

Sita Singh, etc. v. The State of Punjab, etc. (Pattar, J.)

person seeking permission to produce secondary evidence is unable to produce the document, the same having been destroyed or lost, his case is governed by the first clause. The words "not arising from his own default or neglect" do not qualify the first clause but the latter. The second clause is applicable when a party offering evidence is unable to produce the original within a reasonable time for any other reason. The view taken by the trial Court is erroneous and is not warranted from a reading of the section.

(5) After carefully going through the section, the only interpretation which is possible, is that if the Court comes to a conclusion that the will has been lost or destroyed, it has to allow the party concerned to lead secondary evidence and in case it comes to the conclusion that it cannot be produced in reasonable time for any other reason, then it has also to take into consideration the conduct of that party. The learned Court has not given any finding as to whether the will had been destroyed or lost or whether the plaintiffs were not producing it on account of any other reason. In order to allow the secondary evidence it was necessary for it to give a finding to that effect. The Court should now decide the matter again after taking into consideration the aforesaid observations.

(6) For the reasons recorded above I accept the revision petition, set aside the order of the trial Court and direct it to decide the matter afresh in accordance with the above observation.

H. S. B.

CRIMINAL MISCELLANEOUS

Before Pritam Singh Pattar, J.

SITA SINGH ETC.,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Criminal Misc. No. 3432-M of 1975.

November 13, 1975.

Code of Criminal Procedure (2 of 1974)—Section 195(1)(b)(ii)—Complaint under section 467, Indian Penal Code, by a private party—whether can be taken cognizance of—Document forged before commencement of proceedings in which it is produced or given in evidence—Bar of section 195(1)(b)(ii)—Whether applicable.

Held, that the purpose and object of the legislature in creating the bar against cognizance of private complaints mentioned in section 195 (i) (b) (ii) of the Code of Criminal Procedure, 1973, is both to save the accused person from vexatious or baseless prosecution as a result of the feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between the finding of the Court in which the forged documents are produced or false evidence is led and the conclusions of the criminal Courts dealing with the private complaints. For this reason the legislature has entrusted the Court, whose proceedings had been the target of the offence of perjury to consider whether it is expedient in the interest of justice that the accused should be prosecuted for the offence mentioned in sub-clause (ii) of clause (b) of section 195(1) of the Code of Criminal Procedure, 1973. Thus the Court has no jurisdiction to take cognizance of a complaint under section 467, Indian Penal Code, filed by a private party.

(Para 6)

Application under section 482 of Criminal Procedure Code, quashing the proceedings pending in the Court of Judicial Magistrate, Ist. Class, Mansa, on the complaint of Nachhattar Singh.

H. L. Sibal, Senior Advocate with S. C. Sibal, Advocate, for the Petitioner.

N. S. Bhatia, Advocate, for State Respondent No. 1.

R. N. Narula, Advocate, for Respondent No. 2.

JUDGMENT

Pattar, J.—This is a petition filed by Sita Singh, son of Kehar Singh, Ramji Dass, son of Ram Rattan and Dalbir Singh, Municipal Commissioner, all residents of Mansa, District Bhatinda, under section 482, Criminal Procedure Code, to quash the proceedings of the complaint case pending in the Court of the Judicial Magistrate 1st Class, Mansa, filed by Nachhattar Singh, Respondent No. 2 against them.

(2) The facts of this case are that the petitioner Sita Singh filed a suit for the recovery of Rs. 11,333 (principal amount of Rs. 10,000 and interest Rs. 1,333) against Nachhattar Singh, respondent on the basis of a pronote alleged to have been executed by him on 25th November, 1972 in his favour. This suit was filed on 9th January, 1974 in the Court of Sub-Judge Ist Class, Mansa, District Bhatinda. Nachhattar Singh denied the execution and consideration of the

Sita Singh, etc. v. The State of Punjab, etc. (Pattar, J.)

pronote. One of the issues in that civil suit was whether Nachhattar Singh executed the pronote and receipt, dated 25th November, 1972 in favour of the plaintiff Sita Singh. The Court came to the conclusion that the execution of the promissory note and the receipt attached to it was not proved and dismissed the suit of Sita Singh plaintiff on 21st November, 1974. Against this judgment and decree Sita Singh filed Regular First Appeal No. 34 of 1975 in this Court, which is still pending. After the filing of this appeal, the jurisdiction of the District Judges in the State of Punjab to hear appeals was enhanced and now they can hear appeals up to the valuation of Rs. 20,000 and that appeal has since been transferred to the Court of the District Judge, Bhatinda and the same is pending in that Court. Nachhattar Singh, Respondent No. 2, who was defendant in the civil suit filed a complaint against Sita Singh, Ramji Dass and Dalbir Singh petitioners under sections 467, 471/114 and 120-B of the Indian Penal Code. Sita Singh was the plaintiff in that suit in whose favour the pronote was executed while Ramji Dass and Dalbir Singh petitioners were the attesting witnesses of the receipt attached to the above-mentioned pronote. The Judicial Magistrate after recording the preliminary evidence summoned the accused under section 467 read with section 120-B, Indian Penal Code,—*vide* his order, dated 30th May, 1975. The three petitioners appeared in the Court of the Judicial Magistrate on 10th June, 1975 and made an application that the Court has no jurisdiction to take cognizance of this complaint in view of the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, which requires that the complaint has to be made by the Court which dismissed the civil suit filed by Sita Singh against the complainant Nachhattar Singh. The Magistrate after hearing the counsel for the parties held that the offence under section 467, Indian Penal Code, for which the accused have been summoned is clearly triable by that Court but the offence under section 120-B, Indian Penal Code, is barred by the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, and, therefore, he dismissed the application filed by the accused and ordered that the proceedings regarding the offence under section 467, Indian Penal Code, will continue. Feeling aggrieved the petitioners filed this petition to quash the proceedings of this complaint case pending in the Court of the Judicial Magistrate.

(3) Section 482 of the Code of Criminal Procedure, 1973, lays down that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be

necessary to give effect to any order under this Court, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Mr. H. L. Sibal, the learned counsel for the petitioners, argued that according to the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, the Judicial Magistrate has got no jurisdiction to take cognizance of the offence unless on a complaint made by the Court which decided the civil suit filed by Sita Singh against Nachhittar Singh complainant, that in this case the Civil Court did not file the complaint and, therefore, the order, dated 12th August, 1975 of the Judicial Magistrate 1st Class, Mansa, is illegal, and may be set aside. In order to appreciate the contentions of the counsel for the parties, I set out below the relevant portions of section 195 of the Code of Criminal Procedure, 1973, and also of the Code of Criminal Procedure, 1898:—

Criminal Procedure Code, 1973	Criminal Procedure Code, 1898
195(1) No Court shall take cognizance	195(1) No Court shall take cognizance
(a)	(a)
(b) (i).....	(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	(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed <i>by a party to any proceeding in any Court</i> 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.
(iii) except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.	

Sita Singh, etc. v. The State of Punjab, etc. (Pattar, J.)

(4) A perusal of the above shows that section 195(1)(c) of the Code of Criminal Procedure, 1898, corresponds to section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973. The words "by a party to any proceeding in any Court" in clause (c) of section 195(1) of the Code of Criminal Procedure, 1898, which have been underlined by me, have been omitted in sub-clause (ii) of clause (b) of section 195(1) of the new Code. Prior to the year 1971, there was divergence of opinion in the various High Courts regarding the interpretation of the words "by a party to any proceeding in any Court" in clause (c) of section 195(1) of the Code of Criminal Procedure, 1898. According to one view to attract the prohibition contained in clause (c) of section 195(1), Criminal Procedure Code, 1898, the offence alleged should have been committed by the party to the proceeding in his character as such party, which means after having become a party to the proceeding, whereas according to the other view the alleged offence may have been committed by the accused even prior to his becoming the party to the proceeding provided that the document in question is produced or given in evidence in such proceeding. This conflict of view between the various High Courts was resolved by the Supreme Court in *Patel Laljibhai Somabhai v. The State of Gujarat*, (1). The facts of this case were that one of the two accused in that case prepared a cheque for Rs. 2,000 in his own handwriting on a blank cheque form bearing the signatures of the complainant. The complainant filed a civil suit against one of the accused, who owed him the money for which that cheque was used by him knowing the same to be forged. After the dismissal of the civil suit, complaint was filed against the two accused by the plaintiff in the suit. The Magistrate found *prima facie* that one of the accused had fraudulently used the forged cheque in the civil suit and that he committed an offence punishable under section 467, Indian Penal Code. The other accused was held to be *prima facie* liable under section 467/34, Indian Penal Code. A question was raised before the Magistrate that in view of the provisions of section 195(1)(c), Criminal Procedure Code, 1898, the Court has no jurisdiction to entertain the complaint, but this contention was repelled in view of the law laid down in *Emperor v. Mallappa*, (2). The accused then made an application in the Court of the Assistant Sessions Judge, in which the trial was to be held, to quash the commitment proceedings. The case was, however, ultimately withdrawn by the Sessions Judge to his own Court and after hearing the counsel for the parties he referred

(1) A.I.R. 1971 S.C. 1935.

(2) A.I.R. 1937 Bombay, 14.

the case to the Gujrat High Court with a recommendation that the commitment order be quashed. The High Court considering itself bound by the majority view in *Ali Bin* (3) declined the recommendation and upheld the commitment order. Thereafter, the accused filed an appeal in the Supreme Court. On these facts it was held:—

“The purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in section 195(1)(b) and (c) is both to save the accused person from vexatious or baseless prosecutions spited by feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between findings of the courts in which forged documents are produced or false evidence is led and the conclusions of the Criminal Courts dealing with the private complaint. It is for this reason that the Legislature has entrusted the Court, whose proceedings had been the target of the offence of perjury to consider the expediency in the larger public interest of a criminal trial of the guilty party.”

It was further held as under:—

“The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that Court, the commission of which has a reasonably close nexus with the proceedings in that Court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its record the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in section 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party.”

Similar was the view taken by a Full Bench of the Allahabad High Court in *Emperor v. Kushal Pal Singh* (4). The law laid down in

(3) (1968) 9 Gujrat Law Reporter 1.

(4) A.I.R. 1931 Allahabad 443.

Sita, Singh, etc. v. The State of Punjab, etc. (Pattar, J.)

this case by the Allahabad High Court was approved by the Supreme Court. The Supreme Court, therefore, held that the offence under section 471, Indian Penal Code, is clearly covered by the prohibition contained in section 195(1)(c), but the offence under section 467, Indian Penal Code, could, in their view, be tried by complaint unless it is shown by evidence that the documents in question were forged by a party to the earlier proceeding in his character as such party; in other words after the suit had been instituted. To the same effect was the law laid down in *Nirmaljit Singh Hoon v. The State of West Bengal and others* (5). According to these decisions, the prohibition contained in section 195(1)(c) of the old Code of Criminal Procedure applied only to cases in which the offences specified therein were committed by a party to the proceeding in the character as such party i.e. after the suit had been instituted.

(5) As mentioned above, the words, contained in clause (c) of section 195(1) of the Code of Criminal Procedure, 1898, "by a party to any proceeding in any Court" have been omitted in sub-clause (ii) of clause (b) of section 195(1), Criminal Procedure Code, 1973. This clause does not lay down that the offence should be committed by the accused in his capacity as a party to the previous proceeding i.e. after having become a party to the proceeding. The provisions contained in section 195 (1)(b)(ii) show that the prohibition contained in this sub-clause would apply to all cases whether the offence may have been committed by the accused even prior to his becoming a party to the proceeding provided that the document in question is produced or given in evidence in such proceedings.

(6) The legal position, therefore, that emerges is that the purpose and object of the legislature in creating the bar against cognizance of private complaints mentioned in section 195(1)(b)(ii), Criminal Procedure Code, is both to save the accused person from vexatious or baseless prosecutions as a result of the feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between the findings of the Court in which the forged documents are produced or false evidence is led and the conclusions of the criminal Courts dealing with the private complaints. For this reason the legislature has entrusted the Court, whose proceedings had been the target of the offence of perjury to consider whether it is expedient in the interest of justice that the accused should be prosecuted for

(5) A.I.B. 1972 S.C. 2639.

the offences mentioned in sub-clause (ii) of clause (b) of section 195(1) of the Code of Criminal Procedure, 1973. After the coming into force of the new Code of Criminal Procedure, it is not necessary that the offence should be committed by the accused in his character as such party, which means after having become a party to the proceeding, and the prohibition contained in this provision applies even though the alleged offence may have been committed by the accused prior to his becoming a party to the proceeding provided the document in question is produced or given in evidence in such proceedings. In the instant case, the Subordinate Judge, who dismissed the suit of Sita Singh petitioner, has not filed the complaint. The complaint filed by Nachhattar Singh respondent is barred under the provisions of section 195(1)(b)(ii), Criminal Procedure Code, 1973, and the Judicial Magistrate had no jurisdiction to take cognizance of the offence.

(7) Sub-clause (ii) of clause (b) of section 195(1), Criminal Procedure Code, 1973, lays down that no Court shall take cognizance of any offence described in section 463 or punishable under section 471, etc. Section 463, Indian Penal Code, defines "forgery". It is well-settled law that the word, "forgery" is used as a general term in section 463 of the Indian Penal Code; and that section is referred to in a comprehensive manner in section 195(1)(c), Criminal Procedure Code, 1898 [now section 195(1)(b)(ii)], so as to embrace all species of forgery, and this includes a case falling under section 467 of the Indian Penal Code,—*vide Kharaiti Ram v. Malwa Ram* (6), *Ram. Samujh v. King Emperor* (7) and *Queen-Empress v. Tulja and others* (8). Thus, the prohibition contained in section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, applies to offences under section 467, Indian Penal Code. The Judicial Magistrate in the instant case had no jurisdiction to take cognizance of the offence unless the complaint was filed by the Subordinate Judge in whose Court the alleged forged pronote was produced and tendered in evidence in view of the provisions of section 195 (*supra*).

(8) As a result, this petition is accepted and the proceedings pending in the Court of the Judicial Magistrate 1st Class, Mansa, filed by Nachhattar Singh respondent against the petitioners are quashed.

H. S. B.

(6) A.I.R. 1925 Lahore 266.

(7) A.I.R. 1926 Oudh. 485.

(8) I.L.R. 12 Bombay 36.