

In Re: Indrachand Bachraj

In Re: Indrachand Bachraj

SooperKanoon Citation : sooperkanoon.com/344064

Court : Mumbai

Decided On : Dec-02-1931

Reported in : AIR1932Bom185; (1932)34BOMLR294; 137Ind.Cas.134

Judge : John Beaumont, Kt., C.J. and ;Broomfield, J.

Appeal No. : Criminal Revision No. 294 of 1931

Appellant : In Re: Indrachand Bachraj

Judgement :

John Beaumont, Kt., C.J.

1. 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 EastKhandesh. It appears that three persona 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strength of these fabricated accounts and that there are still many suits pending and that these suits are either being withdrawn by the accused because of the charges made against him or dismissed by the Court for default.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 a 195 of the Criminal Procedure Code.

2. 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 198, 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 a 193 ought to be launched or not. But I do not see how to get out of the words of a 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 198, the Magistrate can take cognizance of it without getting any complaint from a Court. It is, in my opinion, quite impossible to hold 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 is in accordance with the decision of this Court in Govind Pandurang, In re I.L.R. (1920) Bom. 668 :22 Bom. L.R. 1239 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 : AIR1923 Bom105 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(6), Criminal Procedure Code, has no application to the offence 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.

3. 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(6) 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.

4. 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 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.

5. 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.

6. I agree.