.