Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

KARNAIL SINGH and another,—*Petitioners.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 2549-M of 1981.

October 20, 1982.

Code of Criminal Procedure (II of 1974)—Section 195(1)(b)(ii)—Indian Penal Code (XLV of 1860)—Sections 420, 463, 467 and 471—Cognizance by Court of certain cognizable offences barred under section 195(1)(b) of the Code except on a complaint by the Court—Police—Whether has the power to investigate such offences—Forgery of a document committed earlier to its production in Court—Section 195(1)(b)(ii) of the Code—Whether attracted—Tests for the applicability of this section—Protection envisaged by section 195(1)(b) (ii) of the Code—Whether confined to the parties to the litigation only—Deletion of the words 'by a party to any proceedings in any court' from section 195(1)(b) of the new Code—Effect of.

Held, that it is elementary that investigation by the police would precede the issue of the question of taking cognizance of an offence, if any, disclosed therefrom by a criminal court. The functions of the police to investigate and that of the judiciary to take cognizance are distinct and separate though complementary to each other. The police has a statutory right to investigate into cognizable offences and the same would not be *per se* barred because the Code of Criminal Procedure, 1973 prescribes a procedure of a condition before cognizance of an offence disclosed by such investigation can be taken by a court. It seems to be well settled that it is only after the investigation into such an offence is complete that the question of granting sanction by the authority arises on the materials so placed before it and thereafter the issue of cognizance by a court of law would come into play. Therefore, it cannot be laid down as an inflexible rule that merely because of a cognizance of an offence can only be taken at the instance of a court the investigation thereof by the police would be automatically prohibited. It has perhaps to be highlighted that the courts do not investigate cognizable offences which is the primary function of the police. It would perhaps be after investigation that the materials collected therein could be placed before a court for moving it to prefer a complaint for the prosecution of the offender as visualised in section 195(1)(b) of the Code. Even when this provision is clearly attracted, there is no inflexible bar against police investigation or the court taking notice of and acting on the material collected by the investigating agency for taking action under the aforesaid section. (Para 5).

Sheela Devi *vs.* The State of Punjab, 1979 Chandigarh Law Reporter 195 *OVERRULED.*

Held, that a close analysis of section 195(1)(b)(ii) of the Code would indicate that it does not include within its ambit the forgery of a document committed much earlier which may later come to be produced in court. Though the language used is somewhat wide, it would appear that it pertains to the cognizance of an offence when the same is committed and is not merely rested on the factum of the production of a document in a court of law. To make a sharp distinction, clause (ii) is applicable and confined to the commission of forgery of a document already produced in court and does not extend to the commission of forgery of a document already produced in court and does not extend to the commission of a forgery of a document much earlier which may subsequently come to be produced and given in evidence in a proceeding in any court. In essence, this provision comes into play only when such a forgery is committed *qua* a document in *custodia legis*. It is only after the commission of an offence takes place during the course of the proceedings in any court or to put it in physical terms, it is committed within the four walls of the court either by forging an existing document therein or fabricating the same, that clause (ii) would be attracted. In such a situation alone, the law creates a bar that the cognizance of the offence can be taken only at the instance of a court in the precincts whereof the offence has been committed. It would seem that the acid test for determining the applicability of section 195(1)(b)(ii) of the Code can be formulated with regard to the time of the commission of the alleged offence. The crucial question to be asked is—When was the forgery committed? If it was committed when the document was already in court or fabricated during the course of the proceedings, then it would be well within the ambit of the statute. However, if the offence was committed much earlier and later the document comes to be produced or given in evidence in the court proceedings, clause (ii) would not be attracted at all.

(Paras 6 and 7).

Held, that there is no indication that in deleting the words 'by a party to any proceedings in any court' from the language of section 195(1)(b)(ii) of the new Code, Parliament intended to make any radical change or departure from the settled law earlier. It is well settled that the legislature is presumed to know the existing state of law when making a change or amendment in the statute. The statements of Objects and Reasons and the detailed notes on clauses of the new Code, give no indication of materially altering or overriding the earlier precedential construction of the predecessor provision. It, therefore, seems inapt to read more into the marginal change than the plain words thereof would indicate. The deletion of the words 'by a party to any proceedings in any court' in section 195(1)(b)(ii) of the Code has only the effect of enlarging the protection envisaged by the section to the witnesses, scribes, attestors etc. of the document with regard to which the offence has been committed. This class of persons would now be equally within the ambit

of the provision irrespective of the fact whether they are parties to the proceedings or not. (Para 11).

Petition Under Section 482 of the Criminal Procedure Code praying that :—

(*i*) *that this petition be allowed and the proceedings against the petitioners be quashed as the same are palpably unjust and abuse of the process of the court.*

(*ii*) *That the proceedings be stayed during the pendency of this petition.*

(*iii*) *That exemption be granted from filing certified copy of the judgment annexed as Annexure P. 1.*

H. S. Mattewal, Advocate, *for the Petitioner.*

K. P. Singh Sandhu, Additional A.G. with D. S. Brar, A.A.G. *for Respondent.*

S. S. Aulakh, Advocate, *for the Complainant.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) The statutory power of the police to investigate the cognizable offences under sections 463, 471, 475 and 476 of the Indian Penal Code *vis-a-vis* the bar under section 195(1)(b)(ii) of the Code of Criminal Procedure with regard to the cognizance thereof by a Court, has ultimately come to be the significant question in this reference.

(2) Karnail Singh petitioner and another had instituted a civil suit on 25th of September, 1980, against his brother Jarnail Singh and others seeking a declaration to the effect that they were owners in possession of the said land and for a permanent injunction against the defendants from interfering with their possession. This claim was rested primarily on a will allegedly executed on the 27th of April, 1977 by the petitioner's father Hari Singh. During the pendency of the said suit Jarnail Singh aforesaid who was a defendant therein made an application before the Senior Superintendent of Police, Amritsar, alleging that the will purporting to be the dated the 27th of April, 1977, relied upon by the petitioner had been designedly forged and thereby the petitioner

had committed the offence of cheating and forgery. On the basis of the said application a case under sections 420, 467 and 471 of the Indian Penal Code was registered at Police Station, Majitha, and the investigation thereof was commenced.

(3) The petitioner thereafter preferred the present petition under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) seeking to quash the first information report against him and the investigation thereunder. It is the admitted position that no charge-sheet or complaint had as yet been filed in any Court of law. When the matter came up originally before S. S. Kang, J., reliance on behalf of the petitioner was placed on a Single Bench judgment in *Sheela Devi* v. *The State of Punjab*, (1). Doubting the correctness of its ratio in view of the earlier Supreme Court judgments and apparently taking the view that the criminal miscellaneous petition was pre-mature and incompetent because the matter was as yet merely at the investigative stage and no final report had been filed in any Court of law whatsoever, the learned Single Judge referred the matter to a larger Bench for an authoritative decision.

(4) It would appear that the aforesaid issue which had originally necessitated this reference, namely, whether a Court has the power of quashing a first information report and the consequent investigation even before a charge-sheet is filed has now been authoritatively resolved by the exhaustive judgment of the Full Bench in *Vinod Kumar Sethi and others* v. *State of Punjab and and another*, (2). After an elaborate discussion on principle and precedent, the matter has been epitomised as under :—

> "To conclude, I see no blanket bar against the quashing of a first information report and the consequent investigation (even before a charge-sheet is filed in Court) provided that requisite pre-conditions formulated above for the exercise of the power stand satisfied without being exhaustive, these may be briefly summarised as under:—
>
> (i) when the first information report, even if accepted as true, discloses no reasonable suspicion of the commission of a cognizable offence ;

(1) 1979 Chandigarh Law Reporter 195.

(2) 1982 P.L.R. 337.

(ii) when the materials subsequently collected in the course of an investigation further disclose no such cognizable offence at all ;

(iii) when the continuation of such investigation would amount to an abuse of powers by the police thus necessitating interference in the ends of justice ;

(iv) that even if the first information report or its subsequent investigation purports to raise a suspicion of a cognizable offence, the High Court can still quash if it is convinced that the power of investigation has been exercised *mala fide.*

Applying the aforesaid principles it seems to be plain that the petitioner is disentitled to the relief of quashing the first information report. A reference thereto (as quoted in the petition itself) would show that a clear allegation of the forgery of the signatures of the father who is alleged to have never signed but always used his thumb mark has been made. It has been averred that with the help of this forged will entries were got made in the revenue records and attempts are made to take away the allegedly bequeathed property. It is thus plain that it cannot even remotely be said that allegations, even if accepted as true, do not disclose any reasonable suspicion of the commission of a cognizable offence. Nor is there the least suggestion that the subsequent collection of materials during the investigation has in any way negatived the offence, or the continuance of this investigation by the police is either *mala fide* or amounts to an abuse of power. The primary ground, therefore, for seeking the relief is untenable and has to be rejected.

(5) Repelled on his main stance, learned counsel for the petitioner fell back for reliance on *Sheela Devi's case* (supra), to contend that the police would have no jurisdiction to investigate the offence unless a complaint in writing by the civil court, wherein the alleged forged will had been produced, was duly made. Particular reference was made to the following observations therein:

> "..... If the court cannot take cognizance of offences on a police report then the police investigation of the said offences as such would be meaningless and futile exercise and would cause avoidable harassment to the person complained against. In a situation like this the police

authorities would have no jurisdiction to entertain the complaint and investigate the same."

It seems manifest from the above that the basic premise in *Sheela Devi's case* (supra) is that if there is a procedural impediment for taking cognizance of an offence by a criminal court, then the jurisdiction of the police to investigate the same would be barred. With great respect, this assumption is not universally true. It is elementary that investigation by the police would precede the issue of the question of taking cognizance of an offence, if any, disclosed therefrom, by a criminal court. As was pointed out in *Emperor* v. *Khwaja Nazir Ahmad*, (3), the functions of the police to investigate and that of the judiciary to take cognizance are distinct and separate though complementary to each other. The police has a statutory right to investigate into cognizable offences and the same would not be *per se* barred because the Code prescribes a procedure or a condition before cognizance of an offence disclosed by such investigation can be taken by a Court. An apt example is that of offences under the Prevention of Corruption Act. Under Section 6 thereof, no court can take cognizance of such an offence except with the previous sanction of the State, Central Govrenment or the authority competent to remove the public servant from his office. Would such a provision necessarily bar investigation by the police into such an offence till the requisite sanction is granted? I do not think so. Indeed, it seems to be well-settled that it is only after the investigation into such an offence is complete that the question of granting sanction by the authority arises on the material so placed before it and thereafter the issue of cognizance by a court of law would come into play. Therefore, it cannot be laid down as an inflexible rule that merely because the cognizance of an offence can only be taken at the instance of a court the investigation thereof by the police would be automatically prohibited. It has perhaps to be hghlighted that courts do not investigate cognizable offences which is the primary function of the police. It would perhaps be after an investigation that the materials collected therein could be placed before a court for moving it to prefer a complaint for the prosecution of the offender as visualised in Section 195 (1) (b) of the Code. Even when this provision is clearly attracted, I am unable to see an inflexible bar against police investigation, or the court taking notice of and acting on the material collected by the investigating agency for taking action under the aforesaid Section.

(3) AIR 1945 Privy Council 18.

(6) Now apart from the above, the essence of the matter herein is the true import of Section 195 (1) (b) (ii) of the Code. It is not in dispute that this is the successor provision to Section 195 (1) (c) of the old Code and barring the deletion of the words "by a party to any proceeding in any court", it is virtually in *pari materia* with the earlier provision. (The impact of this change would be elaborated hereinafter). For facility of reference, the same may be noticed in *extenso* :—

> "195. (1) No Court shall take cognizance :—
>
> (a) * * * *
>
> (b) * * * *
>
> (ii) of any offence described in section 463 or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
>
> (iii) * * * *
> except on the complaint in writing of that Court, or of the some other Court to which that Court is subordinate."

Now the case of the question herein is whether the aforesaid provision includes within its ambit the forgery of a document committed much earlier which may later come to be produced in court. A close analysis of the provision would indicate that this indeed may not be so. Though the language used is somewhat wide, it would appear that it pertains to the cognizance of an offence when the same is committed and is not merely rested on the factum of the production of a document in a court of law. To make a sharp distinction, clause (ii) is applicable and confined to the commission of forgery of a document already produced in court and does not extend to the commission of a forgery of a document much earlier which may subsequently come to be produced and given in evidence in a proceeding in any court. In essence, this provision comes into play only when such a forgery is committed *qua* a document in *custodia logis*. It is only after the commission of an offence takes place during the course of the proceedings in any court or to put it in physical terms, it is committed within the four walls of the court either by forging

an existing document therein or fabricating the same, that clause (ii) would be attracted. In such a situation alone, the law creates a bar that the cognizance of the offence can be taken only at the instance of a court in the precincts whereof the offence has been committed.

(7) It would seem that the acid test for determining the applicability of Section 195(1)(b)(ii) of the Code can be formulated with regard to the time of the commission of the alleged offence. The crucial question to be asked is — when was the forgery committed? If it was committed when the document was already in court or fabricated during the course of the proceedings, then it would be well within the ambit of the statute. However, if the offence was committed much earlier and later the document comes to be produced or given in evidence in the court proceedings, clause (ii) would not be attracted at all. Once that is so, it is plain that there would be no bar to the investigation of such an offence in the latter situation even on the assumption (entirely for the sake of argument) that because of Section 195(1)(b)(ii) of the Code, investigation by the police may be prohibited.

(8) The anamolous results which flow from the stand taken on behalf of the petitioner would also call for pointed notice. Mr. Mattewal, his learned counsel had to go to the logical length of contending that even if the police had already started the investigation with regard to a forged will, the moment it was produced or given in evidence in any proceeding before the civil court the jurisdiction of the police to continue the investigation must cease on the ratio *of Sheela Devi's case* (supra). In substance, this implies that the investigation into a serious offence of forgery may be stifled by the mere subterfuge of putting the document in a court proceeding. Apart from this extreme stand, the construction canvassed on behalf of the petitioner would result in barring investigation into all forgeries with regard to documents which are once placed in court. It may even be possible not only to stall but to totally inhibit such investigation by a collusive action of some of the parties to a civil suit in admitting the genuineness of a forged document. Consequently, if the stand taken on behalf of a petitioner were to be accepted, it would raise the possibility of patent abuse and sharp practice by making it possible to stall, stiffle, and virtually to bar investigation and prosecution of serious offences of forgery by the simple strategam of producing or giving them in evidence in a proceeding in court. Learned counsel for the petitioner's apprehension that allowing the police jurisdiction in such circumstances would

lead to a parallel investigation by the court and police rests on some miconception. Courts of law do not investigate into offences. They only take cognizance thereof. As already noticed, the investigative process in cognizable offence is primarily that of the police and consequently hardly any question of the alleged parallel investigation arises.

(9) On principle as also on the sound canons of construction, it is apt to confine Section 195(1)(b)(ii) of the Code to forgeries committed in respect of a document during its custody by the court or its fabrication in the course of the proceedings itself.

(10) The aforesaid conclusion appears to be equally buttressed by persuasive and binding precedents. Herein it deserves recalling that Section 195(1)(c) of the old Code was couched in language which was capable of a wider or a narrower construction. This led to a considerate conflict of judicial opinion. The special Bench presided over by Mukerji, J. in *Emperor* v. *Raja Kushal Pal Singh* (4), opted for the narrower construction on principle and reading it in consonance with the other provisions of the Code, and in particular with Section 476 thereof. It was unanimously concluded by the Special Bench, as follows :—

> "For these reasons I would hold that Cl. (c) S. 195, applies only to cases where an offence 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 proceeding.
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> In this view of the law, the documents which we have to consider could not come within the purview of S. 195 (1) (c). These documents were forged (supposing they were forged) some time in 1898 and by a person who did not become a party to the present proceedings till the year 1922 when the suit was filed. My answer therefore to the question is in the negative."

It would appear that divergence of judicial opinion continued in the various High Courts which was finally set at rest by *Patel Laljibhai Somabhai* v. *The State of Gujarat*, (5), wherein the aforesaid view in *Kushal Pal Singh's case* (supra) was expressly approved and

(4) AIR 1931 All. 443.
(5) AIR 1971 S.C. 1935.

affirmed. After consideration of the numerous other provisions of the Code and reading them harmoniously, it was categorically observed as under :—

> ".....All these sections read together indicate that the legislature could not have intended to extend the prohibition contained in Section 195 (1)(c) Cr. P.C. to the offences mentioned therein when committed by a party to a proceeding in that Court prior to his becoming such party. It is no doubt true that quite often — if not almost invariably — the documents are forged for being used or produced in evidence in Court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents forged long before the commencement of a proceeding in which they may happen to be actually used or produced in evidence, years later by some other party would also be subject to Sections 195 and 476, Cr. P.C. This in our opinion would unreasonably restrict the right possessed by a person and recognised by S. 190 Cr. P.C. without promoting the real purpose and object underlying these two Sections. The Court in such a case may not be in a position to satisfactorily determine the question of expediency of making a complaint."

The aforesaid view in *Patel Laljibhai Somabhai's case* (supra) has been unhesitatingly reaffirmed with added reasons later in *Raghunath* v. *State of U.P.* (6), *Mohan Lal* v. *The State of Rajasthan* (7), *Legal Remembrancer of Govt. of West Bengal* v. *Haridas Mundra*, (8) and *Dr. S. L. Goswami* v. *The High Court of Madhya Pradesh*, (9). Particular reference, however, is called for to the following observations in *Mohan Lal's case* (supra) which seems to directly cover the issue on all fours :—

> "The allegation of the complainant is that the appellants forged a will in the name of Kharturam and thereafter produced it either before the Patwari or the Tehsildar in the mutation proceedings commenced by them on the strength of the

(6) AIR 1973 S.C. 1100.
(7) AIR 1974 S.C. 299.
(8) 1976 S.C. 2225.
(9) AIR 1919 S.C. 437.

will. The forgery therefore is alleged to have been committed by the appellants not after they became parties to the mutation proceedings but prior to the commencement of those proceedings. Section 195 (1)(c) can therefore have no application at least in regard to the offences under Sections 464, 467 and 468, Penal Code."

(11) In view of the wholly settled state of law declared by the Supreme Court under Section 195(1)(c) of the old Code, all that now remains is to examine the marginal change in the language of Section 195(1)(b)(ii) of the Code by deleting the words "by a party to any proceedings in any Court." There is no indication that in doing so, whilst enacting the new Code, Parliament intended to make any radical change or departure from the settled law earlier. It is well settled that the legislaure is presumed to know the existing state of law when making a change or amendment in the statute. The statements of Objects and Reasons and the detailed notes on clauses of the Code of Criminal Procedure, 1973, give no indication of materially altering or overriding the earlier precedential construction of the predecessor provision. It, therefore, seems inapt to read more into the marginal change than the plain words thereof would indicate. To my mind the deletion of the words by a party to any proceedings in any court in Section 195(1)(b)(ii) of the Code has only the effect of enlarging the protection envisaged by the Section to the witnesses, scribes, attesters, etc. of the document with regard to which the offence has been committed. This class of persons would now be equally within the ambit of the provision irrespective of the fact whether they are parties to the proceedings or not. Apart from this, I am unable to read any other meaningful changed wrongful the law in this context. All other considerations authoritatively noticed in the precedents referred to above with regard to the larger principles of interpretation, the aptness of the narrower construction, the other provisions of the Code including Section 476 etc. remain as much applicable and relevant to Section 195 (1) (b) (ii) of the Code, as they were to its predecessor provision. Consequently, the binding precedent applicable to the earlier provisions of 195 (1) (c) of the old Code would be equally attracted in the case of the present provision subject to the marginal change noticed above.

12. A slightly discordant note has come to our notice in the observations of the learned Single Judge of the Karnataka High

Court in *Azeezuddin* v. *The State of Karnataka*, (10). Wherein it has been observed that the inclusion of other persons within the ambit of the protection in Section 195 (1) (b) (ii) of the Code would also enlarge the scope of the time factor of the commission of the alleged offence whether it is after the initiation of the proceedings or before. With respect, I am unable to agree with this part of the observation for which no detailed reasons have either been given nor any principle or precedent cited therefor. In the light of the detailed discussion above, I would respectfully dissent in respect of this gloss in *Azeezuddin's case* (supra).

(13) To conclude on this aspect, I am of the view that the larger perspective and the precise connotation of Section 195 (1) (b) (ii) of the Code was not adequately projected and canvassed in *Sheela Devi's case* (supra) and the observations made therein are not good law and have, therefore, to be overruled. The submissions of the learned counsel for the petitioner resting thereon have inevitably to be rejected.

(14) To finally conclude it is held that the statutory power of the police to investigate cognizable offences under Sections 471, 475 or 476, Indian Penal Code are in no way barred by virtue of the provisions of Section 195 (1) (b) (ii) of the Code of Criminal Procedure, 1973.

15. All the contentions raised on behalf of the petitioner having been rejected, this revision petition is hereby dismissed.

N.K.S.

Before R. N. Mittal, J.

GURBACHAN SINGH,—*Petitioner.*

versus

MAGHER SINGH and others,—*Respondents*

Before R. N. Mittal, J.

October 22, 1982.

Code of Civil Procedure (V of 1908)—Sections 152, 153-A and Order 41 Rule 11—Decree passed in a suit affirmed in appeal—Second appeal dismissed in limine *under Order 41 Rule 11—Application for amendment of the decree filed before the first appellate Court—Such Court—Whether has power to amend the decree—Expression "Court which passed the decree in the first instance" as used in section 153-A—Meaning of—Decree passed prior to the introduction of section 153-A—Provisions of this section—Whether*

(10) 1978 Cr. L.J. 1632.