
Jashwantlal Bapalal Vs Navinchandra Chandulal

Criminal Reference No. 109 of 1959

Court: Bombay High Court

Date of Decision: March 10, 1960

Acts Referred:

Penal Code, 1860 (IPC) & Section 172, 173, 174, 175, 176

Citation: (1960) 62 BOMLR 527

Hon'ble Judges: H.K. Chainani, C.J; Mudholkar, J; K.T. Desai, J

Bench: Full Bench

Judgement

H.K. Chainani, C.J.

The question referred to the full bench relates to the interpretation of Section 195(1)(c), Criminal Procedure Code.

Sub-section (1) of Section 195 runs as follows;

(1) No Court shall take cognizance-

(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant

concerned, or of some other public servant to whom he is subordinate;

(b) of any offence punishable under any of the following sections of the same Code, namely, Sections 193, 194, 195, 196, 199, 200, 205, 206,

207, 208, 209, 210, 211 and 228, 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; or

(c) of any offence described in Section 463 or punishable u/s 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.

The marginal notes to these three Clauses (a), (b) and (d) are ""prosecution for contempt of lawful authority of public servants,"" ""prosecution for

certain offences against public justice," and "prosecution for certain offences relating to documents given in evidence," respectively. Sub-section (4)

of this section states that the provisions of Sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to

commit such offences and to the abetment of such offences, and attempts to commit them.

2. Two views have been taken with regard to Clause (c) in Sub-section (1) of Section 195. In re Narayan, Dhonddev (1910) 12 Bom. L.R. 383.

it was held that the word "offence" occurring as the third word in this clause is designedly used in a somewhat abstract manner and it is the offence

in itself, not any particular offender's offence, which the section aims at. It was observed that this view was in accordance with Section 40, Indian

Penal Code, where "offence" is defined as a thing made punishable by the Code and that the clause deals with a case where there is a substantive

offence committed by a party to a proceeding in any Court. At p. 385 it was observed:

...This reading of the section appears to us to involve no undue straining of the language and to give a more reasonable interpretation than is arrived

at by the rival construction; for, upon that construction while the prosecution of the main offender could not be instituted without a sanction, any

minor aiders or abettors or accessories of his could be prosecuted without a sanction. That, we think, is hardly a result likely to have been

contemplated.

A different view has been taken by some other High Courts in certain cases, to which I will refer later. The question referred to the Full Bench is

whether the decision in Narayan Dhonddev 's case lays down the correct law.

3. Sub-section (7) of Section 195 imposes a bar on the Court's taking cognizance of the offences referred to in this Sub-section. So far as Clause

(c) is concerned, this bar will apply if three conditions are satisfied. These are: (1) that the offence is an offence described in Section 463 or

punishable u/s 471, 475 or 476, Indian Penal Code, (2) that the offence is alleged to have been committed by a party to any proceeding in any

Court, and (3) that the offence is committed in respect of a document produced or given in evidence in such proceeding. If these three conditions

are satisfied, then the Court cannot take cognizance of the offence, except on the complaint in writing of the Court, in a proceeding before which

the document was produced or given in evidence.

4. Sub-section (4) makes the provisions of Sub-section (1) applicable to conspiracies to commit offences named in Sub-section (1). For an

offence of conspiracy there must be at least two persons. If, therefore, the offence, which is committed in relation to a proceeding in any Court, is

that of conspiracy to commit an offence of the kind referred to in Clause (c), say, that of forgery, and if only one of the conspirators was a party to

the proceeding before the Court, then an anomalous situation will arise, if it is held that a complaint of the Court is required only for prosecuting the

conspirator who was a party to the proceeding in the Court and not for the other co-conspirator, who may have played only a minor part in the

offence. The offence committed by both the conspirators is the same and there is no reason why the Legislature should have tried to draw a

distinction between the two, requiring the complaint of the Court in one case and allowing a private party to prosecute in the other case. The better

view, in our opinion, therefore, appears to be that where an offence of the kind referred to in Clause (c) has been jointly committed by several

persons, only one of whom was a party to a proceeding in a Court, then the complaint of the Court will also be necessary in order to prosecute the

other persons, who had jointly committed the offence, even though they were not parties to the proceeding before it.

5. In this connection the wording of Clause (c) may be compared with the language used by the Legislature in Section 197 and 197AA. Sub-

section (1) of Section 197 states that when any person who is a Judge or when any Magistrate or when any public servant, who is not removable

from his office save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been

committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with

the previous sanction of the appropriate Government. The marginal note to the section is ""prosecution of Judges and public servants."" Section

197AA requires previous sanction of the Court for prosecuting a Commissioner appointed by it. Its wording is similar to that of Section 197 and

the marginal note is ""Prosecution of Commissioner appointed by civil Court."" These two sections, therefore, prohibit the prosecution of the persons

mentioned therein, except with the previous sanction of the appropriate authority. The language used in Clause (c) of Sub-section (1) of Section

195 is materially different. It does not say that when a party to a proceeding is accused of an offence of the kind mentioned therein, the Court shall

not take cognizance except on a complaint in writing of the other Court. This clause, therefore, appears to be directed against prosecutions for

offences committed in relation to proceedings before a Court, irrespective of the persons who had committed them.

6. This view finds support in the marginal notes to these sections. The marginal note to Clause (c) is, ""Prosecution for certain offences relating to

documents given in evidence."" The emphasis is on offences and not on the persons who had committed them. The wording of this marginal note is

different from that of the marginal notes to Sections 197 and 197AA. It is true that a marginal note cannot be looked at for interpreting the

provisions of a section, but where an ambiguity arises it can be used to clear it. See *Emperor v. Fulabhai Joshi* (1040) 42 Bom. L.R. 857 and *The*

State of Bombay Vs. Heman Santlal Alreja, . The wording of the marginal note to Clause (c) in Sub-section (1) to Section 195 also suggests that it

is the offence and not any particular offender's offence, in respect of which the bar has been imposed.

7. The word "offence" is defined in Clause (o) of Sub-section (1) of Section 4 as meaning any act or omission made punishable by any law for the

time being in force. It has been urged that where a number of persons join in committing an offence, the act of each person is a distinct act and that

the word "offence" in Clauses (e) means the particular act done by the party to the proceeding before the Court. Every act does not, however,

constitute an offence. Some offences, such as that of conspiracy or dacoity, cannot be committed by one person alone. They require the acts of

more than one person in order to constitute the offence. In each case, therefore, it will have to be determined whether the offence, with which a

person (who was not a party to the proceeding in the Court) is charged and in respect of which he claims the protection of Clause (ci), is the same

offence as was committed by a party to the proceeding before the Court. If the act committed by him alone constitutes a distinct offence, Clause

(c) will not apply and no complaint of the Court will be required for prosecuting him for that offence. If, on the other hand, the act committed by

him and the act committed by the party to the proceeding together constitute an offence of the kind referred to in Clause (c), then a complaint of

the Court for his prosecution will be necessary.

8. Before a Court can make a complaint in respect of any offence referred to in Section 195(1), it has to hold an enquiry as provided in Section

476. Sub-section (1) of this section states:

When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the

interests of justice that an inquiry should be made into any offence referred to in Section 195, sub-section (1), clause (b) or clause (c), which

appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks

necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the

same to a Magistrate of the first class having jurisdiction....

It will be noticed that this section refers to offences committed in or in relation to a proceeding in a Court. It is not confined to offences committed

by parties to the proceeding.

9. I will now briefly refer to the authorities, which have been cited at the Bar.

10. Most of the cases do not give reasons for the view taken in them. There are three cases of this High Court, to one of which In re Narayan

Dhonddev. I have already referred.

11. In In re Devji valad Bhavani ILR (1803) Bom. 581, certain property was attached in execution of a decree. Thereupon accused No. 1 applied

to have the attachment raised, on the ground that he had purchased the property from the judgment-debtor under a sale-deed executed long

before the date of the attachment. In the summary inquiry held by the Court, accused No. 1 produced the sale-deed and accused No. 2 was

called as his witness in support of his claim. Proceedings were then held u/s 478 of the Code of Criminal Procedure as it then stood. Both the

accused were then tried on charges of perjury and forgery. The question then arose whether proceedings u/s 478 could have been held against

accused No. 2, who had given evidence as a witness. It was held that the power given to the Court under Chap. XXXV of the Criminal Procedure

Code to take action regarding any offence referred to in Section 195, was not restricted, in regard to offences relating to documents, to such

offences only as were committed by a party to the proceeding in which the document was given in evidence. It was observed that sanction was not

requisite for the prosecution of a witness for an offence relating to the documents and that his prosecution was permissible Without sanction. No

reasons are given in support of this observation. It is also not clear from the judgment whether the offence, with which the witness accused No. 2

was charged, was the same as was alleged to have been committed by the party to the proceeding, accused No. 1. This decision cannot,

therefore, be regarded as an authority for the proposition that Clause (o) in Sub-section (1) of Section 195 is inapplicable, when the person, who

is sought to be prosecuted, was not a party to the proceeding in the Court in which the document was produced or tendered in evidence.

12. In *Emperor v. Balgaunda* (1930) 33 Bom. L.R. 296, a complaint was filed by a Court not only against the party to the proceeding before it,

but also against persons who had been examined as witnesses. It was held that Section 476 was wider than Sub-section (7) of Section 195 and

that u/s 476 the Court could file a complaint not only against the party to the proceeding, but also against the witnesses and refer the whole case to

a Magistrate for inquiry. In his judgment *Murphy J.* made an observation that sanction u/s 195 could only have been given against the party to the

proceeding. The decision in this case turned upon the interpretation of Section 476, which refers to ""an offence which appears to have been

committed in or in relation to a proceeding in a Court."" The exact scope of Section 195(7)(c) was not considered in this case.

13. In *Debi Lal v. Dhajadari Gashai* (1911) 15 C.W.N. 565, the question arose whether sanction was necessary for prosecution of a witness. This

question was answered in the negative. The judgment gives no reasons for this view, but only states that there was a strong body of authority in the

Madras, Bombay and Allahabad High Courts that sanction is not necessary against any person who is not a party to the suit and that witnesses are

not to be considered parties to the suit. In support of this view the Bombay case in *In re Devji valad Bhavani* was cited, to which I have already

referred.

14. In *The Grown v. Balmohand* ILR (1928) Lah. 678, it was held that Section 195 read with Section 476 of the Code neither expressly nor

impliedly restrains a Magistrate or the presiding officer of a civil Court from taking action against persons who are not parties to the proceedings

before him. The question, which arose in this case, was whether the Court can file a complaint not only against the party to the proceedings before

it, but also against other persons. This was a different question from the question, which we have to consider, whether a complaint of a Court u/s

195(7)(c) is necessary for prosecuting a person, who is not a party to the proceeding before it.

15. In *Fakir Singh v. The Crown* ILR (1928) Lah. 442, it was held that there is nothing to prevent the trial of an abettor of an offence referred to in

Section 195(1)(c) of the Criminal Procedure Code committed by a party to a proceeding in Court, without a complaint by the Court concerned

u/s 476 of the Criminal Procedure Code. With respect, we agree with the view taken in this case, because the offence of abetment is a distinct and

different offence from the offence abetted.

16. In *Anna Ayyar v. Emperor* ILR (1906) Mad. 226, the question arose whether a criminal prosecution filed by the defendant in a civil suit

against the plaintiff and his witnesses, should be stayed pending the decision of the civil suit. It was held that as sanction u/s 195(1)(c) was

necessary in the case of the accused who were parties to the civil suit, the complaint against them must be dismissed. It was observed that as

regards the other accused Section 195(7)(c) did not render sanction necessary, as they were not parties to the proceeding in which the document

had been produced. No reasons are given in support of this observation.

17. In *Perianna Muthirian v. Vengu Ayyar* A.I.R.[1929] Mad. 21, Curgenv J. considered the scope of Section 195(7)(c). In his judgment the

learned Judge stated that the answer to the question depended primarily upon the construction to be placed upon the term "offence" as it is used in

Clause (c)-whether it denotes the transaction of forgery as a whole, so that the Court is debarred from taking cognizance of that transaction,

including the shares taken in it by non-parties as well as parties, or whether it refers only to the share taken by a party, so that the power to

proceed against non-parties is not affected. He proceeded to observe that the grounds for adopting the former construction were to be found in In

re *Narayan Bhonddev*, and stated that he was impressed forcibly with the merits of that view of the law. The learned Judge went on to observe (P.

25) :

...It seems contrary to public policy that some only of the participants in an alleged act of fabrication-and those perhaps who play a subordinate

part-are exposed to prosecution, while the party in whose interests the act is said to have been done is protected.

In view, however, of the opposite view taken in some other cases, the learned Judge refrained from expressing a definite opinion on this question.

18. The question again arose for consideration before the same learned Judge Curgenv J. in *Ponnusami Udayar and Another Vs. Emperor*, . In

his judgment the learned Judge referred to *In re Narayan Bhonddev*, and observed that he felt much in sympathy with the view that this is how the

law should stand. In view, however, of what the learned Judge regarded as a large body of judicial opinion, which favoured a contrary

interpretation, he felt that he could not say that the lower Court had erred in law in deciding that a criminal case, which had been filed against

persons who were not parties to proceedings before the Court without a complaint from that Court, should continue. The learned Judge referred to

Anna Ayyar v. Emperor and stated that that decision was binding upon him. As I have already pointed out, *Anna Ayyar*'s case only contains an

observation that Section 195(1)(c) does not render sanction necessary for persons who are not parties to the proceeding, in which the document

had been produced, but it does not contain any discussion of the law on this point.

19. In *Jiwa Ram v. Gangoli* [1949] All. 715, a single Judge of the Allahabad High Court held that when several persons combine together to make

a forged document and when one of such persons is a party to a legal proceeding in which the forged document is filed, the other persons

responsible for making the document can be prosecuted on a private complaint. In his judgment the learned Judge referred to *Ponnusami v.*

Emperor, and observed that 19 years had elapsed since the decision of that case and that no case had been pointed out to him in which the

Bombay view expressed in *In re Narayan Bhonddev*, had been followed. He, therefore, followed the decision in *Ponnusami v. Emperor*. At p. 719

the learned Judge referred to the definition of "offence" contained in Section 4(1)(o), Criminal Procedure Code, and observed:

...The act which has been made punishable by Section 465, Indian Penal Code, has been described in Section 463, Indian Penal Code, to be the

making of any false document or part of a document with a particular intent. It seems obvious to me that when more than one person combine to

commit forgery, the act of each individual forgerer is distinct from the act of another. According to the Bombay decision, it is the entire transaction

that constitutes the offence. This interpretation is opposed to the definition of the word "offence", already quoted, because, according to Section

4(o), Criminal Procedure Code, it is the act, and not the transaction, which constitutes the offence.

With respect, we may point out that every act does not constitute an offence. It is only that act, which is made punishable by any law for the time

being in force, which is an offence according to the definition given in Section 4(1)(o)." As to whether the act of each individual constitutes a

different offence is a question, which must be decided on the facts of each case.

20. The last case cited is *Ram Prasad Ojha and Another Vs. Maheshanand Pandey*, . In that case it was observed that Section 195(1)(o) provides

a bar to a prosecution only where such an offence is alleged to have been committed by a party to a proceeding in any Court, but that there is no

bar if the offence is committed by somebody who is not a party to such proceeding. No reasons are given in support of this observation.

21. It will be seen that in most of the above cases there is no discussion of the provisions of Section 195(1)(c). With respect, it seems to us that the

correct view is that Section 195(1)(c) will apply, even when the person accused of the offence in respect of a document produced in a Court was

not a party to the proceeding, in which the document was produced, provided such offence was committed by him jointly with a person who was a

party to that proceeding.

22. The reply to the question referred to us will be that if an offence of the kind referred to in Clause (c) of Sub-section (1) of Section 195 has

been committed by a party to a proceeding in any Court, in respect of a document produced or given in evidence in such proceeding, the

complaint of that Court will be necessary for prosecuting even a person, who was not a party to such proceeding, provided the offence with which

he is charged is the same as is alleged to have been committed by the person who was a party to the proceeding. The question whether the

offence, with which the person, who was not a party to the proceeding is charged, is the same as had been committed by a party to the proceeding

must be decided in each case on the facts of that case.