Controller, and, thus, it is quite evident that now in view of the amendment in R.6 of O.8, a counter claim can be made by the defendant in any kind of suit, i.e. whether a money suit or not.

(4) Rule 6-B provides that if in any case, the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may never the less be proceeded with. That being so, in the present case, even if the plaintiff's suit was dismissed as withdrawn, the counter claim filed by the defendants could be proceeded with. The view taken by the trial courts in this behalf is wholly wrong, illegal and misconceived. Rule 6G provides that the rules relating to Written Statement by a defendant shall apply to a Written Statement filed in answer to a counter claim. Thus, the plaintiff will be entitled to file its Written Statement in answer to the counter claim, in the present case, where all the objections including the bar u/s 6 of the Registration of Societies Act, etc., may be taken, if so advised. In this view of the matter, the petition succeeds, the impugned order is set aside, and the trial court is directed to proceed with the counter claim as provided U. O. 8 R. 6-A to 6-G of Code of Civil Procedure. No order as to costs.

(5) It is stated at the Bar, and has also been observed by the trial court, that a fresh suit on behalf of the present plaintiff St. Thomas School has already been filed through its Proprietor-cum-Principal. If that is so, the counter claim filed earlier by the defendant be decided along with that suit.

(6) The parties, through counsel, are directed to appear in the trial court on 20th March, 1986.

N. K. S.

Full Bench

Before : K. S. Tiwana, Surinder Singh and I. S. Tiwana, JJ.

HARBANS SINGH and others,—*Petitioners.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 5095-M of 1984.

May 7, 1986.

Code of Criminal Procedure (II of 1974)—Sections 154, 190, 195(1)(b)(ii) and 340—Offence of forgery in respect of a document

committed before its production in court—First information report lodged with the police alleging commission of such an offence—Police investigation—Whether could be allowed to proceed in view of section 195(1)(b)(ii) since the document had been produced in Court—Section 195(1)(b)(ii)—Scope of—Discussed.

Held, that :

(i) the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, are by way of an exception to the general right of a citizen to approach ordinary criminal courts as contained in Section 190 of the Code and hence should be strictly construed;

(ii) sections 195 and 340 of the new Code form part of statutory scheme dealing with the subject of prosecution for offences against the administration of justice and thus have to be read together to ascertain the intention of the legislature;

(iii) the offence about which the Court alone to the exclusion of the aggrieved party has jurisdiction to file complaint in respect of an offence should have a reasonably close nexus with the proceedings in court, so that it can satisfactorily consider by reference principally to its record the expediency of prosecuting the delinquent person;

(iv) the Court while embarking upon an enquiry under Section 340 of the Code should not act as an investigating agency as it would be impracticable for the court to decide about the expediency of launching of prosecution in respect of forgeries committed earlier to the proceedings initiated in that Court;

(v) if wider view is taken, the criminal liability can be evaded because the forgerer by filing a suit or other proceedings in courts can prolong the same to the extent he can manage, and claim protection under section 195 of the Code;

(vi) the restricted view is more in consonance with the scheme of Code of Criminal Procedure to provide harmonious interpretation and will not defeat or frustrate any other relevant provision of the Code.

Section 195(1)(b)(ii) of the new Code is, thus, limited in its operation only to the offences mentioned in this section if committed in

regard to a document produced or given in evidence in such proceedings, while the document is in the custody of the Court. It has no application to a case in which such a document is fabricated prior to its production or given in evidence.

(Paras 15 and 18).

Ram Pal Singh *vs.* State of U.P. & others, 1982 Cr. L. J. 424.

(*Dissented from*).

This case was referred to Full Bench by Hon'ble Mr. Justice M. M. Punchhi on 4th March, 1985 for decision of important question of law involved in the case. Full Bench consisting of Hon'ble Mr. Justice K. S. Tiwana, Hon'ble Mr. Justice Surinder Singh and Hon'ble Mr. Justice I. S. Tiwana decided the question of law involved,—vide its judgment dated 7th May, 1986 and sent the case back to the Single Judge for decision on merits. The case was finally decided by Hon'ble Mr. Justice M. M. Punchhi on 24th July, 1986.

Petition u/s. 482 Cr. P. C. praying that the petition may kindly be allowed, the F.I.R. No. 189, dated 7th July, 1983 under Sections 468/471/420/120-B of the I.P.C. registered at Police Station City, Muktsar, District Faridkot and the impugned order dated 25th August, 1984 (Annexure P. 1) passed by the learned Sub-Divisional Judicial Magistrate, Muktsar, be quashed as also the proceedings which have been taken in pursuance thereof.

It is further prayed that during the pendency of the petition in this Hon'ble Court, the proceedings pending in the Court below against the petitioners, may kindly be stayed.

S. C. Sibal, Advocate, *for the Petitioners.*

H. S. Riar, A.A.G. Punjab, Ujagar Singh, Senior Advocate with K. S. Cheema, Advocate, *for the Respondent.*

JUDGMENT

K. S. Tiwana, J.

(1) While hearing Criminal Misc. Application No. 5095-M of 1984 (*Harbans Singh etc.* Vs. *State*), M. M. Punchhi, J. formed the view that a Division Bench decision of this court reported as *Karnail Singh and another* v. *The State of Punjab* (1) went against

(1) 1983 Crl L.J. 713

the Supreme Court judgment reported as *Gopalakrishna Menon and another* v. *D. Raja Reddy and another*, (2) In the view of M. M. Punchhi, J., as the principle of *Gopalakrishna Menon's case* (supra) seems to have escaped the notice of the learned Judges in *Karnail Singh's* case (supra), the latter judgment might be rendered *per incuriam*. On this basis, this matter in which the interpretation of section 195 (1) (b) (ii) of the Code of Criminal Procedure 1973 (hereinafter referred as the new Code) is involved is referred to a larger Bench. Criminal Revision No. 517 of 1985—*Baldev Singh etc.* v. *State of Punjab* was also directed to be heard with Criminal Misc. No. 5095-M of 1984.

2. The question of judgment in case of *Karnail Singh's case* (supra) being *per incuriam* does not arise. *Per incuriam* means 'through want of care'. It means an order of Court obviously made through some mistake or under some misapprehension. *Karnail Singh's case* was decided by a Division Bench of this Court on 20th of October, 1982 and *Gopalakrishna Menon's case* was decided by the Supreme Court on 5th of September, 1983. As *Gopalakrishna Menon's case* was decided after the decision of *Karnail Singh's case*, there was no question of noticing of the former case by the Division Bench of this Court in *Karnail Singh's case*. This ends the reasoning about *per incuriam* as referred by the learned Single Judge.

(3) Since the correctness of *Karnail Singh's case* has come to be doubted in the light of *Gopalakrishna Menon's case*, we did not feel inclined to decline the reference on the basis of *per incuriam*, as noticed in the previous paragraph, but heard the parties in detail in regard to the scope of section 195(1) (b) (ii) of the new Code after its amendment and whether the amendment had brought any change in the area of its operation. The facts in *Karnail Singh's case* were that Karnail Singh petitioner and another had instituted a civil suit on 25th of September, 1980 against his brother Jarnail Singh and others for a declaration that they were owners in possession of the land and for a permanent injunction restraining the defendants from interfering in their possession. The suit was based on the will allegedly executed on 27th of April, 1977 by Karnail Singh's father Hari Singh. Jarnail Singh during the pendency of the said suit made an application before the Senior Superintendent of Police, Amritsar, alleging that the will relied upon by Karnail Singh was forged and, therefore, he had committed offence under

(2) AIR 1983 S.C. 1053.

sections 420, 467 and 471 of the Indian Penal Code. The police registered the case and commenced investigation. Karnail Singh approached the High Court for quashing of the first information report and the investigation.

4. In *Karnail Singh's case*, the Division Bench of this court was seized of the question whether the police had the statutory power to investigate the congnizable offences under sections 471, 475 or 476 of the Indian Penal Code vis-a-vis the bar under section 195(1)(b)(ii) of the new Code with regard to the cognizance thereof by a court. While deciding that case on the basis of arguments addressed before the Bench it went into the scope of section 195 (1) (b) (ii) of the new Code after amendment; as to what was the effect of the deletion of the words, "by party to any proceeding in any Court" from section 195 (1) (c) of the Code of Criminal Procedure, 1898, (hereinafter referred as the old Code), while enacting section 195 (1) (b) (ii) of the new Code. The Division Bench also decided the question whether after amendment section 195(1)(b)(ii) of the new Code applied to the case where forgery was committed much earlier than the production or giving the document in evidence in a proceeding, or only if the offences mentioned in this sub-section are committed when the document is in court. The Division Bench after relying on *Patel Laljibhai Somabhai* v. *State of Gujarat* (3), *Raghunath* v. *State of U.P.* (4), *Mohan Lal* v. *State of Rajasthan* (5), *Legal Rememberancer of Government of West Bengal* v. *Haridas Mundra* (6), and *Dr. S. L. Goswami* v. *High Court of Madhya Pradesh* (7), held:—

> "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."

In para 11 of this case the Division Bench observed:—

> "In view of the wholly settled state of law declared by the Sopreme Court under section 195(1)(c) of the old Code, all

(3) A.I.R. 1971 S.C. 1935.
(4) A.I.R. 1973 S.C. 1100.
(5) A.I.R. 1974 S.C. 299.
(6) A.I.R. 1976 S.C. 2225.
(7) A.I.R. 1979 S.C. 437.

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 proceeding 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 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 Cr. P. C. 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 proceeding 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 change brought in 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 section 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."

5. In *Gopalakrishna Menon's case* (supra), on facts, the High Court of Andhra Pradesh held:—

"From the above provisions, it is quite manifest that the of-
punishment, namely, 10 years imprisonment, whereas under
punishment, namely, 10 years imprisonment, whereas under

section 463, I.P.C., the punishment is infinitely lesser than the one under section 467, namely, two years or fine or both. That apart in a case reported in 1979 Cri. L.R. at 228 (2297), it has been held by the Gujarat High Court that the offences laid down under sections 474 and 471 I.P.C. are distinct. In that case it was contended that a complaint by A to police under section 474 that B was in possession of forged documents with intention to use them in Court proceedings and thereafter B producing documents in Court and thereby committing offence under section 471 did not wipe out the offence under section 474. The High Court held under these circumstances that the Magistrate can proceed with case under section 474 against B grounding the reason that section 195(1)(b)(ii) is not attracted.

The penal provisions as it is fairly settled ought to be interpreted very strictly and therefore, on the foregoing analysis I have no hesitation in holding that section 463 cannot be construed to include section 467 as well and, therefore, certainly it is competent for the Magistrate to take cognizance of and try the same as it is needless to follow the case. Hence the contention on the basis of the provisions in section 340 of the Code of Criminal Procedure fails and the same is rejected.".

The question before the Supreme Court in this case was:—

"The short question arising in this appeal by special leave is whether in the absence of necessary complaint by the Civil Court where a money receipt alleged to have been forged was produced, prosecution for offences punishable under sections 467 and 471 read with section 34 of the Indian Penal Code would be maintainable."

The Supreme Court observed:—

"If S. 195(1)(b)(ii) is attracted to facts of the present case, in the absence of a complaint in writing of the Civil Court where the alleged forged receipt had been produced, taking of cognizance of the offence would be bad in law and the prosecution being not maintainable, there would be absolutely no justification to harass the appellants by allowing the prosecution a full-dressed trial."

After quoting sections 453 and 467 of the Indian Penal Code, it was observed:—

> "The purpose of our extracting the two sections of the Penal Code is to show that the offence which is made punishable under section 467 of the Penal Code is in respect of an offence described in section 463. Once it is accepted that section 463 defines forgery and section 467 punishes forgery of a particular category, the provision in section 195 (1)(b)(ii) of the Code would immediately be attracted and on the basis that the offence punishable under section 467 of the Penal Code is an offence described in section 463, in the absence of a complaint by the Court the prosecution would not be maintainable. *We have no doubt in our mind that the High Court took a wrong view of the matter (emphasis supplied by me).*

The words with emphasis extracted above from *Gopalakrishna Menon's case* make it clear that the view of the Andhra Pradesh High Court that section 463 of the Indian Penal Code cannot be construed to include section 467 of that Code was held to be wrong and was set aside. The Supreme Court in *Gopalakrishna Memon's case* also assumed certain facts, to which section 195(1)(b)(ii) of the new Code, in the view of their lordships, was attracted for application, as the extracted portion from that judgment shows that the observations started with the use of the word "if". The word, 'if' is always expressive of condition. In legal and ordinary phraseology the word imparts a condition. The Supreme Court, therefore, holding the view of the High Court on section 463 of the Indian Penal Code as wrong and assuming certain facts and conditions on the existence of which, if section 195(1)(b)(ii) applied drew the conclusion which it expressed. The question of the scope of section 195(1)(b)(ii), after its amendment, was neither specifically raised, discussed, nor adjudicated by their lordships in *Gopalakrishna Menon's case* (supra). At the same time it has to be noted with interest that in this case the Supreme Court referred to (*Patel Laljibhai Somabhai* v. *State of Gujarat*) (supra) and their lordships observed; "Not the conclusion but the ratio supports our view." I am making a detailed reference to *Patel's case* in the ensuing paragraphs of this judgment to highlight the ratio of that case and the different aspects of section 195(1)(e) of the old Code, which were taken note of and adjudicated upon by the Supreme Court. The post-amendment scope of section 195(1)(b)(ii) was not considered by

the Supreme Court in *Gopalakrishna Menon's case*, when in *Karnail Singh's case* this was the matter directly in issue and decided in the light of the binding precedent by the Supreme Court in *Patel's case*. I do not find that *Karnail Singh's case* in any way is in conflict with *Gopalakrishna Menon's case*.

6. The question which has been debated before us is that after amendment of section 195 of the old Code its scope has been widened and the omission of the words "by a party to any proceeding in any court" from the new provision is an indication to that effect. It has been urged that it is no longer permissible to hold that section 195 (1)(b)(ii) of the new Code only applies to the offences mentioned in that provision while a document is in *custodia legis* but will include in its operation, the document about which such offence, if committed, even prior to its production or being given in evidence in court. The learned counsel for the petitioners urged that *Patel's case* and other cases following that authority are no longer good law after the amendment of the Code and cannot operate to limit the area of operation of this provision to a narrow field. The order of reference in this case also refers to the amendment and its effect.

7. It becomes necessary to reproduce section 195(1)(c) of the old Code and section 195(1)(b)(ii) of the new Code:—

"195(1) (of the old Code): No Court shall take congnizance—

(a) — — —

(b) — — —

(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 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."

"195(1) (of the new Code): (a) No Court shall take cognizance—

(a) — — — —

(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"

The only difference in these two provisions is the omission of the words "by a party to any proceeding in any Court". From the new Code, I may quote section 340, which is a successor provision of sections 476 and 476-A of the old Code. Section 340 is as under:—

"Procedure in cases mentioned in section 195—

(a) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it a necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate."

8. For attracting the provisions of section 195(1)(b)(ii) of the new Code, there are three pre-requisites:—

(i) Offence should be described as in section 463 or punishable under sections 471, 475 or 476 of the Indian Penal Code.

(ii) Such an offence should have been committed in respect of document produced or given in evidence.

(iii) Such a production or giving in evidence of a document should be in a proceeding in any Court.

The provisions of section 195(1)(b)(ii) of the new Code admit of two interpretations, one is the wider view, and the other a restricted or a narrow view. According to the wider view, the bar of this section would be applicable to all the cases involving the offences mentioned therein in respect of a document produced or given in evidence in Court irrespective of the time when the offence was alleged to have been committed, while per the restricted view, the bar of this clause would be attracted only if the offence is alleged to have been committed in respect of documents which are already produced or given in evidence and not to the offences committed earlier to the proceedings in court. While dealing with section 195(1)(b)(ii) of the new Code, the following positions can arise:—

(i) Cognizance of the offence taken by the criminal court in respect of a document, which was never produced or given in evidence in a court.

(ii) Cognizance taken by a criminal Court of the offence in respect of a forged document, but produced or given in evidence in a proceeding in Court, subsequent thereto.

(iii) Cognizance of the offence taken by the criminal court in respect of a document, which already stood produced or given in evidence in the proceedings in a court of law, but either—

(a) The offence was committed earlier to the commencement of proceedings in the court of law or production or giving in evidence of the document in a proceeding in Court; or

(b) The offence was committed during the proceedings in the court.

To the situations enumerated at (i) above, the bar of the aforesaid clause of section 195 of the new Code would not obviously be attracted. As regards the situation mentioned in (ii) above, the bar of the

aforesaid provision will also not be attracted, because it is a well known principle of criminal procedure that cognizance once validly taken by a criminal court cannot normally be taken away or withdrawn.

The controversy is only with regard to sub-clauses (a) and (b) of the situation mentioned in (iii) above. According to the wider view, the bar of section 195(1)(b)(ii) of the new Code would be attracted to both the clauses mentioned in (a) and (b); whereas as per the restricted view, this bar would come into play only regarding cases covered by sub-clause (b) of the situation mentioned in (iii) above.

9. The controversy about the scope of section 195(1)(c) of the old Code, which was the predecessor provision of section 195(1)(b)(ii) of the new Code is not of new origin. It existed even under the old Code. The first case of importance in this regard is *Emperor* vs. *Raja Kushal Pal Singh* (8). In that case, the Full Bench of the Allahabad High Court taking the narrow view interpreted that section 195(1)(c) of the Old Code applied only to those cases where the offences mentioned in that section were committed by a party as such to a proceeding in any court; in respect of a document, which had been produced or given in evidence in such proceedings. The words, "committed by a party to any proceedings in court" were held to mean "committed by a person, who was already a party to the proceedings. It was, further, held in that case that an offence, which has already been committed by a person, who does not become a party till 30 years after the commission of the offence cannot be said to have been committed 'by a party' within the meaning of clause (c) of sub-section (1) of section 195 of the old Code. The 'party' meant to be a 'party' and nothing else.

10. This matter was also dealt with by a Full Bench of the Gujarat High Court in *The State of Gujarat* v. *Ali Ben Rajak* (9). In view of the conflict of judicial opinion in that court and other courts. Full Bench was constituted. The facts of that case require to be be reproduced in detail since it is a case in which the shadow of the words, 'committed by a party to any proceeding in any court' was not there. The case came up to be decided independent of these

(8) A.I.R. 1931 All. 443.
(9) I.L.R. B (1967) Gujrat page 1091.

words. The facts of this case are quoted extensively in *Patel's case*, which read as:—

"The facts in the reported case were, that one Har Gobind Kalidas had obtained a decree against Ali Bin Rajak of Junagadh from the Court of a Civil Judge, Junior Division, Visavadar, District Junagadh. Har Gobind filed an execution application for recovering his decretal dues in the course of which the amount payable by the Mamlatdar, Dhari to the judgment-debtor under an annuity card was attached, Garnishee order was served on the Mamlatdar, Dhari. Rajak thereafter, appeared before the Mamlatdar and stated that he had paid the decretal amount to Har Gobind. The Mamlatdar required Rajak to produce the receipt which was produced on July 27, 1964. The receipt bore the date May 23, 1964, purporting to be signed by Har Gobind. Thereupon the Mamlatdar paid the amount due under the annuity card to Rajak and made a report to the Civil Court enclosing the receipt produced by Rajak. The Civil Court called upon Har Gobind to show cause why the execution application should not be disposed of. Har Gobind denied receipt of any amount from Rajak and alleged the receipt to be forged. The Civil Court thereupon issued notice to the Mamlatdar requiring him to show cause why he should not be held up for contempt of Court. The Mamlatdar regretted his action in making payment without the Civil Court's order and explained how he relied upon Rajak's word. The Mamlatdar got the amount produced by Rajak and forwarded the same to the Civil Court. The amount was produced by Rajak under protest and subject to his right to claim the same. Thereafter Har Gobind lodged a F.I.R. with the police at Dhari and on completion of the investigation the P.S.I. sent a charge-sheet against Ali Bin Rajak to the Court. The Magistrate finding *prima-facie* case committed Rajak to the Sessions Court for trial. One of the charges was under section 420 I.P.C. and the other was under section 471 I.P.C. The second charge with which alone the court was concerned was based on the allegation that Rajak had made use of the receipt dated May 23, 1964, alleged to be forged before the Mamlatdar by producing the same before that officer on July 16, 1964. The objection

taken by Rajak was that by virtue of Section 195(1)(c) the court could not take cognizance of this case whereas on behalf of the prosecution it was contended that the forged receipt had been produced before the Mamlatdar before its production in the civil court and, therefore, Section 195(1)(c) was inapplicable. It was in this context that the majority of the judges held that no complaint by the court was necessary whereas one learned Judge took the contrary view. It appears to us that in the Gujarat case the use of the forged power of attorney before Mamlatdar occurred while the execution proceedings were pending but since it was not this user which was the subject matter of the charge the majority of the Judges rightly held that this was not barred by Section 195(1)(c). It was apparently not argued that the complaint of the Mamlatdar was necessary."

The main feature in the Gujarat case was that the forgery was committed by Ali Bin Rajak when he was not a party prior to the production of the document in the Civil Court. The receipt had been produced only before the Mamlatdar. This case reflects the same position as it is now, that is, after the omission of the words "by a party to any proceeding in any court."

11. Next came the judgment in *Patel's case*, which is the basic judgment of the Supreme Court on this question. In this case the Supreme Court noticed the existence of the two views, that is the wider view and the narrow view of section 195(1)(c) of the old Code and found that the language used in this section seemed to be capable of either meaning without straining it. After considering the effect of section 476 of the old Code and section 195(1)(c) of that Code, the Supreme Court in *Patel's case* held:—

"The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complaint 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 records 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. It may be recalled that the superior Court is equally competent under section 476-A Cr. P.C. to consider the question of expediency of prosecution and to complain and there is also a right of appeal conferred by Section 476-B on a person on whose application the Court has refused to make a complaint under Section 476 or Section 476-A or against whom such a complaint has been made. The appellate Court is empowered after hearing the parties to direct the withdrawal of the complaint or as the case may be, itself to make the complaint. 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 preceeding in the 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 recognized by Section 190 Cr. P.C., without promoting the real purpose and object underlying these two sections. The Court in such a case may be in a position to satisfactorily determine the question of expediency of making a complaint."

This as a matter of fact is the ratio of this judgment. Their lordships in *Gopalakrishna Menon's case* found themselves guided by this ratio. *Patel's case* has been followed in *Raghunath and others* v. *State of U.P. and others* (supra).

In *Mohan Lal and others* v. *The State of Rajasthan and another* (supra), following *Patel's case and Raghunath's case*, on the facts of

that case, it was held that since the forgery by the appellants of that case, was alleged to have been committed not after they became party to mutation proceedings but prior to the commencement of those Section 195(1)(c) of the old Code was not attracted.

Again in *Legal Rememberancer of Government of West Bengal* v. *Haridas Mundra* (supra), following Patel's case interpreting the intention of the legislature it was held:—

> "This Court pointed out that the words of Section 195(1)(c) clearly meant that the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is, after having become a party to the proceeding. Sections 195(1)(c), 476 and 476-A read together indicated beyond doubt that the legislature could not have intended to extend the prohibition contained in Section 195(1)(c) to the offences mentioned therein when committed by a party to a proceeding prior to his becoming such party. The scope and ambit of Section 195(1)(c) was thus restricted by this Court to cases where the offence was alleged to have been committed by a party to a proceeding after he became such party and not before. This view as to the interpretation of Section 195(1)(c) was reaffirmed by this Court in *Raghunath* v. *State of U.P.* (supra) and Mohan *Lal* v. *The State of Rajasthan* (supra)."

This is the settled view of the Supreme Court. In view of *Patel's case, Gopalakrishna Menon's case,* decided on its own facts, does not decide the question of law to create any binding precedent. If the reasoning of the learned Single Judge, in the reference and the arguments of the learned counsel for the petitioners' are taken into account *Gopalakrishna Menin's case* goes against the *Patel's case,* which is not the correct situation, as the ratio of the latter case was adopted in the former case.

12. *Patel's case* has firmly established the law in favour of a narrow view of the provisions of section 195(1)(c) of the old Code and there are reasons for it. Under section 190 of the Code, (new as well as old) a citizen has a right guaranteed under the criminal statute to bring the existence of facts amounting to an offence under, the law of the land, to the notice of the criminal courts functioning under the Code, which have to take cognizance of that. Section 195 of the

new Code imposes restrictions on that right of an individual; if the circumstances given under this section are found io exist. Section 190 of the Code is the rule and section 195 is the exception. The exception has to be strictly construed and has to be operated in a narnow field. In *Raja Kushal Pal Singh's case* (supra), the Allahabad High Court examined the papers and the right of a civil court to file a complaint. The view expressed in that case was that a segment of cases is likely to be left out of the purview of section 476 of the old Code. Similar view was expressed by the Gujarat High Court in *Ali Bin Rajak's case* (supra) as:—

> "Moreover, the narrower view, in our judgment, is more in accordance with the provisions of the Code as a whole and avoids some of the difficulties which arise and which have been mentioned in certain cases. For example, the narrower view would avoid the Civil, Revenue and Criminal Courts having to resort to two kinds of procedure, one in regard to those which fall within the purview of section 476 and another in regard to those which fall outside the same. According to the narrower interpretation, the bar of clause (c) would apply only to those cases where the offences mentioned therein are committed in regard to documents produced or given in evidence in proceeding. It would avoid also the difficulty mentioned by Broomfield J., of sanctions of several Courts having to be taken if a document happens to be produced in more than one Court. The operation of clause (c), according to the narrower construction, would be confined only to the commission of offences in respect of those documents which are produced or given in evidence. Such an inerpretation would also be in accordance with the grammer of the aforesaid clause: The expression "produced or given in evidence" which qualifies 'documents' indicates that the document is one which is already produced or given in evidence. The term "such" in the expression "in such proceeding" also emphisized the same thing. The aforesaid reading also would be more in consonance with proviso (b) to sub-section (3). Under the circumstances in our judgment, though we are conscious of the fact that the authorities of the Bombay and several High Courts, specially those dealing with offences connected with section 463, take the wider view, on the whole, we have come

to the conclusion that the narrower view which was expressed but without any reason in *Noor Mohamad Cassim's case* is the correct view.....".

Reasons given for the conclusion in *Raja Kushal Pal Singh's case* and *Ali Bin Rajak's case* have been approved in *Patel's case.* Even the question of expediency may not be appropriately determined by a court under section 340 of the new Code in case the aggrieved party approaches the court after delay. Section 340 of the new Code on the face of it seems to be quite exhaustive, as it prescribes for an appeal in the succeeding section 341. But, in practice it may not be so; for the criminal offences like the ones referred to in section 195(1) (b) (ii) of the new Code, the Court cannot have the assistance of the police agency for enquiry and investigation into the allegations of forgery which the criminal courts have under sections 202 and 156 of the new Code. The Court under section 340 of the new Code has to see if it is expedient in the interest of justice that an enquiry should be made into the offences referred to in clause (b) (ii) of section 195(1) and which appear to have been committed in relation to a proceeding in that court, or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, it may make a complaint after preliminary enquiry. Forgery is a serious offence and its detection in some cases, like, trace forgery etc., may require technical methods for the detection of the offence, which may not be available to the court under section 340 in the way they are available to the police during investigation. It may be impracticable for the court to hold an enquiry into an offence which was committed before the document was placed on its records. The leading of evidence for the satisfaction of the court is quite a time-consuming and cumbersome process. In *Patel's case, noticing* sections 476-A and 476-B of the old Code, which were predecessor provisions of sections 340 and 341 of the new Code the narrow view was taken. It was observed that it was appropriate for the court only to file complaints in these cases in which the offences were committed by a party to the proceedings, which have a reasonably close nexus with the proceedings in that court, "so that it can, without embarking upon a completely independent and fresh enquiry, satisfactorily consider by reference pricincipally to its records the expediency of prosecuting the delinquent party." This also indicates the view that fresh enquiry independent of the case was not preferred in *Patel's case.*

(13) In case of wider view, there is a scope for misuse of the provision also. Suppose 'A' fabricates a document. After that he

files a suit against 'B' representing that the document is to be used for some collateral purpose in that suit. 'B' challenges the document describing it as a forgery and a fabrication. 'A' later on withdraws the suit or permits it to be dismissed for default. Can it be said that 'B' has no remedy by way of prosecution for the forgery of the document against him, except for applying to the civil court under section 340 of the new Code for making enquiry and then making a complaint under section 195 of the new Code. Alternatively even if the case filed by 'A' was decided by the civil court on merits, but when the proceedings are going on, 'B' did not have material in his possession to prove that the document was forged or for some reason could not produce that in that court, where the civil suit was proceeding, should it be taken that 'B' will have no remedy except approaching the court in which the document was earlier produced for making a complaint and leading that evidence, which he later on discovered and has in his possession. This would mean an enquiry independent of the record of the case on a new and fresh material and such a procedure was not favoured in *Patel's case*. The forgerer may even prolong the proceedings in a civil court. Such instances can be multiplied. This the wider view of section 195(1) (b) (ii) is likely to frustrate or even defeat the interest of justice.

14. After examining the relevant provisions in detail, the Supreme Court in *Patel's case* approved the judgments in *Kushal Pal Singh's case* and *Ali Bin Rajak's case*, which had accepted the narrow view, as the correct view. There may also be a similar indication from paras 15.92 and 15.93 of the Law Commission's Forty-First Report, which led to the deletion of the words, "by a party to any proceedings in any court "From section 195(1) (b) (ii) of the new Code. The purpose of the amendment to delete the words "by a party to any proceedings in any Court" was to extend the benefit to the scribe, witnesses etc., who were intimately connected with the document, about which the suspicion of an offence having been committed is voiced by any party or is found to exist. It cannot be taken to mean that the legislature wanted to negate the ratio of the law laid down by the Supreme Court through its decisions, which unreservedly was expressed in favour of the narrow view. Nothing is forthcoming from the Law Commission's Report or the Objects and Reasons of the amendment to urge or even to suggest that the legislature brought about the amendment of section 195(1) (c) of the old Code to viden the scope of section 195(1) (b) (ii) of the new Code to include into the area of its operation the forgeries committed

outside the court or the commission of offences which may be committed about the documents before they were produced or given in evidence in a proceedings in any Court. Paras 15.92 and 15.93 of the Law Commission's Report (Volume I) are relevant. These can be beneficially reproduced to appreciate the purpose of the amendment in deleting the word, "by a party to any proceeding in any Court".

> "15.92. Under clauses (b) and (c) of section 195(1), the complaint of the civil, revenue or criminal court concerned is necessary for any criminal court to take cognizance of certain offences against public justice or certain offences relating to documents given in evidence.
>
> "As observed in a Madras case, [*Ramaswamy* v. *P. Madaliar*, (10)] "this salutary rule of law is founded on common sense." The dignity and prestige of courts of law must be upheld by their presiding officers, and it would never do to leave it to parties aggrieved to achieve in one prosecution gratification of personal revenge and vindication of a Court's honour and prestige. To allow this would be to sacrifice deliberately the dispassionate and impartial calm of tribunals and to allow a Court's prestige to be the sport of personal passions."
>
> "15.93. It will be noticed that while clause (b) applies when any of the specified offences is committed in, or in relation to, any proceeding in any Court, clause (c) applies only when the offence of forgery etc. is "alleged to have been committed by a party to any proceeding in court in respect of a document produced or given in evidence in such proceedings." An important point that has to be considered here is whether the restriction of the application of the section to a party to the proceeding should be retained. The purpose of the section is to bar private prosecutions where the course of justice is sought to be perverted, leaving it to the Court itself to uphold its dignity and prestige. On principle, there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the

(10) AIR 1938 Mad. 173, 174.

Court should have as much control over the acts of witnesses that enter, as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of section 195."

In paragraph 15.92 the view expressed in *K. Ramaswamy Iyenger* v. *K. V. Panduranga Mudaliar*, (supra) has been referred. Paragraph 15.93 is relevant for the purpose of the omission of the words, "by a party to any proceeding in any court". In this para, the Commission indicated that the witnesses are also entitled for a safeguard against frivolous, vexatious or spiteful proceedings against them by the parties against whom they were cited as witnesses or tendered evidence. The observations of the Madras High Court were extensively quoted in para No. 15.92 and reference made to AIR 1966 SC 523 in para No. 15.93. This holds the key to understand the legislative intent for omitting these words. The knowledge about the existing Judge-made law based on *Patel's case* holding the field is to be attributed to the legislature. No indication was given if the amendment was intended in favour of the wider view. It only seeks to bring within its purview witnesses etc. who have or happened to have connection with the documents referred to in section 195(1)(b)(ii) of the Code. The intention of the legislature can be gathered from the language of the section or from the Objects and Reasons, which led to the enactment or amendment of the provision. The Report of the Law Commission, which formed part of the Objects and Reasons for amendment of section 195 of the old Code and the deletion of the words "by a party to any proceedings in court" therefrom does not go in favour of taking a wider view of section 195(1)(b)(ii) of the new Code as canvassed before us. The purpose of the legislature for bringing this marginal change has been rightly interpreted in *Karnail Singh's case* to favour the narrow or restricted view which is more in consonance with the interest of justice.

15. Deletion of the words quoted above, therefore, in my view, does not affect the ratio of *Patel's case* and this omission is matter of no consequence. The conclusion which can be deduced from the provisions and judgments cited in support of the narrow view, which may envisage the correct law, can be summarised as :—

(i) The provisions of section 195(1)(b)(ii) of the new Code are by way of an exception to the general right of a citizen to

approach ordinary criminal courts as contained in section 190 of the Code and hence should be strictly construed.

(ii) Sections 195 and 340 of the new Code form part of statutory scheme dealing with the subject of prosecution for offences against the administration of justice and thus have to be read together to ascertain the intention of the legislature.

(iii) The offences about which the Court alone to the exclusion of the aggrieved party has jurisdiction to file complaint in respect of an offence should have a reasonably close nexus with the proceedings in court, so that it can satisfactorily consider by reference principally to its record the expediency of prosecuting the delinquent person.

(iv) The Court while embarking upon an enquiry under section 340 of the Code should not act as an investigating agency as it would be impracticable for the court to decide about the expediency of launching of prosecution in respect of forgeries committed earlier to the proceedings initiated in that court.

(v) If wider view is taken, the criminal liability can be evaded because the forgerer by filing a suit or other proceedings in courts can prolong the same to the extent he can manage, and claim protection under section 195 of the Code.

(vi) The restricted view is more in consonance with the scheme of Code of Criminal Procedure to provide harmonious interpretation and will not defeat or frustrate any other relevant provision of the Code.

With the aid of these conclusions, different provisions of the Code having connection with each other can be harmoniously worked.

(16) In fairness to the learned counsel for the petitioners, we notice the only case, other than *Gopalakrishna Menon's case,* cited by them expressing the contrary view in favour of the wider scope of section 195(1)(b)(ii) of the new Code, reported as *Ram Pal Singh* v.

State of U.P. and others, (11). The conclusion drawn by the learned Judges of the Division Bench of the Allahabad High Court is :—

> "The effect of omission in the re-enacted provision of the words "by a party to any proceeding in any Court, occurring in Section 195(1)(c) of the old Code, clearly is that the bar created by Section 195 against taking cognizance of an offence described in Section 463 or under Sections 471, 475 or Section 476, I.P.C. committed in respect of a document produced or given in evidence in a proceeding in any Court, which till then was confined only to complaints directed against parties to the proceeding (offence having been committed in capacity of such party) now became applicable in respect of complaints directed against some other persons as well. Accordingly not only persons who are parties to the proceedings in which the objectionable document in respect of which offences of the nature mentioned in Section 195(1)(b)(ii) had been committed was filed or produced but all other persons who are alleged to have committed such offence in relation to documents produced or given in evidence in any proceeding in a Court, also became, irrespective of the fact whether or not they were parties to the proceeding and whether or not they committed the offence in their capacity as such party immune from being prosecuted at the instance of a private complainant."

With respect to the learned Judges deciding the case I may say that the observations in para 7 in *Patel's case* were not pointedly brought to their notice as well as the approval of *Kushal Pal Singh's case* and *Ali Bin Rajak's case* (supra).

(17) The learned Judge making the reference had, in spite of *Karnail Singh's case*, doubts about the powers of the police to investigate the case of forgery of document when once a document, irrespective of the date of its forgery, was produced or given in evidence in court. The matter regarding the investigation by the police is dealt with in *Karnail Singh's case* and before us no meaningful arguments were raised to contest the correctness of that judgment on that ground. In the light of the view I have taken regarding the right of the party to file criminal proceedings about the forged

(11) 1982 Cr. L.J. 424.

document not falling within the ambit of section 195(1)(b)(ii), the police will have undisputed right of investigation in case its machinery is set in motion.

(18) The net result of the discussion is that *Karnail Singh's case* is correctly decided and depicts the correct position of the law. Section 195(1)(b)(ii) of the new Code is limited in its operation only to the offences mentioned in this section if committed in regard to a document produced or given in evidence in such proceedings, while the document is in the custody of the Court. It has no application to a case in which such a document is fabricated prior to its production or given in evidence.

(19) The reference is accordingly answered. The individual cases will now go back for decision on merits.

Surinder Singh, J.—I agree.

N.K.S.

FULL BENCH

Before : *Hon'ble P. C. Jain, C.J., D. S. Tewatia & S. P. Goyal, JJ.*

SONEPAT CO-OPERATIVE SUGAR MILLS LTD., SONEPAT,—*Petitioner.*

versus

THE PRESIDING OFFICER, LABOUR COURT, ROHTAK and another,—*Respondents.*

Civil Writ Petition No. 2018 *of* 1985.

August 14, 1986.

Industrial Disputes Act (XIV of 1947)—Section 10—*Haryana Co-operative Societies Act (XXII of* 1984)—*Sections* 102, 103 *and* 128—*Punjab Co-operative Societies Act (XXV of* 1961)—*Sections* 55, 56 *and* 82—*Constitution of India,* 1950—*Article* 14—*Industrial disputes arising in a co-operative society referred for adjudication to a Labour Court*—1961 *Act repealed during the pendency of the references and the* 1984 *Act brought on the statute book*—*Section* 128 *of the* 1984