

APPELLATE CRIMINAL.

Before Mr. Justice Jackson and Mr. Justice Curgenvven.

IN RE RAVANAPPA REDDI (FIRST ACCUSED), APPELLANT.*

1931,
November 10.

*Code of Criminal Procedure (V of 1898), sec. 195 (1) (b)—
Offences in respect of which sanction necessary under, but
not obtained—Complaint of, with other offences in respect
of which such sanction not necessary—Jurisdiction to enter-
tain—Conviction in respect of latter offences only—Legality
of—Sec. 537 of the Code—Applicability.*

Where, on a complaint by a private person alleging the commission of an offence under section 193, Indian Penal Code (Act XLV of 1860), and of other offences in respect of which a complaint under section 476, Code of Criminal Procedure, is not necessary, the Court took cognizance of every offence alleged in the complaint but actually convicted the accused under sections 467, 109, Indian Penal Code,

Held, that the Court proceeded upon no legal complaint at all, that the error was much more than an irregularity and could not be cured under section 537, Code of Criminal Procedure, and that the conviction must be set aside as being without jurisdiction.

Per CURGENVEN J.—A Court cannot evade the provisions of section 195, Code of Criminal Procedure, by dealing under sections 467, 109, Indian Penal Code, with what is in effect an offence under section 193, Indian Penal Code.

Perianna Muthirian v. Vengu Ayyar, (1928) 56 M.L.J. 208, followed.

APPEAL against the order of the Court of Session of the North Arcot Division at Vellore in Case No. 6 of the Calendar for 1931.

A. S. Sivakaminathan for appellant.

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

Cur. adv. vult.

* Criminal Appeal No. 442 of 1931.

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REDDI,
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JUDGMENT.

JACKSON J.—The appellant has been sentenced to three years' rigorous imprisonment for abetting the forging of a promissory note.

On the facts there seems to be no doubt that the appellant is guilty under sections 467, 109, Indian Penal Code. The evidence of the Christian school-master, prosecution witness 9, proves that the accused asked him to write the draft of the promissory note, Exhibit C, after the death of its alleged maker Krishna Reddi, obviously for the purpose of a fraudulent execution.

Section 467 has no necessary connection with any Court proceeding, and when the committal order came before me upon an application to have it cancelled, I declined to interfere as there was sufficient evidence to establish a *prima facie* case against the accused. But now that the whole record is before us, the matter is not quite so simple. In the complaint, Exhibit J, it is alleged that the accused fabricated a pro-note and induced one Vatta Goundan to file a suit against Krishna Reddi in the Panchayat Court, and obtained a fraudulent decree. The complainant was ignorant of all this until the execution of the decree was begun in the District Munsif's Court . . . "The object of bringing about these forged and fabricated transactions is to get the house of the late Krishna Reddi."

This is clearly the offence under section 193, Indian Penal Code, of intentionally fabricating false evidence for the purpose of being used in a stage of a judicial proceeding.

The Court may think the forgery a clearer count than the fabrication of evidence because on the facts of this case it is doubtful if there was any proceeding before the panchayat at all, but nevertheless the

allegation is plainly stated in the complaint, and it is the allegation which attracts the mischief of section 195 (1) (b), Code of Criminal Procedure.

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A Court confronted with a complaint like Exhibit J by a private person and not preferred under section 476, Code of Criminal Procedure, must refuse to take cognizance. It cannot even examine the complainant upon oath and then note that it is only taking cognizance of the offences not referred to in section 195, Code of Criminal Procedure; because the examination of the complainant on oath under section 200 is after cognizance has been taken. But nothing of that sort was attempted in this case. The Court recorded a short sworn statement, and evidently took cognizance of every offence alleged in the written complaint.

The effect of this is that the Court proceeded upon no legal complaint at all; which is much more than a mere irregularity in the complaint. Therefore the error cannot be corrected under section 537, Code of Criminal Procedure. Nor has section 532 any relevancy to the matter; for that only validates commitments legal in themselves but made by a Magistrate not empowered to commit.

In these circumstances the conviction must be set aside as being without jurisdiction. The bail is released.

CURGENVEN J.—Section 195 (I) (b) of the Code forbids CURGENVEN J. a Court to take cognizance of an offence under section 193, Indian Penal Code, when it is alleged to have been committed in, or in relation to, any proceeding in any Court, except upon the complaint of that Court. Such an offence, so committed, is undoubtedly alleged in the complaint in the present case, and indeed the section of the Penal Code is quoted. The Court was precluded from taking cognizance of that offence, the complaint

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OURGENVEN J. being a private one. The conviction was actually of abetment of forgery of a valuable security, under sections 467, 109, Indian Penal Code, but in *Perianna Muthirian v. Vengu Aiyar*(1) I have already given my reasons for holding that, this being only another way of dealing with what was in effect the same offence, fabricating false evidence, it is not open to a Court to permit the provisions of section 195, Code of Criminal Procedure, to be evaded in this manner. I agree therefore that upon this ground the conviction must be set aside, the proceedings being without jurisdiction.

K.N.G.

APPELLATE CRIMINAL.

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

1931,
November 20.

PADMANABHANI RAMANAMMA *alias* BULLEMMMA
(COMPLAINANT), PETITIONER,

v.

GOLUSU APPALANARASAYYA (FIRST ACCUSED),
RESPONDENT.*

Indian Evidence Act (I of 1872), ss. 40 to 43—Civil Court judgment—Admissibility of, in criminal proceeding in respect of same matter.

The judgment of a Civil Court dismissing a suit brought by *A* against *B* for damages for defamation is not admissible in evidence to prove the innocence of *B* in a criminal prosecution by *A* against *B* on the same facts. Sections 40 to 43 of the Indian Evidence Act deal with the admissibility of a judgment in evidence, and, if a judgment is not admissible under any of

(1) (1928) 56 M.L.J. 208.

*Criminal Revision Case No. 329 of 1931.