

## REVISIONAL CRIMINAL.

Before Mr. Justice Sulaiman.

1925.  
June, 10.

KANHAIYA LAL v. BHAGWAN DAS.\*

*Criminal Procedure Code, sections 195 and 476—Forgery—  
Document produced in court by a party—Complaint by  
private person not admissible.*

When a document has once been produced or given in evidence in a court, it is not thereafter open to a private person to lodge a complaint that an offence has been committed in respect of it by a party to the case in which it was produced; but proceedings can only be taken in respect of such a document by the court in which it was produced or by some other court to which that court is subordinate. *Emperor v. Bhawani Das* (1), followed. *Mathura Kuar v. Durga Kuar* (2), distinguished. *Emperor v. Lalta Prasad* (3), *Noor Mahomad Cassun v. Kaikhosru Maneckjee* (4), *Teni Shah v. Bolahi Shah* (5) and *Abdul Gani v. Emperor* (6), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. J. M. Banerji and Babu Piari Lal Banerji, for the petitioner.

Munshi Shambhu Nath Seth, for the opposite party.

SULAIMAN, J.—This is a criminal reference by the Sessions Judge of Cawnpore recommending that a case under section 467 of the Indian Penal Code pending in the Court of a first class Magistrate at Cawnpore should be stayed till a civil suit is finally disposed of. On the last occasion when this case came up for hearing the learned advocate for the accused contended that not only the hearing should be adjourned but that the original proceedings should be quashed

\* Criminal Reference No. 294 of 1925.

(1) (1916) I.L.R., 38 ALL., 169.

(2) (1904) 2 A.L.J., 747.

(3) (1912) I.L.R., 34 ALL., 654.

(4) (1902) 4 Bom. L.R., 28.

(5) (1909) 5 Indian Cases, 879.

(6) (1915) 30 Indian Cases, 441.

altogether. As the learned vakil who appears to oppose this reference had no notice of this objection, I allowed the case to be postponed in order that he might be prepared to argue the point raised.

The facts of the case are briefly as follows :—Kanhaiya Lal accused has set up a will, dated the 27th of March, 1922, said to have been executed by a lady, Musammat Basanti, who died two days after. Some time after her death the will was presented for registration before the Sub-Registrar and after contest by the complainant, Bhagwan Das, it was finally registered, though the endorsement of the Sub-Registrar suggests that he had some doubt as to whether the contents of the will had been fully made known to the lady who was in a critical condition. There were a number of other court proceedings to which Bhagwan Das was not a party in which this will was mentioned though not actually produced by Kanhaiya Lal. I, however, ignore those proceedings altogether. On the 23rd of September, 1922, Kanhaiya Lal filed an application for obtaining a succession certificate and in the course of this proceeding he mentioned the existence of the will though he did not actually produce it. The succession certificate was granted to him on the ground that he was the nearest heir, and the order granting the succession certificate was affirmed on appeal by the High Court.

On the 4th of February, 1925, Kanhaiya Lal filed a complaint under section 404 of the Indian Penal Code before the City Magistrate of Cawnpore against Bhagwan Das in respect of certain articles said to have been taken possession of by him which belonged originally to the deceased lady and which according to the complainant had been bequeathed to him. In this case the disputed will was actually produced before the court and evidence was led to prove it.

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After the complainant's evidence had been closed, a charge was framed against the accused, but before the case came up for final hearing the complainant Kanhaiya Lal instituted a civil suit on the 3rd of March, 1925, on the strength of the will. He filed a certified copy of the will along with the plaint and stated that the original was on the criminal court's record and would be produced as soon as it was obtained from there. Later on, on the 18th of March, 1925, the complainant applied to the criminal court for leave to withdraw the complaint on the allegation that he had already filed a civil suit and the dispute would be considered by the court. The learned Magistrate, although the charge had been framed, instead of acquitting the accused in that case, discharged him. On the 21st of March, 1925, Bhagwan Das filed a complaint under section 476 of the Indian Penal Code against Kanhaiya Lal in respect of the disputed will, alleging that it was a forged document and that an offence described under section 463 had been committed.

It is this last criminal proceeding which has been recommended by the Sessions Judge to be stayed pending the disposal of the civil suit.

The question which I have to consider first is as to whether the proceeding started by Bhagwan Das on a private complaint made by him in respect of this disputed will, which had previously been produced before the City Magistrate, is competent.

There was certainly some conflict of opinion on this point when the old Code was in force. A view had been expressed by KNOX, J., in the case of *Emperor v. Lalta Prasad* (1), that if an offence had been committed independently of and antecedent to any proceeding in a court, no sanction of that court was necessary. The Bombay High Court in the case

(1) (1912) I.L.R., 34 All., 654.

of *Noor Mahomad Cassum v. Kaikhosru Maneckjee* (1), took the same view and held that sanction was not necessary. The point, however, was referred by a learned Judge of this Court for decision to a Bench, *vide* the case of *Emperor v. Bhawani Das* (2). The learned Judges who formed that Bench came to the conclusion that no matter whether an offence had been committed prior to the court proceeding, if the disputed document was produced in that court, then after its production no criminal case could be started without the sanction of the court in which it was produced. PIGGOTT, J., at pages 173—4, rejected the contention that an offence could not with propriety be said to have been committed by a party to a proceeding on a date anterior to the institution of such proceeding, because he considered that the expression “offence committed by a party” in the old section was loosely used for the expression “offence alleged to have been committed by a party”. The Calcutta High Court, in the case of *Teni Shah v. Bolahi Shah* (3), had taken the same view and this case was partly followed by a Bench of the same High Court in a later case, *Abdul Gani v. Emperor* (4), though the learned Judges thought that even if proceedings founded on an offence under section 467 could not proceed without the previous sanction of the civil court where the document was filed, the Magistrate was empowered to take cognizance of an offence under section 471. It is not easy to follow the distinction, as section 471 is expressly mentioned in section 195 (c). A similar view has also been taken by the Madras High Court in *re Parameswaran Nambudri* (5).

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It seems to me, however, that these rulings are now a matter of academic discussion. The language

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

(2) (1916) I.L.R., 38 All., 169.

(3) (1909) 5 Indian Cases, 879.

(4) (1915) 30 Indian Cases, 411.

(5) (1915) I.L.R., 39 Mad., 677.

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of section 195 has been slightly altered and it is significant that the expression suggested by PIGGOTT, J., in his judgment has actually been adopted by the legislature. I am entitled to draw the inference that the legislature has approved of the interpretation put on the old section by the Bench of this Court. Anyhow, as the section now stands there can be no doubt whatsoever that no court can take cognizance of an offence 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 except on the complaint in writing of such court or of some other court to which such court is subordinate. The learned vakil for the complainant argues that Kanhaiya Lal, who was the complainant before the City Magistrate, cannot be said to be a party to that proceeding within the meaning of section 195 (c) inasmuch as the real party was the King-Emperor. It is impossible to accept this contention. The case was started on a private complaint filed by Kanhaiya Lal. It was he who was leading evidence and trying to establish the guilt of the then accused, and it was he who ultimately withdrew his complaint and on whose withdrawal the accused was discharged. There cannot be the slightest doubt that he was the prosecutor throughout that proceeding. I am, therefore, unable to hold that he cannot be deemed to have been a party to the proceeding before the City Magistrate. If Kanhaiya Lal was a party to the criminal court proceeding then there can be no doubt that the offence which is now alleged to have been committed by Kanhaiya Lal is alleged to have been committed by a person who was a party to the criminal court proceeding before the City Magistrate in respect of this disputed will which was in fact produced and given in evidence in such proceeding. That being so, no court

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can take cognizance of such an offence except on the complaint in writing of the court of the City Magistrate or of some other court to which such court is subordinate. Of course if the civil court, before whom this document is produced again, comes to the conclusion that it is a forgery, it would be competent to initiate criminal proceedings against the person responsible for it.

The learned vakil for the complainant argues that this interpretation of section 195 is not correct because it would conflict with the provisions of section 476. His contention is that section 476 is confined to cases where an offence has been committed in or in relation to any proceeding in that court and he argues that section 195 must be deemed to be co-extensive with that section. I am unable to accept this contention. The expression "committed in or in relation to any proceeding in that court" which occurs in section 476 and also occurs in section 195 (b) does not occur in 195 (c), where the words are "alleged to have been committed by a party to any proceeding in respect of a document produced or given in evidence in such proceeding." I am of opinion that there would be no conflict between the two sections whatsoever. Section 476 speaks of "civil, revenue or criminal court". It does not refer to any court other than such courts, whereas section 195 refers to courts in general. To my mind it is clear that the expression "court" in section 195 is of a wider scope than the expression "civil, revenue or criminal court" in section 476. This is made particularly clear by the amendment of section 195 (2) which was made by Act XVIII of 1923. It reads: "In clauses (b) and (c) of sub-section (1) the term "court" includes a "civil, revenue or criminal court". Obviously, therefore, the word "court" is of a wider meaning. It is, therefore, quite clear that

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the legislature intends that if an offence has been committed in or in relation to any proceeding in any civil, revenue or criminal court, that court alone can start proceedings, but that if offences mentioned in sub-clause (b) are committed or if offences mentioned in sub-clause (c) are committed in respect of a document produced or given in evidence in such proceeding, then also no court shall take cognizance of them except on the complaint in writing by such court.

I am, therefore, of opinion that the proceedings started by Bhagwan Das in the court of the first class Magistrate of Cawnpore on a private complaint made by him are illegal and ought to be quashed, as was done in *Emperor v. Bhawani Das* (1).

Had I not come to the conclusion that these proceedings should be quashed, I would have had no hesitation in saying that these proceedings ought to be stayed pending the disposal of the civil case. Obviously it would be highly undesirable that the same dispute should be allowed to be fought out in two courts, namely, criminal and civil courts simultaneously. The case of *Mathura Kuar v. Durga Kuar* (2) is distinguishable, because there KNOX, J., was only considering the power of the original criminal court to adjourn the hearing of a criminal case before it. The inherent power of the High Court to stay proceedings is very wide and has been exercised in several cases by this Court.

I accordingly accept the reference and order that the proceeding pending before the first class Magistrate of Cawnpore in the case of Bhagwan Das v. Kanhaiya Lal and others under section 467 be quashed. This of course will not prevent a future

(1) (1916) I.L.R., 38 All., 169. (2) (1904) 2 A.L.J., 747.

prosecution of the accused started by the City Magistrate or by the civil court in case it is found that the document is really a forgery.

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*Reference accepted.*

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## APPELLATE CIVIL.

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*Before Sir Grimwood Mears, Knight, Chief Justice, and  
Mr. Justice Sulaiman.*

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June, 12.

BISHNATH SINGH AND OTHERS (JUDGMENT-DEBTORS) v.  
BASDEO SINGH (DECREE-HOLDER).\*

*Act (Local) No. II of 1903 (Bundelkhand Land Alienation Act), section 9, sub-clause (3)—Mortgage—Final decree for sale—Powers conferred by section 9 exercisable even after final decree.*

Although it is advisable that original courts, when they find that a mortgage has been made which is ordinarily enforceable but which covers property situated within Bundelkhand which cannot be sold, should take action under section 9 (3) before passing the decree and not wait till the decree has been passed, the passing of a final decree for sale on a mortgage is not a bar to the exercise of powers under that section.

THIS was an appeal from the judgment of a single Judge of the Court under section 10 of the Letters Patent. The facts of the case sufficiently appear from the judgment under appeal, which was as follows:—

In a suit filed on foot of a mortgage effected by the appellants on the 13th of May, 1909, a preliminary decree for sale was passed on the 17th of January, 1918, which was made absolute on the 20th of December, 1919. The parties are members of an agricultural tribe.

When the decree was put under execution, an objection was filed by the judgment-debtors under section 16 of the

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\* Appeal No. 132 of 1924, under section 10 of the Letters Patent.