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matter has appealed to most of the High Courts in India, and there is a long current of authority in which it has been held that if at the time when the Court is asked to take cognizance of a complaint the accused is a party to proceedings in a Court in which the document has been produced or used in evidence, then the bar contained in section 195 (*1*) (*c*) applies. That view prevailed in the cases of *Emperor* v. *Bhawani Das*,[1] *Nalini Kanta Laha* v. *Anukul Chandra Laha*,[2] *Teni Shah* v. *Bolahi Shah*,[3] *Kanhaiya Lal* v. *Bhagwan Das*,[4] and *Khairati Ram* v. *Malawa Ram*,[5] and in a case in the Court of the Judicial Commissioner in Sind, *Hayat Khan* v. *Emperor*.[6] I think also that the reasoning adopted in those cases was approved by the Madras High Court in *Re Parameswaran Nambudri*,[7] though that was actually a case under sub-clause (*b*). But a contrary view has recently prevailed in a full bench decision of the Allahabad High Court, *Emperor* v. *Kushal Pal Singh*.[8] The first criticism which occurs to one on that case is that the learned Judges do not notice any of the previous authorities which are opposed to the view they take. They do, however, definitely hold that section 195 (*1*) (*c*) of the Criminal Procedure Code applies only to cases where an offence mentioned therein is committed by a party as such to a proceeding in any Court in respect of a document which has been produced or given in evidence in such proceedings. The reasoning which, as I gather, appealed to the learned Judges is this. They say that you must read section 195 (*1*) (*c*) and section 476 of the Criminal Procedure Code together, because section 195 imposes a bar to a complaint, and section 476 provides the method of removing the bar, by specifying how complaints to be made by a Court in cases which fall under section 195 are to be dealt with. The judgment points out that under

(1) (1915) 38 All. 169.
(2) (1917) 44 Cal. 1002.
(3) (1909) 14 Cal. W. N. 479.
(4) (1925) 48 All. 60.
(5) (1924) 5 Lah. 550.
(6) [1932] A. I. R. Sind 90.
(7) (1915) 39 Mad. 677.
(8) (1931) 53 All. 804, F. B.

section 476 the Court can only take action in relation to an offence which appears to have been committed in or in relation to a proceeding in that Court, and if section 195 (*1*) (*c*) applies to offences bearing no relation to proceedings in that Court, then there may be cases which fall under section 195 and in which the bar exists, but in which the method for removing the bar specified in section 476 does not exist. The argument is that the two sections should be co-extensive, but, with all respect to the learned Judges, the construction which they place upon section 195 (*1*) (*c*) does not make the sections co-extensive. If section 195 (*1*) (*c*) is limited to offences committed by a party as such to a proceeding in Court, then such offences can only be committed in such proceeding, whilst section 476 covers offences committed not only in, but *in relation to* any proceeding in any Court. The great majority of offences which fall to be dealt with under section 476 are committed in relation to proceedings in Court, rather than in proceedings in Court. I should think that only rarely would a case arise in which a forged document produced or given in evidence in Court had not been forged in relation to the Court proceedings. If such a case were to arise, the complaint under section 195 (*1*) (*c*) would have to be made under the normal process for lodging complaints, and not under the special process provided in section 476. The Allahabad Court notes that in that event there will be no appeal against a decision to lodge a complaint or a refusal to lodge a complaint such as is given by section 476-B when the case arises under section 476. That may be so, but in such a case, if the High Court thought that injustice had been done, it could always act in revision. In my opinion, the reasoning of the full bench in *Emperor* v. *Kushal Pal Singh*[1] cannot be supported. In my view the provisions of section 195 (*1*) (*c*) apply if at the time when the complaint is lodged the accused person is a party to a proceeding. Whether it would apply if the proceedings in

[1] (1931) 53 All. 804, F. B.

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Court had terminated, so that the accused had only previously been party to a proceeding, it is not necessary to consider.

The learned Sessions Judge noticed the conflict of authority in other High Courts, but considered himself bound by the decision of this Court in *Noor Mahomad* v. *Kaikhosru*.[1] That case was a case under section 471 of the Indian Penal Code, that is, of using a forged document, and a question was submitted to this Court by the then Chief Presidency Magistrate in these terms :—

"Whether in the event of an offence punishable under section 471 of the Indian Penal Code being made out in a complaint, the use complained of being prior in date to the use of the document in question in evidence in a civil Court, the sanction of such Court is necessary under section 195 (*1*) (*c*) of the Code of the Criminal Procedure, before a Criminal Court can take cognizance of such offence."

And the answer which this Court makes is,

"The Court thinks that the answer to the question put by the Chief Presidency Magistrate should be in the negative. Sanction under section 195 (*1*) (*c*) of Criminal Procedure Code for an offence under section 471 of the Indian Penal Code is not necessary in respect of a use made outside the Court."

The accused in that case was being charged with having forged a cheque, and it was alleged that he had used that cheque in a sale transaction prior to and apart from the proceedings in the Bombay Small Causes Court, in which the genuineness of the cheque was challenged. There is no doubt an element of common sense in saying that the sanction required under section 195 (*1*) (*c*) ought not to apply to a case of user of a forged document which has no relation whatever to proceedings in which the document is given in evidence. For example, supposing a mortgage is forged, and money is raised on it from a sub-mortgagee, and then subsequently the mortgagee sues the mortgagor to enforce the mortgage, and it is held in those proceedings that the mortgage is forged, it certainly seems strange if the sub-mortgagee cannot lodge a complaint for having been defrauded by the user of the forged mortgage without

[1] (1902) 4 Bom. L. R. 268.

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obtaining the sanction of a Court in proceedings instituted by the mortgagee to which the sub-mortgagee was no party. At the same time, it is difficult to see how the decision can be reconciled with the wide language of section 195 (*1*) (*c*). That was the difficulty which appealed to the then Chief Presidency Magistrate, but the High Court did not deal with the point. The decision has been disapproved in other High Courts, and it was doubted by Mr. Justice Broomfield in this Court in *Sanjiv Ratanappa* v. *Emperor*.[1] The decision may at some future time have to be reconsidered, but it does not apply to the facts of this case, because it is not suggested that there was any independent user of the forged document outside the proceedings in the Court. The primary offence here is the offence of forgery, and not merely user of a forged document. I think, therefore, that the learned Judge was wrong in supposing that he was bound by the case of *Noor Mahomed* v. *Kaikhosru*.[2] We propose, therefore, to make no order on the reference. The Magistrate can proceed with the existing complaint under section 420 unless the complainants want to move the Court to make a complaint under section 195 (*1*) (*c*).

N. J. WADIA J. I agree. The learned Sessions Judge has made this reference to us, because of the conflict of authority with regard to the interpretation of section 195 (*1*) (*c*) of the Code of Criminal Procedure. In *Emperor* v. *Bhawani Das*[3] a division bench of the Allahabad High Court held that the words "when such offence has been committed by a party to any proceeding in any Court" used in section 195 (*1*) (*c*) refer not to the date of the commission of the alleged offence, but to the date on which the cognizance of the criminal Court is invited, and that when once a document has been produced or given in evidence before a Court, the sanction of that Court, or of some other Court to which that Court is subordinate, is necessary before

[1] (1932) 56 Bom. 488 at p. 497. [2] (1902) 4 Bom. L. R. 268.
[3] (1915) 38 All. 169.

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a party to the proceedings in which the document was produced or given in evidence can be prosecuted, notwithstanding that the offence alleged was committed before the document came into Court, at a date when the person complained against was not a party to any proceeding in Court. The view which the Allahabad High Court took in that case has been followed by that Court in a subsequent decision, *Kanhaiya Lal* v. *Bhagwan Das*,[1] by the Calcutta High Court in *Nalini Kanta Laha* v. *Anukul Chandra Laha*,[2] by the Madras High Court in *Re Parameswaran Nambudri*,[3] and by the Lahore High Court in *Khairati Ram* v. *Malawa Ram*,[4] and on the plain language of the section itself that view would appear to be correct. If it had been the intention of the legislature to restrict the necessity of obtaining sanction to cases of offences under sections 463 and 471 of the Indian Penal Code committed by a party to any proceeding in any Court as such party in respect of a document produced or given in evidence in such proceeding, that is, committed after the proceedings in Court had started, it would have been easy to make that meaning clear. The words of the section as they stand seem to me to imply no such restriction. The difficulty has been created by the view taken by this Court in the case of *Noor Mahomad* v. *Kaikhosru*,[5] and by the Allahabad High Court in *Emperor* v. *Kushal Pal Singh*.[6] The decision in the latter case makes no reference to the previous decisions of the Allahabad High Court, or to the long series of decisions of other Courts, and the main ground on which that decision is based is that sections 195 and 476 of the Code must be read together, and that, therefore, section 195 cannot be held to apply to any cases to which section 476 would not apply, and as in section 476 the reference is to any offence committed in or in relation to a proceeding in that Court, section

[1] (1925) 48 All. 60.
[2] (1917) 44 Cal. 1002.
[3] (1915) 39 Mad. 677.
[4] (1924) 5 Lah. 550.
[5] (1902) 4 Bom. L. R. 268.
[6] (1931) 53 All. 804, F. B.

195 (*1*) (*c*) cannot be held to apply to offences committed prior to the institution of the proceedings. The view which was taken in *Emperor* v. *Kushal Pal Singh*[1] would, however, have the effect of making the application of section 195 (*1*) (*c*) narrower even than the application of section 476, since it would rule out the application of the section to offences committed by a party to a proceeding in relation to such proceeding, but before the proceedings had started. The decision of the Bombay High Court in *Noor Mahomed* v. *Kaikhosru*[2] refers only to section 471, that is, the use of a forged document. No reasons are given for the decision, and the view taken in that case has been dissented from by the Allahabad High Court in *Kanhaiya Lal* v. *Bhagwan Das*,[3] and by the Calcutta High Court in *Nalini Kanta Laha* v. *Anukul Chandra Laha*,[4] and the correctness of the decision has been recently doubted by this Court in *Sanjiv Ratanappa* v. *Emperor*.[5] The view which has been taken in *Noor Mahomed* v. *Kaikhosru*[2] and *Emperor* v. *Kushal Pal Singh*[1] can only be taken by reading into section 195 (*1*) (*c*) words which do not occur in it. In my opinion, it is difficult to put this interpretation upon the language of section 195 (*1*) (*c*) as it stands. I would, therefore, hold that the view taken by the Allahabad High Court in *Emperor* v. *Bhawani Das*[6] is correct, and that the sanction of the Court would be necessary before a party to the proceedings in which the document was produced can be prosecuted, notwithstanding that the offence alleged was committed before the document came into Court, at a time when the person complained against was not a party to any proceeding in Court. I agree, therefore, that no order should be passed on the reference.

Order accordingly.

Y. V. D.

(1) (1931) 53 All. 804, F. B.
(2) (1902) 4 Bom. L. R. 268.
(3) (1925) 48 All. 60.
(4) (1917) 44 Cal. 1002.
(5) (1932) 56 Bom. 488.
(6) (1915) 38 All. 169.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

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February 11

EMPEROR *v.* NASARALLY V. NETTERVALA (ACCUSED).*

Indian Electricity Act (IX of 1910), section 47—Rules framed under the Act—Offence under rule 41 read with rule 107—No penal rule for breach of obligation under the rule—Section 47 does not apply in case of breach of rule 41—Owner, meaning of—Interpretation of rules.†

In the rules framed under the Indian Electricity Act, 1910, there is no rule imposing a penalty for a breach of rule 41.

Section 47 of the Act deals in terms with default in complying with any of the provisions of the Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, but it does not deal with a breach of the rules made under the Act.

There is a definite policy underlying the penal rules, viz., rules 105 to 107 of the rules and the policy seems to be to make licensees and owners who are experts having, or supposed to have, some knowledge of the technical matters relating to electricity and the maintenance of the electrical apparatus liable for breaches of the rules.

Rules 105 and 107 impose penalties on licensees and owners (i.e. experts). Rules 106 and 106-A impose penalties on persons who are merely consumers, and not experts, and the policy with regard to them appears to be to penalise breaches of the rules which are deliberate and which any consumer can avoid. But there is no rule providing a penalty for breaches of rules which might easily be broken by a non-expert unknowingly.

CRIMINAL APPEAL by the Government of Bombay against an order of acquittal made by Sir H. P. Dastur, Chief Presidency Magistrate, Bombay, in case No. 550/S of 1935.

Prosecution under the Indian Electricity Act, 1910.

Nazarally V. Nettervala (accused) owned a house in Bombay. On July 21, 1935, a mason was engaged to carry

*Criminal Appeal No. 465 of 1935.

†Rules 41 and 107 framed under the Indian Electricity Act (IX of 1910) run as follows :—

"41. Every electric supply-line shall be maintained in a safe condition, as regards both electrical and mechanical conditions, by the person to whom the same belongs.

107. Whoever, being a licensee or owner, or the agent or manager of a licensee or owner, commits a breach of these rules, or being a person specified in rule 62 (3)(*a*) commits a breach of that rule shall be punishable for every such breach with fine which may extend to three hundred rupees, and in the case of a continuing breach with a further fine which may extend to fifty rupees for every day after the first during which he is convicted of having persisted in the breach."

out certain repairs to the garret of his house and the mason employed a cooly to do the work by laying chunam with a trowel. While working with the trowel, the cooly came into contact with a live electric wire, was electrocuted and as a consequence died.

The accused was afterwards prosecuted for an offence under rule 41 read with rule 107 of the Indian Electricity Rules, 1922.

The prosecution alleged that the earth wire had been allowed by the accused to rust and thus it had snapped and that if the earth wire had been intact, the accident would not have proved fatal. And it was contended that rule 41 imposed an absolute liability on the accused to maintain the supply line in a safe condition and that he was liable for a breach of the obligation. The accused stated that the earth wire did not snap on account of rust or corrosion, but it was accidently broken by the workmen in the act of dumping chunam. And it was contended for the accused that he was not the owner of the line within the meaning of the word as defined in the rules and that he was consequently not liable.

The learned Magistrate held that the snapping of the wire was due to corrosion and rust, but in the view he took of the Rules, he made an order acquitting the accused. In the course of his judgment he observed as follows :—

"Mr. Dhondi, who appears for the accused, contends that Rule 41 does not apply to the consumer and has referred me to a Government of India Publication containing the Rules published in 1934 by the Department of Industries. On page 59 there appears to be a tabular statement prepared by the Electrical Adviser to the Government of India specifying the rules affecting the classes of persons mentioned in the Act. It shows that Rules 40 and 41 to 68 apply to owners of Electrical Installation, who are not consumers; while they are shown as inapplicable to consumers and the public.

"Such a statement which expresses the opinion of a private individual, though published in a Government publication is absolutely irrelevant. As a matter of fact the Government Solicitor was able to cite an opinion of another Electrical adviser to the Government of India to the contrary.

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"In the commentary on the Law relating to Electrical energy in India the author Mr. J. W. Meares at page 138 gives a tabular statement of the application of the Rules to various classes of persons interested in or affected by them. He mentions there Rules 40 and 41 to 68 as applicable not only to owners, who are not consumers, but also to consumers and the Public.

"The Rules are not artistically drafted, and at first sight it may be reasonably contended that none of the rules in Chapter V apply to consumers at all, as section 34 says that the rules in this Chapter shall apply to every licensee and to every owner. But there can be no doubt that there are certain rules which expressly refer to consumers, and in my opinion Rule 41 would apply to a consumer as well.

"But the real question and the only question involved in this case is, in my opinion, whether Rule 107 is applicable to a consumer also. It is a penal section and must, therefore, be strictly construed. It is as follows: Whoever being a licensee or owner, or manager of a licensee or owner, commits a breach of these rules, or being a person specified in rule 62 (3) (*a*) commits a breach of this rule, shall be punishable, etc.

"In my opinion this rule is not applicable to a consumer. It does not refer to him. When a consumer or any other person is sought to be made liable to penalty the rules expressly mention him, i.e., Rules 106 and 106-A.

"*I therefore hold that Rule* 107 makes only the 'licensee' or the 'owner' liable to a penalty and it does not apply to a consumer."

* * * * * * *

"I therefore hold that Rule 107 has no application to the present case and I accordingly acquit the accused."

The Government of Bombay appealed.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Government of Bombay.

Carden Noad, with *B. J. Dhondi*, for the accused.

BEAUMONT C. J. This is an appeal by the Government of Bombay against the acquittal of the accused by the Chief Presidency Magistrate for a breach of rule 41 of the rules made under the Indian Electricity Act, 1910, as subsequently amended.

The accused is the owner of a house situate at Doctor Street, Bombay, and in July last an accident occurred in the house. It appears that a contractor was employed to lay chunam in the house, and a workman employed by the contractor, in the course of his work, broke through the lead sheathing of an electric wire and the rubber insulation by means of a metal trowel which the workman had in his

hand. He thereby brought the trowel into contact with the electric wire. He was at the moment supporting himself by holding to a pipe for gas, and the result was that he was electrocuted and died.

The learned Chief Presidency Magistrate has held as a fact that the earth wire connection in the electric supply line of the accused was defective; but he has not held that the accident was due to the defect, and in the absence of any evidence or finding on the point, I am certainly not prepared to assume that a workman behaving as the workman did in this case, no doubt by carelessness and not by design, would not have been electrocuted, whatever the condition of the electric supply-line might have been. However, it is admitted that the question whether the accident which occurred was due to the defect in the earth wire is really irrelevant, because the prosecution allege that the accused is liable for the defect under the rules irrespective of any consequences which may have followed from that defect.

The question to be determined turns on the construction of the Indian Electricity Act, 1910, and the rules made thereunder. Section 37 of the Act enables the Governor General in Council to make rules dealing with various matters, amongst others, providing for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of any appliance or apparatus used in the generation, transmission, supply or use of energy; and under sub-section (*4*) of section 37, the Governor General in Council, in making any rule under the Act, may direct that every breach thereof shall be punishable as therein provided. Section 38, sub-section (*4*), provides that all rules made under section 37 shall be published in the *Gazette of India*, and, on such publication, shall have effect as if enacted in the Act. Then section 47 provides that whoever, in any case not already provided for by sections 39 to 46 (both inclusive), makes default in complying with any of the

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provisions of the Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, shall be punishable as therein provided.

Beaumont C. J. The learned Government Pleader has argued that if there is no rule imposing a penalty for a breach of rule 41, then a penalty can be imposed under section 47; but in my opinion that is clearly not so. Section 47 deals in terms with default in complying with any of the provisions of the Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, but it does not deal with a breach of any of the rules made under the Act. The learned Government Pleader has argued that inasmuch as the rules will have effect as if enacted in the Act, they should be treated as part of the Act. But clearly the rules are not part of the Act, and a provision giving them the same force as if they had been enacted by the Act does not make them so. It is to be noticed that when the legislature intend to deal with breaches of the rules apart from the Act they say so. For example section 34 (2) (*c*) deals with an act not in accordance with the provisions of the Act or of any rule made thereunder, and section 42 (*b*) provides a penalty for a breach of the provisions of the Act or of the rules made thereunder. I have no doubt that the omission in section 47 of any reference to a breach of the rules was deliberate, because the legislature realized that the Governor General had power in making rules to provide a penalty—an appropriate penalty—for the breach of the rules, and if he did not desire to provide a penalty in any case, then it would be wrong to impose a penalty in such case by the Act. In my opinion if the accused is to be liable for a breach of rule 41, he must be rendered liable under one of the other rules, and not under section 47 of the Act.

Now rule 41 which it is alleged that the accused has broken is in these terms :

"Every electric supply-line shall be maintained in a safe condition, as regards both electrical and mechanical conditions, by the person to whom the same belongs."