(1930) 08 CAL CK 0026

Calcutta High Court

Case No: Appeals from Original Order Nos. 47 and 53 of 1930

Prabhatranjan Barat		APPELLANT
	Vs	
Umashankar Chatterji		RESPONDENT

Date of Decision: Aug. 6, 1930

Judgement

Rankin, C.J.

These are two appeals from an order, dated the 9th May, 1930, made by Costello J., directing that a complaint be made and forwarded to the Chief Presidency Magistrate, u/s 476 of the Code of Criminal Procedure. The Appellant in appeal No. 47 is Prabhatranjan Barat and the Appellants in appeal No. 53 are Shivapada Bhattacharya, Ramendralal Gupta and Satishchandra Basu.

2. It appears that one Umashankar Chatterji applied for letters of administration to the estate of Sreemati Krishnabhamini Devi, alleging that she died intestate on the 18th February, 1928. Thereupon the Appellant Prabhatranjan Barat filed a caveat on the 19th April, 1928, by Ramendralal Gupta, an attorney of this Court, claiming to be the sole executor under a will which turns out to bear date 22nd Magh, 1334 B.S. A caveat was also filed on behalf of the Secretary of State and another on behalf of one Jangilal Ghosh. The matter, having been set down as a contentious cause, came on for hearing before the learned Judge on the 20th February, 1929. Prabhatranjan Barat did not appear either in person or by advocate, but the other parties came to terms and letters of administration were granted to Umashankar Chatterji, it being ordered that the terms of settlement be recorded. The caveat of Prabhatranjan Barat was dismissed with costs; and the learned Judge directed that the records be sent to the Government Solicitor with a view to obtain his opinion whether Prabhatranjan Barat could be prosecuted. It would seem that the Government Solicitor was of opinion that the matter should be considered by the Public Prosecutor, who took the matter up at the instance of this Court. After considering certain documents and inspecting the alleged will at the office of Mr. R.L. Gupta, and considering certain letters written by Mr. Gupta on behalf of Shivapada Bhattacharya and referred to in the affidavit of documents of Umashankar Chatterji,

the Public Prosecutor came to the conclusion that there was a ''prima facie case of forgery not only against Prabhatranjan Barat, but also against the attorney R.L. Gupta, Shivapada Bhattacharya and Satishchandra Basu, the scribe of the alleged will. Accordingly, the learned Judge, after considering the report of the Public Prosecutor, made the order now complained of u/s 476 of the Code of Criminal Procedure, complaining against Prabhatranjan Barat of forgery, or procuring the forging of the will, u/s 467, Indian Penal Code, and of dishonestly using as genuine the said will, u/s 471, Indian Penal Code. He likewise complained against Satishchandra Basu, Shivapada Bhattacharya and Kamendralal Gupta, for having abetted or conspired with Prabhatranjan Barat in the commission of the said offences, and against all the parties mentioned for having conspired with one another to commit the said offences and aiding and abetting one another in the commission thereof.

3. In appeal No. 47, Prabhatranjan Barat takes exception to this order on the grounds that there were no materials before the learned Judge to justify it and that the learned Judge was not entitled, u/s 476 of the Code, to proceed upon the basis of any police enquiry, but was bound, if he thought any enquiry to be necessary, to hold such enquiry himself. In appeal No. 53 the Appellants take an additional point to the effect that as they were none of them parties to any proceeding before the learned Judge, their offence, if any, does not come within Clause (c) of Sub-section (1) of Section 195 and that no such order as has been made is within the provisions of Section 476 of that Code.

4. The first question is whether the phrase in Section 476 "Such court may, after such preliminary "enquiry, if any, as it thinks necessary, record a "finding to that effect" is to be read as meaning that, if any enquiry is necessary, it is to be made by the court. Upon this question there is some authority. In the case of Shabbir Hasan v. Emperor [1928] AIR (All.) 21 105 Ind. Cas. 110. Dalal J. said "Under Section 476, an enquiry is to be made by "the civil court. If the civil court so desires, an "enquiry may be ordered by the police, but in that "case, when the police papers arrive, the civil court "is to determine whether it is necessary to take action "against particular persons u/s 476." In Emperor v. Waman Dinkar Kelkar ILR (1918) 43 Bom. 300, 306., a case under the old section, the Assistant Collector had obtained a full report from the police, prior to making his order u/s 476 as it then stood. Hayward J. said "It is to be observed that the preliminary inquiry "to be made is only such inquiry as may be necessary "and it cannot be denied in this case that some inquiry "at least was made by the Assistant Collector himself. "It does not, therefore, appear to me to be a defect "which could deprive him of jurisdiction that he "took the precaution of making a more careful and "deliberate enquiry with the assistance of the "Criminal Investigation Department." In Ruktu Singh''s case (1921) 6 Pat.L.J. 178, 183., also under the old section, a Commissioner, in a mutation case, directed an enquiry by the police and on receipt of the police report directed prosecution u/s 476. Adami J. said "The section contemplated that the preliminary "enquiry should be made by the

court itself and the "only ground on which the Commissioner''s "jurisdiction can be attacked in this case is that he "did not make the enquiry himself. He called on the "Petitioner to show cause by way of enquiry, but the "Petitioner did not call any witnesses, but merely put "in a petition. It would have been open to the "Commissioner to pass an order u/s 476, "without any further enquiry, since his judgment and "order showed that he was satisfied that fraud had "been practised by the Petitioner from the evidence "given before him in the cource of the judicial "proceeding. It seems clear that the direction with "regard to a police enquiry was made ex majore "cautela as shown by the order. I cannot find that "jurisdiction was either wanting or exceeded * * * "In his order, the Commissioner refers back to his "order of the 27th August and that order refers to "the record of the mutation case and so the order "under Section 476 sufficiently discloses the material "on which it is based. It refers to the police report "as well but this reference cannot teke away or impair "jurisdiction."

5. I am loath to add a single word to the language used by the legislature in Section 476; but, having regard to the fact that an appeal is given from an order made under the section, I am prepared to hold that it is not open to a civil court, if it thinks that some preliminary enquiry is necessary, to proceed upon the basis that an enquiry by the police and the police report is an enquiry contemplated by the section. It appears to me that the section contemplates that the enquiry is to be made by the court itself. I agree with Waller J. in Raja Rao v. King-Emperor ILR (1926) 50 Mad. 660, 661. that "the nature, method and extent of the preliminary "enquiry are entirely at the court''s discretion. The "enquiry need not be such as to satisfy the court that "an offence actually has been committed but merely "that an offence appears to have been committed." I think, however, that the enquiry must be of such a character as is compatible with the ordinary procedure of the court in question. I do not doubt that the learned Judge could look at documents on the file or could call for documents and look at them and could consider the whole matter in view of any facts coming to light in the course of the substantive proceedings. But just as it cannot be contemplated that a Judge should go about asking questions for himself from members of the public, who might have some knowledge of the matter, so I think it cannot be intended that reports made by the police, after making such enquiries, should be the basis of the action of the court u/s 476. In my judgment, therefore, the order of the learned Judge cannot be based upon the police report. After he had directed that the papers be laid before the Government Solicitor or Public Prosecutor, it would of course have been quite in order that one or other of these officers should apply to the court, upon evidence, for an order directing that a complaint be made. I am not prepared, as at present advised, to say that such an application could not be made ex parte, but this question does not now arise.

6. It appears, that in the present case, by an order made in June, 1928, the learned Judge directed the will to be deposited with the Registrar. It appears, further, that

the Public Prosecutor''s report was in substance to the effect that, if this document be considered together with two letters of the 22nd and 23rd February, 1928, there is ground for thinking it expedient that an enquiry should be made into the question of forgery. Accordingly, as copies of the letters were included in the copy correspondence prepared for the use of the Judge, I have thought it right to consider whether these materials by themselves justify a complaint being preferred against Prabhatranjan Barat for an offence u/s 467 or 471, Indian Penal Code. In my opinion, they are insufficient by themselves, but, in the circumstances, while setting aside the order of the learned Judge, we should make it clear that it will be open to him to make further enquiry u/s 476 and to pass such order as may be justified upon the materials thus disclosed. It is inadvisable that we should discuss the matter further. Appeal No. 47 must be allowed.

7. In appeal No. 53, the Appellants are none of them parties to the proceeding before the learned Judge and, as the offence in question is thus not within Clause (c) of Sub-section (1) of Section 195 of the Code of Criminal Procedure, a criminal court does not require a complaint in writing by the learned Judge to enable it to take cognizance of. the offence alleged. Their case, therefore, is not within Section 476 at all. Sub-section (4) of Section 195 means that, where a party to a proceeding is alleged to be guilty of conspiracy to commit or of abetment of an offence of forgery committed in respect of a document produced or given in evidence in a proceeding in any court, the bar imposed by Section 195 applies, but, in my opinion, a person who is not a party gets no protection from Clause (c) of Sub-section (1) of Section 195 and is not within the purview of Section 476 in respect of the offences mentioned in Clause (c). I am not prepared to give any unusual or extended meaning to the phrase "party to any proceeding" in Clause (c). The Appellant Shivapada made an affidavit of due execution of the alleged will set up by Prabhat, when the script was brought into Court in May, 1928, but a witness is not a party. It is open to the Public Prosecutor to take any action which he may choose without any order of the learned Judge as against these Appellants and in my opinion appeal No. 53 should be allowed.

8. Of course if the learned Judge chooses to make a complaint to a magistrate independently altogether of Section 195 or Section 476 of the Code of Criminal Procedure, he is exercising a right or privilege which belongs to any citizen and his action in such a case is in no way open to review by a court of appeal, because it is not a judicial act at all. I do not say that it is not a complaint made by a court within the meaning of Section 200 of Code of Criminal Procedure: that is another question. The directing of a complaint u/s 476 is clearly a judicial act and the order made in this case purports to have been made as a judicial order under that section.

9. I understand some difficulty has been felt as to the meaning of the phrase in Section 476 of Code of Criminal Procedure "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." These words, when compared with the words in Clause (b) of Section 195, Sub-section (1) and contrasted with the language of Clause (c) of the same section, appear to have been thought to give room for a contention to the effect that Section 476 embraces cases which would not be within the terms of Clause (b) or Clause (c) of Section 195 at all. In my view, there is no difficulty of that kind. Section 476 nowhere says that no court shall take cognizance of certain offences. That provision is only in Section 195 and it is clear, to my mind, that Section 476 can only apply to cases, where, by reason of a provision in the Code, the magistrate requires a complaint by a court, in order that he may take cognizance of the charge. Otherwise, it is manifest that an order might be made u/s 476 and an appeal might be brought, but whatever the result of the proceedings u/s 476 or Section 476(b), it would be open to the Public Prosecutor or to any other member of the public to ignore the result altogether and file a complaint before a magistrate, upon which the magistrate would be obliged to take proceedings. The use of the words "in or in relation to a proceeding "in that court" is, to my mind, merely to say that the court, e.g., at Alipore, is not to take action where the offence has relation to a proceeding in some other court. It is merely to identify the court itself, which is to take action u/s 476, Code of Criminal Procedure. The language "in or in relation to "a proceeding in that court" is necessarily and naturally wide, because it has to cover cases under Clause (b) as well as Clause (c).
Ghose, J.

10. I agree.