

## Abraham Vs Maria Ambrose

**Court:** Madras High Court

**Date of Decision:** Jan. 19, 2001

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 151

**Citation:** (2001) 2 LW 831 : (2001) 1 MLJ 571

**Hon'ble Judges:** K. Sampath, J

**Bench:** Division Bench

### Judgement

@JUDGMENTTAG-ORDER

K. Sampath, J.

This civil revision petition arises out of an order passed in L.A.No. 295 of 1998 in O.S.No. 96 of 1996 on the file of the

Subordinate Judge's Court, Kuzhithurai, under the following circumstances:

2. The revision petitioner filed a suit against the respondent herein for recovery of amount due under a cheque for Rs. 50,000 issued by the

respondent herein drawn on Tamil Nadu Mercantile Bank, Kanjampuram Branch. The cheque was dishonoured with an endorsement funds

insufficient by the bank concerned. This necessitated the filing of the suit.

3. The respondent resisted the suit contending that a sum of Rs. 34.560 had been paid. The matter went for trial. While the plaintiff was being

examined as P.W.1. it was brought to his notice by the cross-examining counsel that an endorsement had been made in carbon pencil as if Rs.

34.560 had been paid. When the respondent was being examined in chief, he admitted that the endorsement was made by him even before the

dishonouring of the cheque by the bank. The suit came to be decreed and it was also found by the learned Subordinate Judge that the respondent

had tampered with the document while it was in the custody of the Court and that he had committed perjury while deposing before the Court and

in fact he had lied in the reply notice. The learned Subordinate Judge ultimately decreed the suit with costs. This was on 16.3.2000. During the

course of the trial, it would appear that the revision petitioner had filed L.A.No. 295 of 1998 in the suit under Sections 151 and 94(e) of CPC for

initiation of criminal proceedings against the respondent for tampering with court records. This application was opposed by the respondent

contending that the revision petitioner had acknowledged the money by accepting the endorsement and therefore estopped from denying the

endorsement or the receipt of the amount, that the receipt of the amount was proved and corroborated by the entries in the diary of the respondent

and his own evidence, and that therefore the petition was not maintainable. It was also contended by him that the revision petitioner did not allege

or say that the endorsement was made after the filing of the cheque into the Court. The learned Subordinate Judge dismissed the application on the

very day he decreed the suit observing that the suit had been decreed and that therefore the petition was being dismissed. It is, as against the

dismissal of the said application, the present civil revision petition has been filed.

4. Mr. Thampi, learned Counsel for the petitioner, vehemently urged that when once the lower Court found that the respondent/defendant had

tampered with the records and had also committed perjury, it had no option other than to direct initiation of criminal proceedings.

5. On the contrary, Mr. R. Subramanian, learned Counsel for the respondent submitted that an appeal had been filed against the decision of the

learned District Judge in A.S.No. 66 of 2000 and the same was pending before the District Court and any interference with the order of the lower

court would only complicate matters and that in case the respondent succeeded in the appeal before the District Court, the exercise in taking

criminal proceedings would be futile. The learned Counsel also submitted that in any event the lower Court had to follow the provisions under the

Criminal Procedure Code and in particular Section 340

6. Having found that the respondent had tampered with the records and that he had committed perjury, the lower Court clearly erred in dismissing

the application filed by the revision petitioner for taking criminal proceedings against the respondent. The learned Subordinate Judge has not

assigned any reason whatsoever for dismissing the application excepting to state that the suit having been decreed, the application was being

dismissed. By filing the application, the revision petitioner had merely drawn the attention of the Court to the impropriety committed by the

respondent. On the materials available, I am satisfied that this is a glaring case of deliberate falsehood and that the Court has to direct prosecution

in the larger interest of administration of justice. There is a prima facie case on a matter of substance and there is a reasonable foundation for the

charge and it is expedient in the interest of justice to file a complaint.

7. In my view, the learned Subordinate Judge ought to have followed the procedure laid down in Section 340 (already referred to). This he ought

to have done on the basis of his own finding against the respondent.

8. In view of the discussion above, the order of the learned Subordinate Judge dismissing the application will stand set aside and the application

filed by the revision petitioner before the lower Court will stand allowed. The matter will stand remitted to the learned Subordinate Judge for taking

proceedings as per the provisions of the Code of Criminal Procedure. Mere filing of an appeal by the respondent before the District Court,

Nagercoil, cannot stand in the way of the lower court proceeding according to law.

9. In the result, the civil revision petition is allowed. No costs.