

the mortgagee. If there had been any satisfactory proof of that no doubt the position would have been very different ; it might then have been possible to hold that the accused had a dishonest intention at the time he gave this order on September 16. But the only evidence adduced on that point is the evidence of one witness who deposes that the mortgagee was not a person of substance, which by itself is quite insufficient to support an allegation of fraud and collusion. The learned Magistrate has also commented upon the accused's failure to produce evidence as to his financial stability. But in my opinion it was for the prosecution to prove affirmatively that he had no reasonable expectation of paying for these goods and until that was done there was no burden upon the accused to produce evidence at all.

I agree, therefore, that this appeal should be allowed and the conviction set aside.

Appeal allowed.

J. G. R.

CRIMINAL REVISION.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.

INDRACHAND BACHRAJ, APPLICANT (ORIGINAL ACCUSED) *v.* EMPEROR.*

Indian Penal Code (Act XLV of 1860), section 193—Criminal Procedure Code (Act V of 1898), section 195—Offence committed in respect of proceedings in Court of law contemplated but never started—Offence not committed in or in relation to judicial proceedings—Complaint by Court not necessary.

There are four cases which may arise under section 193 of the Indian Penal Code. First of all there may be proceedings in a Court in or in relation to which proceedings the offence is alleged to have been committed. A second case is where a suit was pending, but has been disposed of by the order of the Court before any prosecution is launched. A third case is where a suit has been started in connection with which the evidence has been fabricated and the offence committed under section 193 but the suit has been withdrawn without being heard before a Court is asked to take cognizance of the offence. Then there is a fourth case in which an offence is committed under section 193 in respect of proceedings in a Court of law which are contemplated but which in fact are never started. Section 195 of the Indian

* Criminal Revision Application No. 294 of 1931.

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Penal Code applies to the first three cases but not to the fourth and in the latter case a Magistrate can take cognizance of the offence without getting a complaint from a Court.

Govind Pandurang, In re,⁽¹⁾ relied on.

In re Vasudeo Ramchandra,⁽²⁾ discussed.

Per *Beaumont, C. J.* :—“ Although for the purpose of determining whether an offence has been committed under section 193 of the Indian Penal Code, the crucial date is the date on which the offence was committed, yet for the purpose of seeing whether a complaint by the Court is necessary under section 195 of the Criminal Procedure Code, the crucial date is not the date when the offence is committed, but the date when the Court takes cognizance of the offence.”

CRIMINAL APPLICATION for revision against the order passed by the District Magistrate, East Khandesh.

Three persons, Shivdas Daji Patil, Baliram Sakharain Mali and Soma Ramji Bhangle, residents of Vaghli in Chalisgaon Taluka, presented a petition to the District Magistrate, East Khandesh, alleging that Indrachand Bachraj (applicant) was suspected of keeping false accounts and bringing suits thereon ; that in suit No. 132 of 1931 in the Court of the Second Class Subordinate Judge at Chalisgaon the accounts of the petitioner were attached from the shop ; that the petitioner then withdrew the suit ; that several other suits filed by the petitioner in that Court were being withdrawn by the petitioner or being dismissed for default ; and therefore the police may be ordered to investigate the accounts and inquiry be held. In support of this petition one of the three persons Shivdas Daji Patil made an affidavit before the District Magistrate, East Khandesh.

The applicant, Indrachand Bachraj, appeared before the District Magistrate with his pleader who submitted that the District Magistrate could not take cognizance of the petition except on the complaint in writing by the Second Class Subordinate Judge at Chalisgaon.

The District Magistrate passed the following order :

“ The District Magistrate has taken cognizance of the offence under section 193 of the Indian Penal Code on the general allegation about keeping false accounts made

⁽¹⁾ (1920) 45 Bom. 668.

⁽²⁾ (1922) 24 Bom. L. R. 1153.

by Shivdas Daji Patil on oath. The District Magistrate saw no necessity of having a preliminary inquiry and has taken direct cognizance as he was satisfied with the genuineness of the complaint. The applicant's request, therefore, cannot be granted. The case should proceed."

As against the order applicant applied to the High Court in revision.

G. N. Thakor, with *P. V. Kane*, for applicant.

P. B. Shingne, Government Pleader, for the Crown.

BEAUMONT, C. J. :—This is an application to the Court in revision in which we are asked to quash the proceedings taken against the accused under section 193 of the Indian Penal Code before the District Magistrate of East Khandesh. It appears that three persons presented a petition to the District Magistrate alleging that the accused was falsifying accounts on a large scale. The petition alleges that false decrees have been obtained on the strength of these fabricated accounts and that there are still many suits pending and that these suits are either being withdrawn by the accused because of the charges made against him or dismissed by the Court for default. Then there is a general allegation that the effect of it all is that tremendous fraud extending to several lakhs of rupees has been perpetrated on many illiterate agriculturists. The learned District Magistrate appears to have sent for one of the petitioners, and to have taken from him a statement on oath referring to a particular suit brought by the accused against the deponent in which a decree was obtained, as is alleged, on false accounts. The learned District Magistrate passed an order in which he said that he saw no necessity for having a preliminary inquiry, and took direct cognizance, as he was satisfied with the genuineness of the complaint and made an order that the case should proceed. The applicant comes here in revision against this order praying that we quash the proceedings because no complaint has been preferred under section 195 of the Criminal Procedure Code.

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In deciding the question I think it necessary to deal shortly with the law on the subject, because I am in some doubt as to what exactly the learned District Magistrate is proposing to do. Under section 193 of the Indian Penal Code, read with the definition in section 192, so far as it is necessary to state the sections for the purposes of this case, an offence is committed if evidence is fabricated either in connection with some judicial proceedings or quasi-judicial proceeding pending or contemplated at the time of the fabrication. If the charge is that the evidence has been fabricated in connection with proceedings which are only contemplated by the accused, then of course the burden will be upon the Crown to prove the fact that proceedings were contemplated, because the mere fabrication of accounts is not in itself a criminal offence. For instance, if a man prepares false accounts for his own edification to persuade himself that he possesses more money than he does, although that may be a proceeding lacking in wisdom, it is not a criminal offence: you must show that the false accounts were to be used in some proceedings pending or contemplated at the time when the offence was committed. Then when we turn to section 195 of the Criminal Procedure Code it is provided that no Court shall take cognizance of any offence punishable under section 193 of the Indian Penal Code 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. Now it seems to me that four cases may arise under that section. First of all, at the date when the Court takes cognizance of an offence under section 193 of the Indian Penal Code, which I think is the crucial date for the purpose of seeing whether section 195 of the Criminal Procedure Code applies, there may be proceedings pending in a Court in or in relation to which proceedings the offence is alleged to have been committed. In that case, I think, clearly the section applies, and the complaint must be by the Court in which those proceedings

are pending, although I may point out that if the proceedings are pending but have not come to trial, probably the Judge will refuse to launch any complaint until he has heard the suit. A second case is where a suit was pending, but has been disposed of by the order of the Court before any prosecution is launched. That is the normal case in which section 195 comes into operation. I think clearly the section applies to such a case and the Judge is in a position to say whether a prosecution should be started or not. A third case is where a suit has been started in connection with which the evidence was fabricated and the offence committed under section 193, but that suit has been withdrawn without being heard before a Court is asked to take cognizance of the offence. In that case I appreciate the contention of the learned Government Pleader that if the Judge before whom those proceedings were started has never tried them, he is not in a better position than anyone else to say whether a prosecution under section 193 ought to be launched or not. But I do not see how to get out of the words of section 195 of the Criminal Procedure Code which seem to me to apply to such a case, because the offence has been committed in or in relation to judicial proceedings and the mere fact that the proceedings have been withdrawn and were never tried does not prevent the offence having been committed in relation to those proceedings and no other. Therefore I think in that case also section 195 applies and the complaint must be that of the Court. Then there is a fourth case in which an offence is committed under section 193 of the Indian Penal Code in respect of proceedings in a Court of law which are contemplated but which in fact are never started, possibly because of the prosecution under section 193. In such a case it appears to me clear that section 195 of the Criminal Procedure Code does not apply, and although an offence has been committed under section 193 the Magistrate can take cognizance of it without getting any complaint from a Court. It is in my opinion quite impossible to hold

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that section 195 applies, as Mr. Thakor has argued, in respect of proceedings which are contemplated when the Court takes cognizance of the offence but which are in fact never brought. I think the views I have expressed are in accordance with the decision of this Court in *Govind Pandurang, In re*,⁽¹⁾ a decision of Mr. Justice Shah and Mr. Justice Crump. But we were pressed by Mr. Thakor with the decision of the same Bench in *In re Vasudeo Ramchandra*⁽²⁾ as showing that section 195 of the Criminal Procedure Code applies although the proceedings contemplated in relation to which the offence was committed were in fact never brought. In that case the accused was charged with having fabricated evidence on April 10 and the proceedings in which that fabricated evidence was to be used were at the date of the offence only contemplated, but were launched on April 15, and the Court held that a complaint under section 195 of the Criminal Procedure Code was necessary. The report does not show at what date the Magistrate first took cognizance of the offence. But I have no doubt that it was in fact after April 15, when the proceedings, in which the fabricated evidence was to be used, commenced. It was therefore a case in the first of the categories discussed above, viz., a case of a suit pending but not yet heard. The passage which Mr. Thakor particularly relies on is in the judgment of Mr. Justice Crump in which he says (p. 1156) :—

“It is alleged in this case that the petitioner on April 10 instigated certain persons to give false evidence in a criminal proceeding which was about to come before a Magistrate, and did in fact come before that Magistrate on April 15. It is sought to be argued on behalf of the Crown that section 195 (b), Criminal Procedure Code, has no application to the offence so committed. In order to accept that view, it would be necessary to cut down the meaning of the words ‘in relation to’ to an extent, which is, I think, unwarranted. The words are very general, and are wide enough, in my opinion, to cover a proceeding in contemplation before a criminal Court, though it may not have begun at the date when the offence was committed.”

⁽¹⁾ (1920) 45 Bom. 668.

⁽²⁾ (1922) 24 Bom. L. R. 1153.

I think the learned Judge there only intended to deal with the case in which proceedings in a Court were actually pending, when the Magistrate took cognizance of the offence. He did not intend to say that section 195 (b) would apply if there were no proceedings pending at that date. The passage I have read seems to me, if I may say so, not very happily expressed, because the learned Judge does not seem to notice that, although for the purpose of determining whether an offence has been committed under section 193 of the Indian Penal Code, the crucial date is the date on which the offence was committed, yet for the purpose of seeing whether a complaint by the Court is necessary under section 195 of the Criminal Procedure Code, the crucial date is not the date when the offence is committed, but the date when the Court takes cognizance of the offence. Nor does he notice that though proceedings contemplated at the date of the offence are sufficient to constitute the offence under section 193 of the Indian Penal Code, proceedings contemplated at the date when the Magistrate takes cognizance are not sufficient to bring the case within section 195 of the Criminal Procedure Code.

As I said at the commencement of my judgment I am not very clear in this case what the learned District Magistrate is proposing to do. I am not prepared to quash the proceedings before him because I think he may be taking cognizance of a general allegation that accounts have been fabricated in respect of suits which were or are merely in contemplation, but which have not been brought. I think he has got jurisdiction to do that without getting a complaint under section 195 of the Criminal Procedure Code. But I think it is necessary to warn him that in our view he cannot take cognizance of any offence, under section 193 where the judicial proceedings contemplated at the time when the offence was committed have actually been started whether they are now pending or whether they have been determined by the decision of the Court, or by being

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withdrawn. I am in some doubt from the papers before us whether the complaint which has been lodged by the petitioners covers any case to which section 195 would not apply. That is a matter to which the learned Magistrate will have to direct his mind.

Rule discharged. Applicant will have liberty to apply if the learned Magistrate is found at a later stage to take cognizance of an offence of which he could not take cognizance under our judgment.

BROOMFIELD, J. :—I agree.

Rule discharged.

J. G. R.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.

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 January 11.

VITHALDAS MOOLJI (ORIGINAL ACCUSED), APPELLANT v. EMPEROR.*

Criminal Procedure Code (Act V of 1898), section 514—Sentence of fine—Bond for appearance before Court on a particular date—Extension of time—Fresh bond necessary if time extended.

On August 10, 1931, the accused was convicted of cheating and sentenced to pay a fine of Rs. 1,000. Being unable to pay the fine, the accused on the same day entered into a bond by which he bound himself to appear before the Court of the Presidency Magistrate, Third Court, on August 24, 1931, and in case of making default therein, he bound himself to forfeit to His Majesty the King-Emperor of India the sum of Rs. 1,000. On August 24, the accused applied for extension of time and one week's extension was allowed. On August 28, further time was given till September 4. On this date the accused neither appeared in Court nor paid the fine. On October 29, a distress order was issued by the Magistrate and on November 6, the accused was arrested, and committed to prison for default of payment of fine. On November 18, the appeal of the accused against the conviction and sentence was heard and allowed and he was discharged from prison. On November 20, the Magistrate made an order enforcing the bond. The accused having appealed to the High Court from this order :

Held, setting aside the order, that on the terms of the bond, which must be strictly construed, the accused only bound himself to appear on August 24, 1931, and not on any date finally fixed for payment. A Magistrate is bound, when he extends the time, to take a fresh bond requiring the accused to appear on the altered date,

*Criminal Appeal No. 708 of 1931.