CRIMINAL REVISION.

Before Mr. Justice Mirza and Mr. Justice Percival.

In re GULABCHAND RUPAJI*.

1925.
June 12.

Criminal Procedure Code (Act V of 1898), section 195 (1) (c)—Production of document—Perusal by the Court— Court's refusal to file it as time-barred—What constitutes production.

The applicant in answer to an application for execution, produced before the trial Court a document purporting to evidence the compromise of the decree under execution. The trial Judge did not take the document on the file on the ground that it was time-barred, and returned it to the applicant's pleader. A question having arisen in certain criminal proceedings thereafter initiated :—

Held, that the document was "produced" in the proceeding before the trial Court within the meaning of section 195 (*1*) (*c*) of the Criminal Procedure Code.

THIS was an application against an order passed by E. I. Patel, Resident Magistrate, F. C., at Nadiad.

Sanction to prosecute.

In 1922 one Dayabhai filed a darkhast in the Court of the First Class Subordinate Judge at Surat, for execution of a decree obtained by him against the applicant. In answer to that darkhast the applicant produced a document purporting to show that the decree had been compromised. The Subordinate Judge refused to take the document on the file on the ground that the adjustment pleaded was beyond time and handed it back to the applicant's pleader.

Subsequently it was discovered that the document produced by the applicant in the Court of the Subordinate Judge was a forged document and that the applicant had got it forged with the assistance of two other persons.

The applicant was charged along with the two others under sections 467 and 190 of the Indian Penal Code and a complaint was filed against him in the Court of the Resident First Class Magistrate at Nadiad.

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The applicant applied to the Magistrate to reject the complaint on the ground that he had no jurisdiction to try the case in the absence of a written complaint by the First Class Subordinate Judge, Surat, as required by section 195 (*1*) (*c*) of the Criminal Procedure Code.

The Magistrate rejected the application on the ground that no sanction was necessary under section 195 (*1*)(*c*), Criminal Procedure Code, as the document was neither produced nor given in evidence in the Surat Civil Court.

The applicant applied to the High Court for revision of the order.

H. C. Coyajee, with *H. M. Choksi*, for the applicant.

S. S. Patkar, Government Pleader, for the Crown.

MIRZA, J. :—This is an application in revision on behalf of the accused against an order of the Resident First Class Magistrate, Nadiad, who rejected the accused's application to quash certain criminal proceedings pending in his Court under sections 467 and 109, Indian Penal Code, against the accused.

The contention of the accused is that a document in respect of which a charge of abetment of forgery is made against him in those proceedings was "produced" before the Extra First Class Subordinate Judge of Surat in the Civil Suit No. 529 of 1922, that any prosecution against him in respect of such a document can be instituted only on a written complaint of the Subordinate Judge and that as, admittedly, there is no written complaint the present proceedings are irregular and should be quashed.

It appears that the accused was the defendant in Civil Suit No. 529 of 1922. The plaintiff in that suit had obtained a decree against the accused and had filed a "darkhast" in the Extra First Class Subordinate Judge's Court for execution of that decree. In answer to that

"darkhast" the defendant had produced the document in question and had handed up the same to the Subordinate Judge. That document purported to show that the decree had been compromised for a payment of Rs. 1,500. The Subordinate Judge did not take the document on the file on the ground that the date it bore showed that it was out of time for the purpose of evidencing any compromise of the decree. In doing so the learned Subordinate Judge failed to observe the provisions of Order XIII, Rule 6, Civil Procedure Code, which lays down :—

"Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned..."

The learned Subordinate Judge returned the document to the pleader of the accused. It is now alleged that the document is being suppressed by the accused and is, therefore, not forthcoming. Under these circumstances the question before us to decide is whether what happened before the Subordinate Judge was tantamount to the "production" of the document in question within the meaning of section 195 (*1*), clause (*c*) of the Criminal Procedure Code. That section provides :—

"195 (*1*). No Court shall take cognizance... (*c*) of any offence described in section 463 or punishable under sections 471, 475 or 476, 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."

Reliance is placed by the learned counsel for the accused upon Order VII, Rule 14, as showing that production of a document is different from giving the document in evidence. Order VII, Rule 14, Civil Procedure Code, provides :—

"Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint."

Order VII, Rule 14, contemplates that a record of the document or its copy should be kept in the Court

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when it is said "to be produced" although it may not be given in evidence.

Our attention has been called to the case of *Queen-Empress* v. *Nagindas*[1], where a Division Bench of this Court consisting of Birdwood and Jardine JJ. held that a document is given in evidence within the meaning of section 195, Criminal Procedure Code, when it is handed over by the person tendering it to the Court though the Court on inspection may reject it as evidence, for insufficiency of stamp or want of registration. This decision was prior to the date of the amendment of the Criminal Procedure Code whereby the words "produced or" have been added.

Our attention has also been called to a decision of the Calcutta High Court in *Nalini Kanta Laha* v. *Anukul Chandra Laha*[2]. That case decided that, where a document was called for by a party to a proceeding under section 145 of the Criminal Procedure Code, brought into Court and referred to by his pleader in argument and by the Magistrate in his judgment, though he expressly refrained from any opinion as to its authenticity, the document was "produced" in the proceeding within the meaning of section 195 (*1*)(*c*) of the Code.

We are further referred to a more recent case of our Division Bench in *In re Gopal Sidheshwar*[3]. In that case Chandavarkar and Pratt JJ. held that section 195 (*c*) of the Criminal Procedure Code, 1898, applied to a document which was alleged to be forged and was produced in a Court of Justice. "Production" of a document in Court, they say, is not the same as "giving it in evidence". A document produced in Court according to this decision means "one which is

[1] (1886) Ratanlal's Unrep. Crim. Cas., p. 242.

[2] (1917) 44 Cal. 1002. [3] (1907) 9 Bom. L. R. 735.

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produced for the purpose of being tendered in evidence or for some other purposes". We are of the opinion that this interpretation of section 195 (*c*) is binding upon us. The circumstances in that case were very similar to the circumstances in the present case.

In a still more recent judgment in *In re Bhau Vyankatesh*[1], Macleod C. J. and Coyajee J. have given the same wide interpretation to the word "produce".

We, therefore, make the rule absolute and quash the Magistrate's proceedings in the matter of the complaint against the applicant. This order, however, will not preclude fresh proceedings being instituted after a complaint is made in writing by the learned Subordinate Judge which in his discretion he is competent to do.

PERCIVAL, J.:—I agree in regard to the legal aspect of the case. I would only like to add that, while it will be a matter of discretion for the learned Subordinate Judge whether to make a complaint or not, in the peculiar circumstances of the case it appears that the complaint by the Subordinate Judge is rather a formality, owing to the fact that, although the document was technically produced in his Court, it was not retained there; and therefore the Subordinate Judge will probably not find anything on his record regarding it. It is even a question whether the document is in existence now or not. Thus, while on technical grounds the complaint by the Subordinate Judge is necessary, it cannot be expected that he will have any personal knowledge of the subject under consideration.

Rule made absolute.

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[1] (1925) 49 Bom. 608.