

I would therefore dismiss this appeal with costs.

MOTI SAGAR J.—I agree.

A. N. C.

*Appeal dismissed.*

### MISCELLANEOUS CRIMINAL.

*Before Mr. Justice Martineau.*

KHAIRATI RAM (ACCUSED) Petitioner,  
*versus*

MALAWA RAM (COMPLAINANT) Respondent.

Criminal Miscellaneous No. 96 of 1924.

*Criminal Procedure Code, Act V. of 1898, section 195 (1) (c)—Forgery—necessity of a complaint by the Court in which the forged document was produced—Indian Penal Code, 1860, sections 463, 465, 467.*

K. R. sued M. R. for rent at the rate of Rs. 3-9-0 *per mensem* on the basis of a deed executed by M. R. The Court found that the rate agreed upon was only Re. 0-9-0 *per mensem*, and decreed accordingly. M. R. then prosecuted K. R. for forgery, alleging that K. R. had altered the rate of rent in the deed from Re. 0-9-0 to Rs. 3-9-0. It was contended for the accused that the Court could not take cognizance of the offence except on the complaint of the judge who had decided the civil suit. The Magistrate overruled this contention on the ground that the forgery had been committed before the civil suit was instituted, and framed a charge against K. R. for an offence under section 465, Indian Penal Code.

*Held*, that the Magistrate had no jurisdiction to start proceedings against K. R. for an offence under section 465 of the Indian Penal Code except on the complaint in writing of the Court in which the forged document was produced in evidence, *vide* section 195 (1) (c) of the Code of Criminal Procedure.

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*Emperor v. Bhawani Das* (1), *Nalini Kanta Laha v. Anukul Chandra Laha* (2), and *Teni Shah v. Bolahi Shah* (3), followed.

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*Held also*, that section 195 (1) (c) of the Code of Criminal Procedure refers to an offence described in section 463 of the Penal Code and is used there in a comprehensive sense so as to embrace all species of forgery. It was therefore immaterial whether the complaint was of an offence under section 467 or of one under section 465 of the Penal Code.

*Queen-Empress v. Tulja* (4), and *Teni Shah v. Bolahi Shah* (3), followed.

*Application under sections 435 and 439, Criminal Procedure Code, praying that the High Court may be pleased to quash the proceedings instituted in the Court of Sardar Balwant Singh, Magistrate, 1st Class, Ferozepore.*

FAKIR CHAND, for Petitioner.

G. S. SALARIYA, for Respondent.

#### JUDGMENT.

MARTINEAU J.—Khairati Ram sued Malawa Ram for rent at the rate of Rs. 3-9-0 *per mensem* on the basis of a deed executed by Malawa Ram. The Court found that the rate agreed upon was only Re. 0-9-0 *per mensem* and decreed accordingly, and Malawa Ram has now prosecuted Khairati Ram for forgery, alleging that Khairati Ram altered the rate of rent in the deed from Re. 0-9-0 to Rs. 3-9-0. It was contended for the accused that the Court could not take cognizance of the offence except on the complaint of the Judge who had decided the civil suit, but the Magistrate overruled this contention on the ground that the forgery, if committed, had been committed before the civil suit was instituted, and he proceeded

(1) (1915) I. L. R. 38 All. 169.

(3) (1909) 5 I. C. 879.

(2) (1917) I. L. R. 44 Cal. 1002.

(4) (1897) I. L. R. 12 Bom. 36.

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to frame a charge of an offence under section 465, Indian Penal Code, against Khairati Ram. The latter has applied to have the proceedings quashed and his application must be accepted.

The Magistrate's view is not supported by the wording of section 195 (1) (c) of the Criminal Procedure Code, which prohibits the Court from taking cognizance of an offence described in section 463, Indian Penal Code, when such offence is 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. In *Emperor v. Bhawani Das* (1) it was held that the words "when such offence has been committed by a party to any proceeding in any Court" refer, not to the date when the offence was committed, but to the date on which the cognizance of the Criminal Court is invited. In *Nalini Kanta Laha v. Anukul Chandra Laha* (2) it was held that where, before complaint has been made, a document has been produced in a Court by a party to a proceeding before it, the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery. The same view has been taken in *Teni Shah v. Bolahi Shah* (3). It is clear therefore that a prosecution for forgery in the present case could not be entertained except on a complaint by the Court.

It is urged for the respondent that the complaint was of an offence under section 467 and not one under section 465, but this is clearly immaterial. Section 195 (1) (c) of the Criminal Procedure Code refers to an offence described in section 463 of the Indian Penal

(1) (1915) I. L. R. 38 All. 169.

(2) (1917) I. L. R. 44 Cal. 1002.

(3) (1909) 5 J. C. 879.

Code, and in *Queen-Empress v. Tulja* (1) and also in *Teni Shah v. Bolahi Shah* (2) it was held that section 463 is there used in a comprehensive sense so as to embrace all species of forgery and thus includes a case falling under section 467.

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It is then pointed out for the respondent that the complaint was not only of an offence under section 467, Indian Penal Code, but also of one under section 474, namely, possession of a forged document with the intention that it should be used as genuine, and it is urged that such an offence is not one mentioned in section 195 (1) (c) of the Criminal Procedure Code. It is true that section 474, Indian Penal Code, is mentioned in the heading of the complaint, but the complaint itself is clearly one of forgery only, and the charge which the Magistrate has framed against Khairati Ram is only of an offence under section 465. There is therefore no force in the respondent's contention.

I accordingly quash the proceedings taken by the Magistrate on the complaint of Malawa Ram as having been taken without jurisdiction.

A. R.

*Application accepted.*

(4) (1897) I. L. R. 12 Bom. 36.

(2) (1909) 5 I. C. 879.