FULL BENCH.

Before Mr. Justice Mukerji, Mr. Justice Young and Mr. Justice King.

EMPEROR v. KUSHAL PAL SINGH*

1931
April, 14.

Criminal Procedure Code, sections 195(1) (*c*) *and* 476—*Offence committed by "a party"—Document alleged to be forged twenty five years before suit and not relevant to or relied upon in the suit—Whether complaint of a court necessary for cognizance of such offence—Jurisdiction—Inherent powers.*

In a suit instituted in 1922 against one *K* and others, certain documents, alleged to have been caused to be forged or fabricated in 1898 at the instance of *K*, were attempted to be produced against him but were rejected by the court as they were irrelevant. These documents had never been used on any occasion. They were allowed to be put in during the hearing of the appeal in the High Court, but they were not relied upon for the purposes of the appeal by any party and the appeal was decided without any reference to them. After the decision of the appeal the Bench issued notice to *K* to show cause why he should not be prosecuted for abetment of forgery in respect of these documents. On the question whether a complaint by the court was necessary before a prosecution in respect of those documents could be lodged, it was *held* that the documents did not come within the purview of section 195(1) (*c*) of the Criminal Procedure Code, and a complaint of a court was not necessary for launching a prosecution in respect of the documents.

Section 195 (1) (*c*) of the Criminal Procedure Code applies only to cases where an offence mentioned therein is committed by a party, as such, to a proceeding in any court in respect of a document which has been produced or given in evidence in such proceeding. The words, "committed by a party to a proceeding", in section 195 (1) (*c*) should be interpreted to mean "committed by a person who is already a party to a proceeding". As section 195 lays down the bar against the cognizance of certain offences and section 476 lays down the method for removing the bar, the two sections must be read

*Miscellaneous Case No. 122 of 1931.

together; and the above interpretation makes the meaning of section 195 (1) (*c*) quite in keeping with the provisions of section 476.

Semble, a complaint can not be filed, outside the provisions of section 476 of the Criminal Procedure Code, by any civil, revenue or criminal court, under an inherent jurisdiction.

The Acting Government Advocate (Mr. *Sankar Saran*), for the Crown.

Messrs. *Iqbal Ahmad*, *Kumuda Prasad* and *Baleshwari Prasad*, for the opposite party.

MUKERJI, J. :—A point of law mixed with facts has been referred to a Bench of three Judges owing to a difference of opinion occurring between two learned Judges who heard the first appeals Nos. 349 and 449 of 1925. The point that has been referred to us for decision is worded as follows :—

"Whether section 195 (1) (*c*) is applicable so as to render a complaint of a court necessary before a prosecution for abetment of forgery can be lodged in respect of High Court Exhibits 4 to 7 or any of them."

As it would be necessary to know the nature of the exhibits in order to answer the question, I will very briefly give a description and history of these exhibits.

In these provinces there is a large landed property, known as the Kotla Estate. It was owned by one Thakur Chaturbhuj Singh who died on the 4th of November, 1844. He was succeeded by his widow Mst. Mahtab Kuar, who died in 1889. When Thakur Chaturbhuj Singh died, Umrao Singh, who was probably one of his collaterals, was a minor. Umrao Singh, having attained majority, in 1866 brought a suit against Mahtab Kuar for recovery of the estate on the allegation that he, Umrao Singh, had been adopted by Mahtab Kuar. The case was fought up to appeal in the High Court and was ultimately dismissed. The principal parties to the litigation, out of which the present proceedings have

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arisen, are sons of Umrao Singh. The opposite party in these proceedings, Raja Kushal Pal Singh, is a step-brother to four persons, Jogendra Pal Singh, Mahendra Pal Singh, Bhawan Pal Singh and Lakshman Pal Singh.

Mukerji, J.

On the death of Mst. Mahtab Kuar, the widow of Chaturbhuj Singh, her daughter Lali Jas Kuar became entitled to the estate and went into possession. The one idea which dominated the mind of Umrao Singh was to get this large property for himself or his family. It is said that the opposite party Raja Kushal Pal Singh was of the same mind and he conceived certain schemes and, in pursuance of these schemes, brought into existence certain documents in order that he might establish a claim to the estate. It is said that the Exhibit No. 4 is a note book written and prepared by Raja Kushal Pal Singh in which a scheme how to obtain the property was written. Exhibit 6 is another note book, six pages of which have been written on, it is said, by the opposite party. The writing suggests that it was in the mind of Raja Kushal Pal Singh that he would get certain documents put into certain records, these documents being in the shape of certain depositions stating that he had been adopted by Lali Jas Kuar. Certain drafts of spurious depositions are also to be found in this document. Exhibit 7 is another copy book which contains final drafts of the proposed depositions. Exhibit 5 is an envelope and contains certain documents, said to be spurious documents, purporting to be certified copies of depositions. On the face of the envelope there is an index showing its contents.

These documents, it is said, were brought into existence some time in 1898. It is nobody's case that these documents were ever used and it appears that there was never any occasion to use these documents.

In 1905 Raja Kushal Pal Singh obtained by a gift the Kotla Estate from Lali Jas Kuar. The gift

was supported by documents executed by all the persons believed to be next reversioners at the time. It is by virtue of this document that Raja Kushal Pal Singh is in possession of the Kotla Estate.

Mukerji, J.

The suit out of which the two appeals arose was instituted by one of the step brothers of Raja Kushal Pal Singh, namely, by Jogendra Pal Singh, and it was for the partition of the estate. Jogendra Pal Singh contended that the estate was really the property of his late father Umrao Singh and the deed of gift was really meant for Umrao Singh, and Kushal Pal Singh was a *benami* holder for the whole family. He asked for other reliefs, but we are not concerned with them.

To this suit, the documents which I have described were irrelevant. These documents were not produced by the plaintiff, Jogendra Pal Singh, when he filed his plaint, nor did he file them at the first hearing when he filed his other documents. An attempt was made to file these documents by summoning them through the defendant Mahendra Pal Singh, plaintiff's own brother, and they were brought into court by the defendant Bhawan Pal Singh. The learned Subordinate Judge who was trying the case rejected the documents as being irrelevant, on the 18th of September, 1923. The documents were again put in when Raja Kushal Pal Singh was in the witness box, but the Subordinate Judge again rejected them.

The suit was decided and the parties to the suit filed separate appeals. This is why two appeals were before this Court. When the appeals were being heard, an application was made on behalf of Jogendra Pal Singh, appellant in one case and respondent in another, for permission to file the documents sought to be produced in the court below, together with four others. After some difference of opinion between the learned Judges who heard the appeals, the documents

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were allowed to be put in. As the documents had not been proved, by any formal evidence, to have been in the handwriting of Raja Kushal Pal Singh and because it had not been proved that they or some of them had been brought about or procured by him, a question of taking further evidence in the appeal arose. The learned counsel appearing for Raja Kushal Pal Singh, in order to avoid a delay in the disposal of the appeals, admitted the documents, for the purposes of the appeals alone. He admitted that the documents, which were said to be in the handwriting of Raja Kushal Pal Singh, were in his handwriting. The appeals were decided, but as can be easily seen, no reference was made to the documents now in question and they were not relied on for the purposes of the appeal by the party who produced them.

Mukerji, J.

As it had been admitted before the Division Bench hearing the appeals that the documents had been written by Raja Kushal Pal Singh, two notices were issued to him to show cause why he should not be prosecuted for committing certain offences in respect of the documents. The learned Judges came to the conclusion that the proceedings should be dropped with respect to one document. But, in respect of the documents described above and four additional documents, which had been produced in appeal and which purported to be certified copies of certain depositions, there happened to be a difference of opinion. The learned Judges were agreed that they could not proceed under section 476 of the Criminal Procedure Code. One of the learned Judges expressed the opinion that it was not open to him to proceed under section 195, sub-section (1), clause (*c*) independently of section 476 of the Criminal Procedure Code. The other learned Judge thought that these documents came within the purview of the said provision of law (section 195(1) (*c*) of the Criminal Procedure Code) and except for a complaint filed by this Court no prosecution

could be entertained by a Magistrate. Owing to this difference of opinion the matter has been put before a larger Bench constituted, apparently, under clause 27 of the Letters Patent of this High Court.

It is clear that if our answer to the question put before us be in the affirmative, it will be necessary for the Division Bench which issued the rule, to consider whether it would be in the interests of justice to lodge a complaint under section 195, sub-section (1), clause (*c*). But we, here, have nothing to do with that portion of the case. Nor have we anything to do with the question whether it was open or not to the learned Judges to proceed under section 476 of the Criminal Procedure Code. On that point the learned Judges are unanimous and that is, again, a matter not before us.

Mukerji, J.

I shall therefore confine myself only to the question that has been put to us.

Section 195 of the Criminal Procedure Code is one of the sections which prohibit a court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person. The other sections dealing with similar matters are sections 196 to 199A of the Criminal Procedure Code. These sections do not lay down any rule of procedure. They only create a bar and say that unless some requirement has been complied with, no court shall take cognizance of the offences described in those sections.

In sub-section (1), clause (*a*), of section 195 certain offences are described and it is stated that no court shall take cognizance of those offences unless the public servant concerned files a complaint.

Clause (*b*) of sub-section (1), of the same section describes certain offences, but it lays down that only when those offences are committed in certain circum-

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stances, i.e., in, or in relation to, any proceeding in any court, then the cognizance of those offences shall be barred by clause (*b*). An offence under section 193, for example, may be committed in court and out of court. It is only when an offence under section 193 of the Indian Penal Code is alleged to have been committed in or in relation to any proceeding in any court that a complaint by the court would be necessary before cognizance is taken of that offence. Similarly, in all other cases enumerated in clause (*b*) the bar arises only when the offences are committed in or in relation to any proceeding in any court.

Mukerji, J.

Coming to clause (*c*) of sub-section (1), section 195, a bar is mentioned in particular cases. It is not in the case of offences generally, mentioned in sections 463, 471, 475 and 476 of the Indian Penal Code, that cognizance is barred. But it is barred when "such offence is alleged to have been committed by a party to a proceeding in any court in respect of a document produced or given in evidence in such proceeding." The question is, what is the meaning of this rule of law? This rule has been variously interpreted by various courts and a similar rule has been in existence in the Criminal Procedure Code since the year 1861. The language was recast in 1923 and a particular policy, to be mentioned later on, was adopted in that year. It is not my purpose to investigate the language of the rule as it existed in the old Codes. Nor is it my purpose to go into the possible intention of the legislature as considered apart from the legislation itself.

Coming to the language of clause (*c*) of sub-section (1), section 195, it may be interpreted in two ways. It may be read that when an offence which is described in section 463 (we are concerned with that section alone, here) is alleged to have been committed by a person, who has, subsequently to the commission

of the offence, become a party to any proceeding in any court, a complaint would be necessary in order to prosecute him. Another way of reading it is to say that the offence would be cognizable without a complaint, except when it is committed by a person, who is already a party to a proceeding in court, in respect of a document produced or given in evidence in such proceeding. The question is, which of the two interpretations should be accepted. The present policy of law, undoubtedly, is that there can be no complaint by a private person and all complaints that can be filed in respect of offences mentioned in section 195(1), clauses (*b*) and (*c*), must be filed by the court. The rule which lays down the procedure for a civil court to file a complaint is to be found in section 476 of the Code. There the following words occur, "which appears to have been committed in or in relation to a proceeding in that court", with reference to an offence referred to in section 195. If then, it be the case that section 195 lays down the bar and section 476 lays down the method for removing the bar, I take it that we must read the two sections together.

Mukerji, J.

It has been urged that section 476 may not be exhaustive and it may be open to a court to file a complaint, although it may not be possible for it to file a complaint under section 476 of the Criminal Procedure Code. This argument does not appeal to me and for various reasons. A court is a creature of law and can act only in the manner laid down in law. Abstract notions of justice cannot persuade a court to act contrary to rules laid down by law. Further, the responsibility of initiating a prosecution is immense. A person who takes upon himself the responsibility of initiating a prosecution may be himself prosecuted if it is found that the prosecution was lightly and without sufficient cause launched, or if there was malice in his mind. He may be made civilly liable in damages. In the case of a complaint

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by the court all this is not possible and even when the prosecution fails, the person prosecuted has no remedy. If, therefore, a prosecuted person is to have no remedy, it is necessary that a court should act within the rule of law laid down for its guidance and not outside it.

Mukerji, J

As to inherent jurisdiction, it cannot be said that a court, especially a civil court, has an inherent jurisdiction to file a complaint. That is not the ordinary function of a civil or any court. The power to file a complaint is given by the Criminal Procedure Code and this Code does not indicate the existence of any inherent jurisdiction, except that of a High Court (section 561A). But if we lay down that there is a power to make a complaint outside section 476 of the Code of Criminal Procedure, we must lay it down for subordinate courts also. Section 151 of the Code of Civil Procedure cannot be read as authorising the filing of a criminal complaint,—a matter which is not at all dealt with in that Code. It seems to me, therefore, to be tolerably clear that a complaint, outside the provisions of section 476, cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.

This being my opinion, I would read section 476 and clause (*c*), of section 195 as having the same scope. In other words, I would not read clause (*c*) of section 195 so as to make it comprehensive of offences which would be outside the purview of section 476, unless the language is such as would compel me to put a construction which cannot be reconciled in the manner indicated.

Going back to the language of clause (*c*) of section 195, I find that the offence should be one which has been committed by a party to a proceeding. Now an offence which has already been committed by a person who does not become a party till, say, thirty

years after the commission of the offence, cannot be said to have been committed "by a party" within the meaning of clause (*c*). The word "party" must mean a party and nothing else. If we lay a little emphasis on the word "party" or if we add the words "as such" after the word "party", the meaning of clause (*c*) would be quite in keeping with the provisions of section 476 of the Criminal Procedure Code.

Mukerji, J.

It is to be noticed that the words "in or in relation to a proceeding", to be found in clause (*b*) of section 195 and in section 476, do not find a place in clause (*c*) of section 195. It has been argued that the omission of the words "in or in relation to" from clause (*c*) is intentional and is meant to give clause (*c*) a wider application. In my opinion it is not difficult to see why these words "in or in relation to" have been omitted from clause (*c*). If the sense which is produced by the words "in or in relation to" is already there and is perfectly conveyed by the language of the words used in clause (*c*), it would not be necessary to use those words again.

I have already pointed out that in the case of clause (*b*) the offences described therein by the several sections of the Indian Penal Code are of various kinds and it is only with respect to a limited kind of offences that clause (*b*) applies. It was to limit the cases that it became necessary to use the words "in or in relation to" in clause (*b*). In the case of clause (*c*), the use of the words "committed by a party to a proceeding" brought the offences on the same line with the offences as described in clause (*b*) or with offences as described in section 476 of the Code. It was, therefore, not necessary to introduce the words "in or in relation to" in clause (*c*).

Let us consider some of the consequences that would follow if we give a wider interpretation to clause (*c*) of section 195. When a civil or revenue

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or a criminal court, not being a court of highest jurisdiction, proceeds under section 476, an appeal is provided for and the proceeding is subject to re-examination by the appellate court. If there be any case to which section 195 (1) (*c*) is applicable and to which section 476 does not apply, the result would be that there will be some offences for which a court would be entitled to file a complaint (assuming that a court can file such a complaint), but there will be no check by way of an appeal in those cases. It can hardly have been contemplated by the legislature that, while it deliberately provided for appeals, in some cases, it failed to provide for appeals in certain other cases. Before the amendment of 1923, every sanction to prosecute, granted by a court under section 195 (1) (*c*), was appealable.

Mukerji, J.

For these reasons I would hold that clause (*c*) of section 195 applies only to cases where an offence is committed by a party, as such, to a proceeding in any court in respect of a document which has been produced or given in evidence in such proceeding.

In this view of the law, the documents which we have to consider could not come within the purview of section 195(1) (*c*). These documents were forged (supposing they were forged) sometime in 1898 and by a person who did not become a party to the present proceedings till the year 1922 when the suit was filed. My answer therefore to the question is in the negative.

YOUNG, J. :—I concur and have nothing to add.

KING, J. :—I concur.

BY THE COURT :—The answer to the question referred to us is in the negative.