

Emperor Vs. Rackappa Yellappa

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Court : Mumbai

Decided On : Feb-07-1936

Reported in : (1936)38BOMLR440

Judge : John Beaumont, Kt., C.J. and ;N.J. Wadia, J.

Appeal No. : Criminal Reference No. 155 of 1935

Appellant : Emperor

Respondent : Rackappa Yellappa

Judgement :

John Beaumont, Kt., C.J.

1. This is a reference made by the Sessions Judge of Dharwar, and the question is whether a prosecution can be proceeded with without the sanction of a Court under Section 195 of the Criminal Procedure Code. The material facts are that on January 3, 1927, a mortgage of certain immovable property was executed, which mortgage was subsequently transferred to the present complainants. On February 11, 1935, accused No. 1 took the mortgage deed from the father of the complainants, in whose custody it was, and it is alleged that accused No. 1 and accused No. 2, who is the second mortgagee of the property, subsequently forged an endorsement of satisfaction on the mortgage. The other accused are alleged to have either written the forged endorsement, or attested it, and so to have abetted the offence of forgery. On February 16, 1935, accused No. 2 made an application

to the City Survey Officer, Gadag, to substitute his name as a mortgagee of the property in place of the name of the complainants, and in support of that application he relied on the endorsement of satisfaction on the mortgage, which is alleged to have been forged. On February 23, 1935, a complaint was lodged against the accused under Sections 467 and 471 of the Indian Penal Code. The learned Magistrate framed a charge not only under Sections 467 and 471, but also under Section 420. He then, however, came to the conclusion that he could not take cognizance of the offence under Section 467 or 471 without a complaint of the City Survey Officer. He was apparently not willing to proceed only with the complaint under Section 420, so he refused to proceed with the matter. From his order there was a revision application to the Sessions Judge, who considered that a complaint by the City Survey Officer was not necessary, and that the prosecution could proceed, and he, therefore, referred the matter to us with a recommendation that we should make an order directing the Magistrate to proceed with the prosecution.

2. The first question is whether the Mamlatdar, that is, the City Survey Officer, is a Court. Sub-section 2 of Section 195 of the Criminal Procedure Code provides that the term ' Court ' includes a Civil, Revenue or Criminal Court. The learned Sessions Judge held that the Mamlatdar was a Revenue Court, and I am not disposed to differ from him in that view.

3. The next question which arises is whether the consent of that Court is necessary to the prosecution. Now Section 195 provides that no Court shall take cognizance of offences dealt with under sub-Clauses (a), (b) and (c) except upon complaints of the persons therein mentioned. Sub-clause (a) I need not refer to. Sub-clause (b) refers to offences punishable under various sections of the Indian Penal Code, those sections including offences of perjury and fabrication of evidence, and provides that no Court can take cognizance of offences of that nature when such offences are alleged to have been committed in or in relation to any proceeding in any Court except on the complaint of such Court. So that under that clause the offence must have been committed in connection with proceedings in the Court which has to lodge the complaint. Then we come to sub-cl, (c), which is the material sub-clause for the present purpose, and which provides that no

Court shall take cognizance of any offence described in Section 463, that is forgery, or punishable under Section 471, that is using a forged document, Section 475 or Section 476, to which no further reference need be made, of the 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. Now reading that section apart from authority, I think the relevant date which has to be considered is the date at which a Court is invited to take cognizance of the complaint. At that moment the Court has to ask itself whether it is debarred from taking cognizance by reason of the provisions of Section 195, and in cases falling under Section 463 or Section 471 of the Indian Penal Code the Court has to see whether the offence in respect of which it is asked to take cognizance is alleged to have been committed by a party to any proceeding in any Court, and in respect of a document produced or given in evidence in such proceeding. Now in this case the offence had been ' committed by a person who, at the date of the complaint, was a party to a proceeding in a Court, and the document had been produced or given in evidence in such proceeding, and therefore the words of the section would seem to apply. But it is suggested that the words ' committed by a party to any proceeding in any Court' mean that the alleged offence must have been committed by a person who was at the date of the committal of the offence a party to proceedings in a Court, and must also have been in respect of a document produced or given in evidence in such proceeding. If that is the meaning of the section, it seems to me that it can have but little effect, .because people who are minded to launch false cases, and to support their cases by forged documents, do not, as a rule, launch the case first, and then forge the documents on which they propose to rely. They prepare the ground beforehand. They forge their documents first, and then launch their proceedings based on those documents. So that if the section is only to apply to a person who commits forgery, whilst he is a party to a proceeding, of documents used in those proceedings, the section will very rarely have any application. That view of the 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* I.L.R. (1915) 38 All. 169, *Nalini Kania Laha v. Anukul Chandra Laha* I.L.R. (1917) Cal. 1002, *Teni Shah v. Bolahi Shah* 14 C. W. N. 479, *Kanhaiya Lal v. Bhagwan Das* I.L.R. (1925) All. 60, and *Kihairati Ram v. Malawa Ram* I.L.R. (1924) Lah. 550, and in a case in the Court of the Judicial Commissioner in Sind, *Hayat Khan v. Emperor* AIR [1932] Sind 90. I think also that the reasoning adopted in those cases was approved by the Madras High Court in *Re Parameshwaran Nambudri* I.L.R. (1915) Mad. 677, though that was actually a case under sub-cl, (b). But a contrary view has recently prevailed in a full bench decision of the Allahabad High Court, *Emperor v. Kushal Pal Singh* I.L.R. (1931) All. 804. 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(J)(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(I)(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 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(7) (c) applies to offences bearing no relation to proceedings in 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 coextensive, but, with all respect to the learned Judges, the construction which they place upon Section 195(J)(c) does not make the sections co-extensive. If Section 195(Z)(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(7) (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* I.L.R. (1931) All. 804 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 Court had terminated, so that the accused had only previously been party to a proceeding, it is not necessary to consider.

4. 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* (1902) 4 Bom. L.R. 268. 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(Z)(e) 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(7) (c) of the 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(J)(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 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(J) (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 *Emperor v. Sanjiv Ratnappa* : (1932)34BOMLR1090 ., 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 Mahomad V. Kaikhosru* (1902) 4 Bom. L.R. 268. 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(J) (c).

N.J. Wadia, J.

6. 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* I.L.R. (1915) All. 169 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 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* I.L.R. (1925) All. 60, by the Calcutta High Court in *Nalini Kania Laha v. Anukul Chandra Laha* I.L.R. (1917) Cal. 1002, by the Madras High Court in *Re Parameshwaram Nambudri* I.L.R. (1915) 39 Mad. 677, and by the Lahore High Court in *Khairati Ram v. Malawa Ram* I.L.R. (1924) Lah. 550, 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 Mahomed v. Kaikhosru* (1902) 4 Bom. L.R. 268, and by the Allahabad High Court in *Emperor V. Kushal Pal Singh* I.L.R. (1931) All. 804. 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 195(2) (c) cannot be held to apply to offences committed prior to the institution of the proceedings. The view which was taken in *Emperor v. Khushal Pal Singh* would, however, have the effect of making the application of Section 195 (2)(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 Mahomad v. Kaikhosru* 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* I.L.R. (1925) All. 60 and by the Calcutta High Court in *Nalini Kania Laha v. Anukul Chandra Laha* I.L.R. (1917) Cal. 1002, and the correctness of the decision has been recently doubted by this Court in *Emperor v. Sanjiv Ratnappa* : (1932)34BOMLR1090 . The view which has been taken in *Noor Mahomad v. Kaikhosru* and *Emperor v. Khushal Pal Singh* 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(7) (c) as it stands. I would, therefore, hold that the view taken by the Allahabad High Court in *Emperor v. Bhawani Das* I.L.R. (1915) All 169 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.