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Court : Allahabad

Decided On : Dec-10-1915

Reported in : AIR1916All299; 35Ind.Cas.161

Judge : Tudball and ;Piggott, JJ.

Appellant : Bhawani Das

Respondent : Emperor

Judgement :

Piggott, J.

1. This is an application in revision against the order of a Magistrate taking cognizance of a complaint filed by one Cheda Lal against the applicant Bhawani Das. The offence alleged against the latter is abetment of the forgery of a sale-deed, dated 27th June 1913, whereby Cheda Lal purported to convey certain property to one Het Ram. On the same date Het Bam executed a mortgage-deed, whereby he purported to borrow money from Bhawani Das on the security of this very property. Cheda Lal's case is that he knew nothing about the sale-deed, and that his signature to the same was forged by one Babu Lal. The question was raised in two separate suits filed in the Court of the Subordinate Judge, one by Cheda Lal and one by Bhawani Das. The latter did not affirm the disputed sale-deed to be genuine, but on the contrary claimed damages from Babu Lal and Het Ram for having defrauded him. The Subordinate Judge held that the deed was a

forgery and that Bhawani Das had been defrauded. He gave appropriate relief to the latter as well as to Cheda Lal, and he took proceedings under Section 476 of the Criminal Procedure Code against Babu Lal and Het Ram. At the Sessions trial which followed Bhawani Das appeared as a witness for the prosecution. Babu Lal and Het Ram were convicted; but the Sessions Judge cannot have been satisfied with the evidence given by Bhawani Das, for he issued a notice calling on the latter to show cause why he should not be prosecuted for abetment, on charges framed under Sections 467/471 read with Sections 109/114 of the Indian Penal Code. In the meantime, however, Cheda Lal had filed a complaint before a Magistrate charging Bhawani Das simply with abetment of forgery under Sections 463/109 of the Indian Penal Code. The Magistrate has taken cognizance of this complaint, and his competence to do so is challenged by the present application.

2. The question depends on the construction to be put on certain words in Section 195 of the Code of Criminal Procedure. The essential words to be considered are: 'No Court shall take cognizance...of any offence described in Section 463 or punishable under Sections 471, 475 or 476 of the same Code (i.e., of the Indian Penal Code) when such offence has 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 with the previous sanction or on the complaint, of such Court, or of some other Court to which such Court is subordinate.'

3. The case for the applicant is that the offence alleged against him in the complaint of Cheda Lal is an offence of the kind described in Section 463 of the Indian Penal Code; that it was committed in respect of a document produced and given in evidence in the Court of the Subordinate Judge in two suits to each of which Bhawani Das was a party, and that no sanction has been granted or complaint made by the Subordinate Judge; or by the presiding officer of any Court to which that of the Subordinate Judge is subordinate. As for the proceedings initiated by the Sessions Judge, they have not yet resulted in any definite order respecting the prosecution of Bhawani Das; moreover, the Court of the Subordinate Judge is not subordinate to that of the Sessions Judge.

4. On behalf of the prosecution it is pointed out that the complaint against Bhawani Das is for abetment of forgery, and that this offence was completed before Bhawani Das became a party to any proceeding in the Court of the Subordinate Judge; hence it is contended that it cannot with propriety be described as an offence 'committed by a party' to such proceeding. It may be noted further that Bhawani Das is nowhere alleged to have committed any offence punishable under Section 471 of the Indian Penal Code in connection with the litigation in the Court of the Subordinate Judge. He did not set up the forged sale-deed as genuine in that Court; on the contrary, he denounced it as a forgery by which he had himself been defrauded.

5. With regard to the actual wording of the Sub-section under consideration, it does seem to me somewhat lacking in precision. To forbid a Court to 'take cognizance' of an 'offence committed by a party' is open to the criticism that no Court can decide whether an offence was committed or not, until after it has taken cognizance. It seems necessary, therefore, to read the word 'committed' as equivalent to the expression 'alleged to have been committed.' It then remains to be decided whether the words 'by a party to any proceeding' refer to the date of the commission of the alleged offence, or to the date on which the allegation is brought to the notice of the Criminal Court invited to take cognizance of such commission.

6. I am not satisfied that this precise point is covered by any reported decision. The greater part of the case-law which has grown up around Section 195 of the Code of Criminal Procedure is devoted to the elucidation of Sub-clause (b) of Clause (1) of the aforesaid section. This relates to certain offences 'committed in, or in relation to, any proceeding in any Court,' but in Sub-clause (c), which is now under consideration, there are no words equivalent to the expression 'or in relation to' in Sub-clause (6). It would, I think, be easy to refer to a number of cases in which the point now in question has been assumed, or decided by implication, in a sense favourable to the present applicant. I may refer to the case of Giridhari Marwari v. Emperor 12 C.W.N. 822 : 8 C.L.J. 73 : 8 Cr. L.J. 51 where it was obviously conceded, on behalf of the prosecution, that a person who first gets a document forged and then institutes a suit upon it, cannot be prosecuted for any

offence in respect of the said document without the sanction of the Court in which the suit was instituted. I note also the case of Emperor v. Baja Mustafa Ali Khan 8 O.C. 313 : 2 Cr. L.J. 653 because this case would seem to have been put forward in the Court below on behalf of the prosecution. It seems to me by implication strongly in favour of the applicant's contention, that sanction is required in the present case. The complaint before the Oudh Court was one of forgery in respect of a document which a Civil Court had declared to be a forgery in a suit instituted by the complainant. The person accused had made no use of the document in the Civil Court; he had in fact declined to defend the civil suit or to produce the document. The plaintiff had obtained his declaration on the basis of a certified copy produced as secondary evidence. The learned Judges held that no sanction was necessary because the document itself had never been produced or given in evidence in the Civil Court; they obviously never thought of holding that sanction was not required because the complaint was in respect of an offence of forgery which had been completed before the accused person became a 'party' to the civil suit. There is a Bombay case which is some authority on the other side, namely, that of Noor Mahomad Cassum v. Kaikhosru Maneckjee 4 Bom. L.R. 268. There a certain cheque had been forged and used as genuine in a sale transaction. It was subsequently produced and relied upon as genuine on behalf of the defendant in a civil suit. The successful plaintiff in this suit then filed a complaint against the defendant, not in respect of the forgery of the cheque, nor yet in respect of the use made of it in the Civil Court, but simply in respect of the use made of it in the sale transaction which preceded the institution of the civil suit. Objection was taken that the Chief Presidency Magistrate could not take cognizance of this complaint without the sanction of the Civil Court. The Magistrate clearly thought that his cognizance ought not to be barred, but doubted whether the words of Section 195 (1)(c) of the Code of Criminal Procedure were not wide enough to cover the case. He referred to the Bombay High Court the question 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), Criminal Procedure Code, before a Criminal Court can take cognizance of such offence.' The learned Judges who sat to determine this

reference did not discuss the wording of the sub-section, or refer to any authorities. They intimated their opinion that the question referred to them must be answered in the negative, and laid down the general principle that sanction to prosecute for an offence under Section 471 of the Indian Penal Code is not necessary in respect of a use made outside the Court.

7. There is one case of this Court which is strongly relied on by the prosecution and has been accepted by the Magistrate as sufficient authority for his action in taking cognizance of Cheda Lal's complaint. This is the case of Lalta Prosad v. Emperor 17 Ind. Cas. 799 : 34 A. 654 : 10 A.L.J. 294 : 13 Cr. L.J. 863. The facts of that case are not fully apparent from the report or from the record filed in this Court. I am inclined to think that the Magistrate had actually taken cognizance of the alleged offence before the person accused brought the matter into the Civil Court. This is the sense in which the ruling has been understood by Mr. GL P. Boys in his commentary on the Code of Criminal Procedure. I should not feel the slightest hesitation in holding that once a Magistrate had taken cognizance of an alleged forgery, the person accused could not be permitted to obstruct his proceedings by filing a civil suit on the basis of the document impeached. Cognizance having been validly taken, the Magistrate's jurisdiction could not be ousted by subsequent proceedings before a Civil Court. I think, however that the learned Judge who decided this case was obviously inclined to hold, and did in substance hold that Section 195(1)(c) of the Code of Criminal Procedure must be understood as prohibiting only the cognizance of an offence alleged to have been committed by a party to a suit after he became such party.

8. The present application has in fact been referred to a Bench of two Judges in order that the point may be further considered. The interpretation sought to be put on Section 195(1)(c), on behalf of the prosecution in the present case, does not seem to me to follow inevitably from the wording of the section or to be consistent with its apparent purpose. Sub-sections (a) and (6) of Section 195 (1) are intended to restrain private individuals from coming forward to demand the punishment of certain offences against the lawful authority of public servants, or the administration of public justice, except under the authority of the public servant or the Court of justice concerned. The Legislature has seen fit, in Sub-clause (c), to

extend this prohibition to a certain limited class of offences not exactly ejusdem generis with either of the above. Yet it is clear that when a party to a civil suit forges a document for the purpose of that suit and then produces it in support of his claim, he has committed an offence punishable under Section 193 of the Indian Penal Code, and for these offences he cannot be prosecuted without the sanction of the Court. It would be something of an anomaly to maintain this prohibition, and yet to permit a prosecution without any sanction for the graver offences, of forgery and of using as genuine a forged document. Mereover, the Legislature doubtless intended to prevent the possibility of any such scandal to the administration of justice as is generally understood to have occurred in the historical case of the prosecution for forgery of the Maharaja Nand Kumar (Nuncomar). It was not considered proper to leave it open to the defendant in a civil suit to carry the question of the genuineness of the plaintiff's document of title before a different tribunal by instituting a prosecution against the plaintiff, alleging him to have forged the same, or to have made use of it knowing it to be forged. If the Legislature had seen fit to limit the prohibition to the prosecution without sanction of 'a party to any proceeding pending in any Court in respect of a document,' etc., there could have been no serious doubt as to the meaning of the words; but the prohibition would have ceased to be effective as soon as the suit was decided. It may well be that this was considered practically inconvenient, in view of the possible filing of an appeal after prosecution had been instituted. Or it may have been thought advisable, as already suggested, to make the prohibition, as against parties to a proceeding in a Civil Court, co-extensive with the prohibition in respect of the offence of fabricating false evidence already embodied in Section 195(1)(6). At any rate, I am decidedly of opinion that the Legislature employed the words 'offence committed by a party to any proceeding' with reference, not to the date of the commission of the alleged offence, but with reference to the date on which the-cognizance of the Criminal Court was invited. The argument that an offence cannot with propriety be said to have been committed by a party to a proceeding on a date anterior to the institution of such proceeding, seems to me to lose much of its force when the point is clearly grasped that the expression 'offence committed by a party' is loosely used for 'offence alleged to have been committed by a party.' To my mind the provisions of the Sub-section under consideration

require to be interpreted as applying to the case of any person who, at the time when a Criminal Court is invited to take cognizance of the matter, can rightly be described as 'party to any proceeding in any Court' in which the document in question has been produced or given in evidence, that is to say, who is or has been a party to such proceeding. It does not appear to me that this interpretation does any real violence to the language of thq siib-section and I am confident that it is in accordance with the general practice of the Courts.

9. The only case about which I have felt any difficulty is the Bombay case of Noor Mahomad Cassum v. Raikhosru Manechjee 4 Bom. L.R. 268 to which I have already referred. The decision in that case is unsupported by reasoning, and it is impossible to say with certainty what view the learned Judges intended to take of the provisions of Section 195(1)(c), Criminal Procedure Code, as a whole. I feel the strongest possible doubts as to whether they would have accepted the general proposition contended for on behalf of the prosecution in' the present case. Had they taken this view they might well have informed the Chief Presidency Magistrate that no offence anterior in date to the institution of a certain proceeding could with propriety be said to have been committed by a party to that proceeding. I incline to the opinion that they had present to the minds some such analogy, as I have myself suggested, between the prohibition with regard to the manufacture or use of false evidence in Sub-section (1)(6) and the extension of that prohibition to major offences in Sub-section (1)(e). They were trying to distinguish between offences committed by a party to any proceeding' in respect to the said proceeding and any offence which he may have committed in the course of a transaction wholly independent of that proceeding. Personally I doubt if this case was rightly decided, and I incline to the opinion suggested by the Chief Presidency Magistrate, that the wording of Section 195(1)(c) was 'wide enough' to cover even the case which was then before the Court. If it were attempted to apply any such a distinction to the facts of the present case, then the necessity or otherwise for sanction would have to depend on whether or not the prosecution was in a position to prove that Bhawani Das, at the time when he abetted this forgery, intended that the document should be produced or given in evidence in the subsequent civil suits. The distinction seems to me too fine for practical application and to involve reading into the provisions of the Sub-section words which are not

there.

10. I would, therefore, allow this application and set aside the order of the Magistrate taking cognizance of the complaint filed by Cheda Lal.

Tudball, J.

11. I concur.

12. The application is allowed and the proceedings against Bhawani Das in the Magistrate's Court are quashed.

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