

trust for the benefit of the Hindu community at large, and that plaintiffs Nos. 2 to 13, being members of that community and representatives of the same, are entitled to visit the temple freely and worship there as Hindus. The defendants are enjoined not to offer any resistance whatsoever in the worshipping of the temple by the plaintiffs, and by other members of the Hindu community.

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HARI  
KISHEN  
v.  
RAGHUBAR  
DAYAL.

*Appeal allowed.*

### APPELLATE CRIMINAL.

*Before Mr. Justice Raza.*

RAM SAMUJH (APPELLANT) v. KING-EMPEROR  
COMPLAINANT-RESPONDENT)\*

1926  
May, 19.

*Criminal Procedure Code (Act V of 1898), sections 195 (c), 537, 467 and 471—Absence of complaint under section 195(c), effect of—Defect, whether curable by section 537 of the Code of Criminal Procedure.*

*Held*, that a court could not take cognizance of the offence punishable under section 467 of the Indian Penal Code when there was no complaint as required by section 195(c) of the Code of Criminal Procedure; and the absence of sanction or complaint under section 195(c) of the Code of Criminal Procedure vitiates the whole proceedings and the defect is not cured by section 537 of the Code of Criminal Procedure.

Mr. *Niamatullah*, for the appellant.

The Government Advocate (Mr. *G. H. Thomas*), for the Crown.

RAZA, J. :—The appellant Ram Samujh has been convicted by the learned Assistant Sessions Judge of Fyzabad under sections 467/114 and 471 of the Indian Penal Code. Under section 467/114 he has been sentenced to 25 months' rigorous imprisonment and a

\* Criminal Appeal No. 154 of 1926, against the order of Shyam Manohar Nath Shargha, Assistant Sessions Judge of Fyzabad, dated the 24th of March, 1926.

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fine of Rs. 50. He has been sentenced to two years' rigorous imprisonment under section 471 of the Indian Penal Code. The sentences are to run consecutively.

The trial was by jury and the appeal has been filed on a matter of law. The appellant's learned Counsel does not question the correctness of the finding and order of the lower court so far as the conviction under section 471 is concerned; but he contends that the trial was illegal and without jurisdiction so far as the charge under section 467/114 of the Indian Penal Code is concerned for want of the necessary sanction or complaint.

The circumstances out of which this case has arisen, so far as they are material to this appeal, may be very shortly stated :—

The accused Ram Samujh produced a receipt in a certain case before the Tahsildar of Akbarpur in March, 1925. This receipt has been found to be a forgery. The objection filed by the accused was disallowed by the Tahsildar and then the decree-holders applied that proceedings might be taken against the accused under section 476 read with section 195 of the Code of Criminal Procedure for the offence mentioned in section 193 of the Indian Penal Code. The Tahsildar refused to take action, but the Deputy Commissioner of Fyzabad on appeal directed the prosecution of Ram Samujh accused and sent his order to a Magistrate. The order runs thus :—

“Whereas on the 4th of March, 1925 Ram Samujh filed as genuine in the court of the Tahsildar of Akbarpur a receipt (exhibit A) purporting to be executed by Ram Lal, which I believe to be false and forged, in the execution of decree case No. 56 of 1925, Tahsildar of Akbarpur. Whereas also he

swore and produced other evidence that the receipt was given by Ram Lal, although it was not. I order his prosecution under section 471 of the Indian Penal Code.”

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Though the Deputy Commissioner had ordered prosecution under section 471 of the Indian Penal Code without referring to any other section; but the Magistrate to whom the order was sent as a complaint, added section 467 of the Indian Penal Code also to the charge. Thus Ram Samujh accused was charged both under sections 467 and 471 of the Indian Penal Code. It was contended before the learned Assistant Sessions Judge, in respect of the charge under section 467, that the complaint of the Deputy Commissioner, as the superior revenue court under section 476B, did not mention section 467 of the Indian Penal Code and, therefore, the court could not try the accused on that charge under section 195 of the Code of Criminal Procedure. This contention was not accepted by the learned Assistant Sessions Judge and the result was that Ram Samujh was tried on both the charges and convicted and sentenced under sections 467 and 471 of the Indian Penal Code both. I should like to note that the Deputy Commissioner of Fyzabad had subsequently directed the prosecution of Ram Samujh accused under section 467/114 of the Indian Penal Code also, but that order was actually passed on a date subsequent to the commitment of the accused by the Committing Magistrate to the Court of Sessions. That order has been held to be invalid and illegal by the learned Sessions Judge of Fyzabad and must be left out of consideration.

The learned Assistant Sessions Judge has held that the original complaint (exhibit M) can be construed to give the Magistrate jurisdiction to inquire into the offence under section 467 of the Indian Penal

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Code also. I have read the complaint carefully. In my opinion that complaint cannot be construed to give the Magistrate jurisdiction to inquire into the offence punishable under section 467 of the Indian Penal Code. The lower court could not take cognizance of the offence punishable under section 467 of the Indian Penal Code when there was no complaint as required by section 195(c) of the Code of Criminal Procedure. It should be noted that section 467 of the Indian Penal Code is not specifically mentioned in section 195(c), but section 463 is mentioned in that section which includes a case falling under section 467 of the Indian Penal Code. As pointed out in the case of *Queen-Empress v. Tulja and others* (1) the word "forgery" is used as a general term in section 463 of the Indian Penal Code and that section is referred to in a comprehensive sense in section 195 of the Criminal Procedure Code so as to embrace all species of forgery, and thus includes a case falling under section 467 of the Indian Penal Code. The absence of sanction or complaint under section 195 of the Code of Criminal Procedure vitiates the whole proceedings and the defect is not cured by section 537 of the Code of Criminal Procedure. Section 537 of the Code of Criminal Procedure applies to errors of procedure and not to substantive errors of law. Where a trial is contrary to law it is no trial at all and disobedience to an express provision of law as to the mode of the trial is not an irregularity which can be cured by section 537 of the Code of Criminal Procedure. It is an illegality which vitiates the whole trial. Absence of complaint or irregularity in complaint makes whole proceedings void *ab initio*. Under these circumstances the contention of the appellant's learned Counsel must be accepted. The conviction and sentence under section

(1) I.L.R., 12 Bom., 86.

467/114 of the Indian Penal Code must, therefore, be set aside.

The result is that the appeal is allowed to the extent indicated above. I set aside the conviction and sentence under section 467/114 of the Indian Penal Code and uphold the appellant's conviction and sentence under section 471 of the Indian Penal Code. He shall undergo two years' rigorous imprisonment as ordered by the learned Assistant Sessions Judge.

*Appeal allowed.*

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## REVISIONAL CRIMINAL.

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*Before Mr. Justice Muhammad Raza.*

INDARJIT SINGH (*in jail*) (APPLICANT) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE-PARTY).\*

1926  
May, 26.

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*Criminal Procedure Code, sections 195 and 476—Indian Penal Code, section 409—Supurdar refusing to deliver up property—Civil court, jurisdiction of, to commit him under section 409 of the Indian Penal Code.*

A *supurdar* refused to deliver up property to the civil court for sale when called upon to do so and the Munsif thereupon took proceedings against him under section 476 of the Criminal Procedure Code and committed the accused under section 409 of the Indian Penal Code, who was convicted under that section.

*Held*, that the offence under section 409 of the Indian Penal Code is not one of the offences referred to in section 195 or 476 of the Criminal Procedure Code and the Munsif was wrong in taking proceedings against the accused under section 476 of the Criminal Procedure Code in respect of the offence under consideration, and he had no jurisdiction to do so.

Mr. M. M. Ansari, for the applicant.

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\* Criminal Revision No. 52 of 1926, against the order of W. Y. Madeley, Sessions Judge of Rae Bareilly, dated the 15th of May, 1926.