

MISCELLANEOUS CIVIL.

Before Mr. Justice Young and Mr. Justice Sen.

KETKI KUNWAR (APPLICANT) v. SHEO NARAIN JAJA
AND OTHERS (OPPOSITE PARTIES)*

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April, 10.

Criminal Procedure Code, sections 195(1) (b) and 476—Power of appellate court to file complaint in respect of offences committed in lower court—Offences committed “in relation to a proceeding in any court”—Power of High Court to file complaint in respect of offences committed in relation to a suit in a Subordinate Judge’s court—Jurisdiction.

It appeared to the High Court, at the hearing of a first appeal from a decree passed in a suit by a Subordinate Judge, that there were reasons to believe that certain persons had committed offences under sections 193, 120B and 209/109 of the Indian Penal Code in, or in relation to, the suit in the Subordinate Judge’s court. After the disposal of the appeal the High Court issued notice to these persons to show cause why a complaint should not be filed, under section 476 of the Criminal Procedure Code, by the High Court against them in respect of the said offences. In showing cause an objection, based on section 195 of that Code, was raised against the jurisdiction of the High Court to make the complaint. *Held* that the High Court had jurisdiction to do so.

The words, “in relation to”, in section 195 (1) (b) of the Criminal Procedure Code should not be construed narrowly. An offence which is committed in or in relation to any proceeding in the trial court is also committed “in relation to” the appeal in the appellate court, within the meaning of section 195(1) (b). For example, the offence of perjury, although it was committed in the trial court, must be deemed to have been also committed in relation to the appeal in the appellate court. A person committing perjury in a trial court must be held to have intended that his perjury should not only influence the proceedings in the trial court but also subsequent proceedings which might take place if either party took the matter up to appeal. Therefore the High Court, which heard the appeal, was a court competent according to section 195(1) (b) to make the complaint.

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Further, at the time of the passing of Act V of 1898 there was an already existing jurisdiction in the High Court to order prosecutions in matters like this; and it could not be said that section 195(1) (b) of Act V of 1898 took away in clear terms the undoubted jurisdiction which existed in the High Court prior to the passing of that Act.

Messrs. *Saila Nath Mukerji, A. K. Sanyal* and *N. C. Ganguli*, for the applicant.

Messrs. *Iqbal Ahmad* and *S. S. Sastry*, for the opposite parties.

YOUNG and SEN, JJ. :—Notices have been issued to Sheo Narain Japa, a pleader of Budaun, Ghasa Singh and Nathu Lal to show cause why a complaint should not be filed against them in a criminal court charging them with having committed offences under sections 193, 120 B and 209, read with section 109, of the Indian Penal Code. Notice was also issued to Makhan Singh to show cause why he should not be prosecuted for having committed offences punishable under sections 120 B and 209, read with section 109 of the Indian Penal Code.

These applications arose out of F. A. No. 147 of 1927, which was heard and decided by a Bench of this Court on the 22nd of January, 1931. That Bench made very strong observations against all the four respondents. The Court found in the civil appeal that there had been a conspiracy by all of them to deprive one Manohar Singh of his property, and, in accordance with that finding, avoided a deed of gift executed by Manohar Singh in favour of Nathu Lal and Makhan Singh, and also a sale deed executed by the same parties. The Court also set aside a decree of the 12th of November, 1923, in suit No. 201 of 1923, which was a suit by Nathu Lal and Makhan Singh against Manohar Singh for a declaration that the plaintiffs were entitled to possession of the property comprised in the said sale

deed. The facts arising in this case are fully set out in the judgment of this High Court in F. A. No. 147 of 1927, and it is unnecessary for us to detail fully those facts again. We have to consider whether there is a *prima facie* case established against all or any of the respondents which would make it obligatory on us to order their prosecution under section 476, coupled with section 195, of the Code of Criminal Procedure. Counsel appearing on behalf of Sheo Narain Jafa did not take any preliminary objection; but counsel on behalf of the others have objected that this court has no jurisdiction to order the prosecution of their clients. The objection is based upon section 195 of the Code of Criminal Procedure. That section enacts that "No court shall take cognizance . . . (b) of any offence punishable under any of the following sections of the Penal Code, namely sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate." [With the exception of section 120B, the sections comprised in this notice are included in sub-clause (b) of section 195. Clause (4) also brings in clause (1) (b) the charge under section 120B. It is clear that the alleged offences were not committed in this Court, and it is contended therefore that this Court has no jurisdiction to order the prosecution of the respondents. It is, however, to be noted that the sub-clause does not apply merely to offences committed "in such court", but applies also to offences committed "in relation to any proceeding in any court". It is obvious that the offence charged under section 209, read with section 109, was not committed even in the trial court. It cannot be denied that that offence was committed in relation to the proceeding in the trial court. It is,

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therefore, in our opinion also clear that the offence under those sections was also committed in relation to the appeal which was heard in this Court. There is no reason to construe narrowly the words "in relation to". Equally the offence of perjury, although it was undoubtedly committed in the trial court, must, in our view, be held to have been committed in relation to the appeal in this Court. A person committing perjury in a trial court must be held to have intended that his perjury should not only influence the proceedings in the trial court, but also subsequent proceedings which might take place if either party to the case in the trial court took the matter to appeal.

Further, on this point it is not denied that there was, before Act V of 1898 was passed, a jurisdiction in the High Court to order prosecutions in a matter like this. The equivalent section of Act X of 1882 undoubtedly gave jurisdiction to this Court to order prosecutions. The High Court has also directed similar prosecutions, even prior to the specific enactment of Act X of 1882. There was, therefore, at the time of the passing of Act V of 1898 an existing jurisdiction in the High Court to order such prosecutions. Therefore, in construing the material section of Act V of 1898 the cardinal rule of construction as to jurisdiction must be taken into account, and that is, that no existing jurisdiction of a supreme court can be taken away, unless the language used in the enactment which purports to take that jurisdiction away is in the clearest possible terms. There can have been no object in cutting down the jurisdiction of the High Court in such matters, and, at any rate, it cannot possibly be said that section 195 (b) takes away in clear terms the undoubted jurisdiction which existed in the High Court prior to the passing of that Act. We hold, therefore, that this Court has jurisdiction to make the orders.

We, have very carefully and anxiously considered the case as against Sheo Narain Jafa. [After discussing the facts the judgment proceeded.] We feel that there is not enough evidence which would justify a criminal court in coming to a conclusion adverse to Sheo Narain Jafa. We, therefore, discharge the notice as regards him with respect to all these sections of the Indian Penal Code.

The matter, however, stands on a different footing with regard to the charges against the other three respondents. We do not wish to say anything in this matter to prejudice their trial in the criminal court. We, therefore, confine ourselves to saying that, in our view, there does exist a *prima facie* case against them. We, therefore, record a finding under section 476 (1) of the Code of Criminal Procedure that it is expedient in the interests of justice that an inquiry should be made into the said offences, and direct the Registrar of this Court to take the necessary steps for the filing of a complaint against the three respondents, charging them with the offences enumerated above with regard to each. [Details of the charges were then given.]

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