

Mrs. Susheela Dantyagi v. The State and others
Kapur, J.

He also informs me that the practice in the Lahore High Court was that before the probate was issued but after the trial and after the Judge had given his decision in favour of the petitioner that the probate should be granted, the probate duty was collected but not at the time of the trial or at the time of the petition, and this is also my recollection of that practice. He also informs me that there was an order made by the Judges of the Lahore High Court but unfortunately that file is not traceable.

As I read the section it requires that before an order is made issuing the probate which certainly cannot be made if the petition is dismissed and can only be made after a Judge decides in favour of the will, the probate duty is required to be paid by a petitioner. I would therefore order in this case that it is not necessary for the petitioner to pay the court-fee at this stage, but it may be paid after the trial, after it is decided that the will is genuine and the propounder is entitled to the probate and before order for issue of the probate is made. The costs of this hearing will come out of the estate.

REVISIONAL CRIMINAL

Before Kapur, J.

MAL SINGH AND OTHERS.—Petitioners

versus

THE STATE.—Respondent

Criminal Revision No. 139 of 1954.

1956.
June, 5th.

Code of Criminal Procedure (Act V of 1898)—Section 195(1)(b)—Offence committed in one Court—Case transferred to another Court—Transferee Court, whether a successor Court within the meaning of Section 195—Complaint by the transferee Court under section 195, whether ineffective—Prosecution in pursuance of such complaint, whether legal and proper.

Milkha Singh was ordered to be released on bail by Mr. Tuli, a Magistrate at Amritsar. The bail bond was executed by Mal Singh representing himself to be as S. S. son of M. S. D. S. impersonated as U. S. and identified the executant as S. S. B. S. father of Milkha Singh also identified S. S. Later on it transpired that Mal Singh, D. S. and B. S. had all been impersonating other persons and were convicted under section 205/34, I.P.C. by Mr. Beni Parshad, Magistrate to whom the case had been transferred from the Court of Mr. Tuli.

Held, that the transferee Court could launch the prosecution and such prosecution would be quite proper and legal. The object of section 195 was to ensure that a prosecution would only be launched on the complaint of the Court which is in the best position to judge if a prosecution is desirable.

Behari Lal v. Sheikh Abdul Qadir Hamyari (1), followed. *Hasam Ajam Bhakara v. Emperor* (2), relied upon: *Girish Chandra Ray v. Sarat Chandra Singh* (3), *Jai Lal v. Phogo Mal and others* (4), and *Ramdin Lal v. Emperor* (5), not followed.

Petition under Section 439, Criminal Procedure Code, for revision of the order of Shri Behari Lal Goswami, Additional Sessions Judge, Amritsar, dated the 6th January, 1956, affirming that of Shri D. K. Khanna, Magistrate, 1st Class, Amritsar, dated the 28th November, 1955, convicting the petitioners.

G. C. SHARMA, for Petitioners.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT.

KAPUR, J.—This case raises rather an important question of law and the facts which have given rise to it are that one Milkha Singh was being prosecuted under section 19 of the Indian Arms Act. He was ordered to be released on bail by Mr. Tuli, a Magistrate of the 1st Class at Amritsar, and a bail bond was filed, which is

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(1) A.I.R. 1940 Lah. 292

(2) A.I.R. 1934 Bom. 185

(3) I.L.R. 42 Cal. 667 at p. 673

(4) 47 I.C. 286

(5) 38 Cr. I.J. 97

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Exhibit P.A. Mal Singh represented himself as Sajjan Singh son of Mangal Singh and was the executant of the bail bond. Dalip Singh who is another petitioner before me, impersonated as Ujagar Singh Lambardar of Roranwala and identified the executant as Sajjan Singh, Basant Singh petitioner, the father of Milkha Singh, also identified Sajjan Singh and thumb-marked as an attesting witness. It subsequently transpired that the persons who had executed the bail bond or had identified the executant had all been impersonating other persons and it has been held by both the Courts below that there was impersonation in that the persons who executed the bail bond or attested it were not the real persons who purported to execute the bond or attest it. The executant as well as the attesting witnesses have been convicted under section 205/34 Indian Penal Code, and have been sentenced to nine months' rigorous imprisonment each.

The question raised by Mr. Gyan Chand Sharma is that the offence was committed in the Court of Mr. Tuli and the case was then transferred to Mr. Beni Prasad and therefore he was not a successor within the meaning of that word and consequently the complaint made by Mr. Beni Prasad under section 195 of the Criminal Procedure Code is ineffective and the prosecution started as a result of that complaint is not a proper prosecution. He has relied on a judgment of the Calcutta High Court in *Girish Chandra Ray v. Sarat Chandra Singh* (1). In that case a proceeding had been taken under section 107 of the Criminal Procedure Code in which a certain *pottah* was used by the petitioners. The case was disposed of by Babu Harendra Kumar Ghose and an

(1) I.L.R. 42 Cal. 667 at p. 673

application for sanction to prosecute the petitioners was put in before Babu Khirode Lal Mukherjee and the question was whether the latter was a successor-in-office of the former and it was held that the latter was not a successor-in-office of the former because where there are many Deputy Magistrates, and one of them is transferred, "the Deputy Magistrate who comes to fill the gap is not the successor-in-office of the Deputy Magistrate who has been transferred," and it was held therefore that the sanction for the prosecution in respect of the use of that document was not a proper sanction.

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The next case relied upon is *Jai Lal v. Phogo Mal and others* (1), where it was held that the Court of a City Magistrate is not a permanent Court and therefore where a City Magistrate has been transferred, his successor has no power to sanction a prosecution in respect of an offence committed before his predecessor. I am very doubtful, and I say so with due respect, if the decision in this case is correct in view of what has been held in other cases.

Another case relied upon by counsel is *Ram-din Lal v. Emperor* (2), where it was held that there should be a complaint in writing by a Court or by its successor and that in the case of an offence under section 193, Indian Penal Code, alleged to have been committed before a Second Class Magistrate a complaint could not be made by the Additional District Magistrate as he was not a Court to whom a Second Class Magistrate was subordinate.

(1) 47 I.C. 286

(2) 38 Cr. L.J. 97

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The State relies upon section 195(1) (b) of the Criminal Procedure Code which provides—

“No Court shall take cognizance * * * * *
* * * * of any offence punishable under
any of the following sections of the
same Code, namely, * * * 205, * *
*****, when such offence is alleged to
have been committed in, or in relation to,
any proceeding in any Court, except on
the complaint in writing of such Court
or of some other Court to which such
* * * * * , Court is subordinate.”

The words to be interpreted are “committed in, or in relation to, any proceedings in any Court.” The matter came up for decision before the Lahore High Court in *Behari Lal v. Sheikh Abdul Qadir Hamyari* (1). Dalip Singh, J., delivering the judgment of the Court said at page 297 —

“I think the law is correctly laid down in *Amanat Ali v. Emperor* (2), where it is pointed out that if a case or proceeding has been before various Courts and an offence is alleged to have been committed in that proceeding or case falling under the various sections prescribed in section 195, Criminal Procedure Code, then all the Courts have jurisdiction to make the complaint though, normally speaking, the proper Court to make the complaint is the Court which finally tried and determined the suit. I see no reason on the plain words of the section to hold otherwise. The learned counsel

(1) A.I.R. 1940 Lah. 292
(2) A.I.R. 1929 Cal 724

for Sheikh Abdul Qadir sought to con- Mal Singh and
tend that the offence must be commit- others
ted in the presence of the Presiding v.
Officer of the Court and if a case is trans- The State
ferred from one Court to another, then Kapur, J.
only that Court in which the acts constituting the offence were committed has jurisdiction to make a complaint. If this was so, the Legislature could have expressed their intention quite clearly and different words would have been used. I have no hesitation in rejecting this contention."

This is also the view taken by the Bombay High Court in *Hasam Ajam Bhakara v. Emperor*, (1), where an attempt was made to fabricate evidence in respect of a prosecution pending in the Court of a Second Class Magistrate at Chorasi. Subsequently the case was transferred to a First Class Magistrate of Surat, who tried the case and convicted the accused. Proceedings were then started by the police against the person who had attempted to fabricate evidence and the complaint was filed by the First Class Magistrate who had decided the case. It was argued before the Bombay High Court where the matter was taken up in appeal that the offence was committed in relation to a proceeding in the Court of the Second Class Magistrate at Chorasi and that that Court alone or a Court to which it was subordinate could file the complaint. This was negated by a Division Bench of the Bombay High Court, which held that the words "in relation to any proceeding in any Court" are quite wide. The object of the section 195 was to ensure that a prosecution would only be launched on the complaint of the Court

(1) A.I.R. 1934 Bom. 185

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which is in the best position to judge if a prosecution is desirable. But the Court which actually hears the case has this advantage that it knows, at any rate, what the effect would have been if the fabrication of evidence had succeeded.

If the construction to be placed on the section were as submitted by the learned counsel for the petitioners, then in my opinion it will become impossible to punish persons who have committed offences mentioned in section 195(1) (b). No doubt there is section 559 of the Criminal Procedure Code which gives the power of making complaint to a successor Court or to a Court to which the previous Court was subordinate, but the view taken by the Lahore High Court, and I say so with great respect, seems to be more consistent with the words used in section 195, and I would therefore dismiss the petition and discharge the rule. The petitioners must surrender to their bail bonds to serve the unexpired portion of their sentence.

REVISIONAL CRIMINAL

Before Kapur, J.

BIR SINGH,—*Petitioner.*

versus

Mst. SIBO,—*Respondent*

Criminal Revision No. 193 of 1956

Code of Criminal Procedure (Act V of 1898)—Section 488—Applicability of sub-section (4) of Section 488—Words “without any sufficient reason”, meaning of—Offer of husband to take back wife, requirements of.

1956
June, 6th.

Held, that the words “without sufficient reason”, in section 488 of the Code of Criminal Procedure, are objective and not merely subjective, and merely because the wife in a particular case has not been able to explain herself properly is no reason for the application of sub-section (4) of section 488, Criminal Procedure Code.