
(1978) 05 KAR CK 0013
In the Karnataka High Court

Azeezuddin

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-05-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 471
Prevention of Corruption Act, 1988 — Section 5 (1) (d)

Citation : (1978) CriLJ 1632

Hon'ble Judges : N.R. Kudoor, J

Bench : Single Bench

Judgement

N.R. Kudoor, J.—The appellant, who was the accused in C. C, No. 9 of 1975 on the file of the Special Judge, Bangalore, has filed this appeal against the conviction and sentences passed against him by the learned Special Judge in his judgment dated 28-6-1976 for offences punishable under Sections 420 and 471, I.P.C. on two counts each and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act and sentencing him to undergo rigorous imprisonment for one month and to pay a fine of Rs. 100/- in default to undergo further rigorous imprisonment for 15 days for each of the aforesaid five offences and directing the substantive sentences to run concurrently.

2. The appellant was working as Upper Division Clerk in 26, Equipment Depot, Air Force, Bangalore, in the accounts section till May 1975. He was entitled to medical advance and medical reimbursement in respect of the treatment of himself and the members of his family from the Department in his capacity as such Government servant. The appellant presented an application for medical advance of Rs. 500/- on 25-2-1972 for the treatment of his wife Kurshit Mumtaz Begum in the Bowring and Lady Curzon Hospital, Bangalore, to which she was said to have been admitted as an In-patient on 24-2-1972 for Asthma. He drew the advance amount of Rs. 500/- in two instalments of Rs. 250/- each on 4-3-1972 and 11-3-1972 respectively. On 19-6-72, he gave an application for medical reimbursement of Rs. 254/- with relevant documents. His application was passed for payment of Rs. 238/- by the C. D. A., Dehradun. It was adjusted

towards the advance drawn by the appellant. According to the prosecution, the wife of the appellant was not an in-patient in the Bowring and Lady Curzon Hospital, Bangalore, at these relevant point of time and the appellant has forged the relevant documents filed in support of the claim of medical reimbursement.

3. On receipt of the information, P. W. 21 M. L. Narasimha Murthy, Inspector of Police, S. P. E., Central Bureau of Investigation, conducted a preliminary enquiry which revealed that the appellant had filed false applications enclosing forged prescription chits, cash bills and the essentiality certificate. He registered a case in R.C. No. 18 of 1974 against the appellant and submitted the F.I.R. After completing the investigation, he placed a charge-sheet against the appellant for offences punishable under Sections 420 and 471, I.P.C. and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act.

4. The defence of the appellant was that his wife was under the treatment of Dr. Mir Asaf Ali, P. W. 20, attached to the Bowring and Lady Curzon Hospital and he has signed the relevant documents which he (Appellant) had produced along with his application for reimbursement of the medical charges. Misunderstandings arose between P. W. 20 and himself regarding the payment of fees and therefore, P. W. 20 gave false evidence against him. Similarly, there was some quarrel between him and the staff members of Geetha Pharmacy. So they came forward to support the prosecution by giving false evidence. As regards the remaining witnesses, he was unable to state as to why they gave false evidence against him.

5. The learned Special Judge, rejecting the defence of the appellant and accepting the prosecution case, found the appellant guilty of the offences charged and convicted and sentenced him as aforesaid.

6. Shri V. V. Srinivasachar, learned Counsel for the appellant raised a legal question by way of additional ground against the competence of the learned Special Judge taking cognizance of the offence of forgery u/s 471, I.P.C. against the appellant in view of the amended provisions of Section 195 (1) (b) (ii) of the Code of Criminal Procedure, 1973 (shortly called the "new Code"), The matter was heard at some length by D. B. Lal, J., and the learned Judge referred the matter to a larger Bench as he felt that the point raised was of some importance. The point formulated for the decision and referred to the Division Bench was in the following terms:

Whether, in view of the amendment made u/s 195(1) (b) (ii) by deletion of the words "by a party to any proceeding in any Court", a prosecution, for the offence of forgery u/s 471, of the I.P.C. committed in respect of a document produced or given in evidence in Court, being the subject-matter of that prosecution, cannot be taken cognizance of by the Court unless a complaint in writing is filed by that Court.

7. On receipt of the reference, the Division Bench, on the construction of the provisions of the Karnataka High Court Act, 1961, held that there was no

provision under the High Court Act to enable a Single Judge to refer a criminal appeal to a larger Bench and in that view of the matter, held that the reference in question was not competent. The Division Bench further observed that the appeal including the question of law formulated and referred to the larger Bench will have to be heard and decided by a Single Judge. Hence the matter came up before me for hearing.

8. It was contended by Shri Srinivasachar learned Counsel for the appellant referring to the amended Section 195 (1)(b)(ii) of the new Code, that before the learned Special Judge could take cognizance of the offence of forgery u/s 471, I.P.C., a complaint in writing by that Court was required, and without such a complaint in writing, the Special Judge could not have taken cognizance of the offence against the appellant and as such, the very trial was vitiated. The argument was that upon a plain reading of the amended provision, the offence of forgery was said to have been committed in respect of a document produced or given in evidence in the proceeding before the learned Special Judge and unless a complaint in writing of that Court was submitted, no Court, which of course to be other than the Court of the very same Special Judge; could take cognizance of that offence. In other words, a complaint by the Special Judge in writing was required and upon that complaint perhaps, another Special Judge would be in a position to take cognizance of the offence against the appellant.

9. The learned High Court Government Pleader contended that the amended Section 195 (1) (b) (ii) of the new Code would not give rise to such an interpretation that a complaint in writing by the learned Special Judge was required before taking cognizance of the offence against the appellant, because the document produced or given in evidence before him was the foundation of the prosecution launched against the appellant for the offence of forgery committed by the appellant in respect the documents produced before the Defence Authorities and not in a proceeding before any Court. His further contention was that the alleged forgery was committed on a date prior to the taking cognizance of the offence by the learned Special Judge and the Section, even after amendment, refers only to those instances of forgery which are committed in respect of a document produced or given in evidence in a proceeding in any Court other than the proceeding in which the trial of the offence of forgery is dealt with.

10. To better appreciate the rival contentions of the parties, it will be useful to refer to the relevant provisions of law. Section 190 and Section 195 (1) of the new Code which are the relevant sections read thus:

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the Second Class specially empowered in this behalf under Sub-section (2) may take cognizance of any offence.-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance.

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable u/s 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

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

11. Section 195 (1) of the Code of Criminal Procedure, 1898 (shortly called the "old Code") which is also relevant for our purpose reads thus:

195. Prosecution for contempts of lawful authority of public servants.- (1) No Court shall take cognizance -

(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code (45 of 1860), except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

(b) Prosecution for certain offences against public justice - 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 proceedings 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) Prosecution for certain offences relating to documents given in evidence. -of any offence described in Section 463 or punishable u/s 471, Section 475 or B. 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.

12. Chapter XIV of the new Code deals with the topic "conditions requisite for initiation of proceedings." Section 190 deals with the general powers of the Magistrates of taking cognizance of any offence upon receiving a complaint of facts which constitute such offence, or upon a police report of such, facts, or upon the information received from any person other than the police officer or upon his own knowledge that such offence has been committed. However, the powers of the Magistrates taking cognizance of any offence in the manner stated above is subject to the other provisions of Chap. XIV. Section 195 which is one of the sections found in Chap. XIV is one such provision which imposes restrictions or places a bar on the general powers of the Magistrates of taking cognizance of certain groups of offences viz., contempt of authority of public servant, certain offences against public justice and certain offences relating to documents given in evidence. The first group of offences relating to contempt of lawful authority of public servants 14 dealt with in Section 195 (1) (a) (i) of the new Code and the corresponding provision under the old Code was Section 195 (1) (a), Similarly, the second and the third groups of offences viz., certain offences against public justice and certain offences relating to documents, given in evidence are dealt with in Section 195 (1) (b) (i) and (ii) of the new Code; the corresponding provisions under the old Code were 195 (1) (b) and (c). No Court shall take cognizance of the offences mentioned in Section 195 (1) (a) (i) of the new Code except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate and the offences covered u/s 195 (1) (b) (i) and (ii) except on the complaint in writing of that Court or some other Court to which that Court is subordinate. The term "Court" referred to in Section 195 (1) (b) means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or under a Central provision or State Act if declared by that Act to be a "Court for the purpose of the said section. Thus it is seen that under Clauses (i) and (ii) of Section 195 (1) (b), the complaint of the Civil, Revenue or Criminal Court is necessary for taking cognizance of certain offences against public justice or certain offences relating to documents given in evidence. Section 340 of the new Code prescribes the procedure for making a complaint by the Court In respect of the offences referred to in Clause (b) of Sub-section (1) of Section 195. There is some distinction between complaint by Court under Clause (b) (i) and Clause (b) (ii). Complaint of offences mentioned in Clause (b) (i) is in respect of offences alleged to have been committed in or in

relation to any proceedings in Court while in regard to the offences mentioned in Clause (b) (ii) they have to be connected not with any proceeding but with the document produced or given in evidence in the proceeding.

13. The offence u/s 471 of the Indian Penal Code is found in Section 195 (1) (b) (ii) of the new Code and in Section 195 (1) (c) of the old Code. Section 195 (1) (b) (ii) stands altered by the deletion of the words "by a party to any proceeding in any Court" as found in Section 195 (1) (c) of the old Code. What is the effect of the deletion of these words in the interpretation of the amended provision in Section 195 is the point which is the subject matter of the present decision. Would it go to mean that even that offence of forgery which was committed in respect of a document produced in Court although it was the subject matter of the very same prosecution would nonetheless require prior complaint in writing by that Court before taking cognizance of that offence by the Criminal Court against the accused ?

14. It was not the contention of Shri V. V. Srinivasachar that under the unamended provision as it contained in Section 195 (1) (c) of the old Code, the learned Special Judge, in the instant case, could not have taken cognizance of the offence without a complaint in writing by that Court but that it was so in view of the amendment brought about by the deletion of the words "by a party to any proceeding in any Court" and as such the whole trial was vitiated. According to him, upon a plain reading of the provisions of Section 195 (1) (b) (ii), it is obvious that the offence of forgery said to have been committed was in respect of a document produced or given in evidence in the proceeding, before the learned Special Judge within the meaning of the said provisions and unless a complaint in writing of that Court was submitted, no Court which is of course to be other than the Court of the Special Judge could take cognizance of that offence. In other words, his submission was that a complaint by the Special Judge in writing was required and upon that complaint perhaps another Special Judge would be in a position to take cognizance of the offence against the appellant.

15. Shri Srinivasachar cited certain rulings on the scope and interpretation of Section 195 (1) (c) of the old Code and contended that the ratio of those decisions would lend support to his submission. The effect and meaning of the words "to have been committed by a party to any proceeding in any Court" came up for judicial review in a number of cases. Broadly speaking, two divergent views have been expressed in decided cases in this connection. According to one view, to attract the prohibition contained in Clause (c) of Section 195 (1), the offence should be alleged to have been committed by a party to the proceeding in his character as such party which means after having become a party to the proceeding. According to the other view, the alleged offence may have been committed by the accused even prior to his becoming a party to the proceeding provided that the document in question is produced or given in evidence in such proceeding.

16. In *State of Gujarat Vs. Vora Saifuddin Akbarali and Another*, , His Lordship Shelat, J., as he then was, following the majority decision of the Full Bench of the Gujarat High Court in *State of Gujarat v. Ali* (1968) 9 Guj Lj 1 : ILR (1967) Guj 1091 (FB) preferred to place a narrow construction on the scope and effect of Section 195 (1) (c) of the old Code, that Clause (c) is confined only to those cases where the offences mentioned in the clause are committed in respect of documents after they are so produced and given in evidence; in other words, the offence in respect of the document already produced in the Court must have been committed while it remained in the custody of the Court and it would not embrace cases where the offence in respect of the document had already been committed outside the Court but they were produced in Court later on in a proceeding between the same parties though he was inclined to agree with the dissenting view expressed in the Full Bench decision by Desai, J., who took the wider view that the correct Interpretation of Section 195 (1) (c) was that on the date on which the Criminal Court takes cognizance of the offence mentioned in the clause, the Court has to satisfy itself whether the offence in respect of which it is called upon to take cognizance is alleged to have been committed by a party to any proceeding in any Court and whether the alleged offence is in respect of document produced or given in evidence in such proceedings and if these conditions are satisfied, the Criminal Court will have jurisdiction to entertain the complaint only if it is filed by the Court in which it is tendered in evidence by the party to the proceeding or by some other Court to which such Court is Subordinate irrespective of the fact whether the alleged offence of forgery was committed before the proceedings were initiated or thereafter.

17. The correctness of the view taken by the Gujarat High Court in *State of Gujarat Vs. Vora Saifuddin Akbarali and Another*, came up for consideration before the Supreme Court in *Patel Laljibhai Somabhai Vs. The State of Gujarat*, The point that arose for consideration before the Supreme Court in this decision was as to which of the two divergent views expressed in decided cases on the effect and meaning of the words "to have been committed by a party to any proceeding in any Court" found in Clause (c) of Section 195(1) of the old Code in order to attract the prohibition contained in Clause (c) viz., (1) whether the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is to say committed by him after having become a party to the proceeding or (2) that the alleged offence may have been committed by the accused even prior to his becoming a party to the proceeding provided that the document in question is produced or given in evidence in such proceeding is to be preferred. Answering his question, the Supreme Court observed thus (at p. 1442 of Cri LJ):

The offences about which the Court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain 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 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". The Supreme Court consistently took the view expressed in *Patel Lalji Bhai's* case in the subsequent rulings in *Raghunath and Others Vs. State of U.P. and Others*, *Mohan Lal and Others Vs. The State of Rajasthan and Another*, *Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra*, . As interpreted in the above decisions, the scope of Section 195 (1) (c) of the old Code is restricted to cases where the offence is alleged to have been committed by a party to any proceeding after he became such party and not before.

18. Placing reliance on these rulings, Shri Srinivasachar contended that the strict and narrow construction adopted in the rulings cited by him on the basis of the words "to have been committed by a party to any proceeding in any court" in order to attract the prohibition contained in Section 195 (1) (c) of the old Code that the offences alleged to have been committed must be by a party to the proceeding after he became such party and not before does not hold good under the amended provisions of Section 195 (1) (b) (ii) of the new Code as its language in the present form would cover the cases in which the offence of forgery alleged to have been committed was committed even prior to the proceeding in which the documents were produced or given in evidence. Stretching the contention a little further, he contended that the offence for which a complaint in writing by the court is needed could even be committed on a date antecedent to the date on which the court took cognizance of that offence as in that case though the forged document was the foundation of the prosecution, it being the fact that the said document was produced or given in evidence in a proceeding in that court, prior complaint in writing by that court would be a *sine qua non* before cognizance could be taken by the court. That being the position in law, it was his contention that the very trial of the appellant for the offence of forgery was vitiated.

19. Per contra, it was argued by the learned High Court Government Pleader that the arguments advanced by Shri Srinivasachar would not apply to the facts of the case and a complaint in writing by the Special Judge before taking cognizance of the offence against the appellant was not required as the documents produced or given in evidence before him were the foundation of the very prosecution for the offence alleged against the appellant and he was not prosecuted for the offence of forgery committed by him in respect of documents which were produced or given in evidence in any proceeding in any court earlier. His further contention was that the alleged offence of forgery was committed on a date antecedent to the taking cognizance of the offence by the Special Judge in respect of documents not produced or given in evidence in a proceeding in any court and the amended Section 195 (1) (b) (ii) refers only to those incidents of

forgery which are committed during the course of the judicial proceedings in respect of the documents produced or given in evidence in the said proceedings. He has cited a ruling of this Court in *Bhola Nath Nayek Vs. The State and Another*, in support of his contention.

20. The various rulings cited on either side referred to above do not help to decide the legal point raised in this case. It is seen from the decision in *Yellappa Gowder*'s case cited by the learned High Court Government Pleader that the effect of the deletion of the words "by a party to any proceeding in any court" in Section 195 (1) (b) (ii) of the new Code was not considered. Similarly in the various decisions cited on behalf of the appellant, the question that came up for consideration was the effect and meaning of the words "to have been committed by a party to any proceedings in any court" in order to attract the prohibition contained in Clause (c) of Section 195 (1) of the old Code. No direct ruling was cited as to the effect of the deletion of the words "by a party to any proceeding in any court" in order to attract the prohibition contained in Section 195 (1) (b) (ii) of the new Code. It is manifest that the words "by a party to any proceeding in any court" are deleted in the amended provisions of Section 195 (1) (b) (ii). The question for decision would be as to what is the effect of the deletion of these words in the interpretation of the newly amended provision in Section 195. Would it go to mean that even that offence of forgery which was committed in respect of a document produced in court although it was the subject matter of the very same criminal prosecution would nonetheless require prior complaint in writing by that court before taking cognizance of the offence!

21. In order to attract the prohibition contained in Section 195 (1) (c) of the old Code in respect of the offences mentioned therein, two conditions were to be fulfilled as could be seen from the section itself. They were : (1) that the offence alleged to have been committed in respect of the document must be by a party to any proceeding in any court; and (2) that such a document should be produced or given in evidence in such proceeding. Construing the effect and meaning of the words "to have been committed by a party to any proceeding in any court", the Gujarat High Court and also the Supreme Court in the rulings cited *supra* have consistently held that it would be more appropriate to adopt the strict construction by confining the prohibition contained in Section 195 (1) (c) of the old Code only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party in respect of documents produced or given in evidence in such proceeding. In other words, u/s 195 (1) (c) of the old Code, the offences alleged to have been committed were restricted to a party to the proceeding in the character as such party and in view of the deletion of the words "by a party to any proceeding in any court", the restriction confined to the party to the proceeding is removed and hence u/s 195 (1) (b) (ii) they cover offences alleged to have been committed not only by the party to the proceedings but also others, viz., witness, agent, writer, attester, pleader, guardian of a minor plaintiff, abettor etc., but it must be in respect of the document produced or-given in evidence in such proceeding as there is no

change effected in the amended Section 195 (1) (b) (ii) regarding the second condition stipulated in Section 195 (1) (c) of the old Code that the offences alleged to have been committed must be in respect of documents produced or given in evidence in a proceeding in any court. Since the amended Section 195 (1) (b) (ii) would cover not only the party to the proceeding but also others referred to above, it is reasonable to hold that the offences alleged to have been committed by such persons in respect of the documents would include not only the offences alleged to have been committed in respect of the documents produced or given in evidence after the initiation of the proceeding in which they were produced but also the offences committed before the initiation of the proceeding and were produced in the proceedings after its initiation. On a proper reading and understanding of the amended Section (1) (b) (ii) of the new Code in the light of the deletion of the words "by a party to any proceeding in any court", it is manifestly clear that the only change that is brought about by the deletion of these words is the removal of the restriction confined to the party to the proceedings u/s 195 (1) (c) of the old Code and the inclusion of other persons referred to above and also enlarging the scope of the time factor of the commission of the alleged offence of forgery whether it is after the initiation of the proceeding or before. There is no change in the legal position so far as the proceeding in which the documents in respect of which the offences alleged to have been committed are to be produced or given in evidence so as to entitle that court to consider the desirability of complaining against the guilty party which would mean that the production of the document or the documents given in evidence is not in the very proceedings in which the guilty party is being prosecuted for the very offence of forgery committed by him but in some earlier proceeding. The view I take on this question gains support from the object and purpose of enacting the prohibition contained in Section 195 (1) (b) and (c) and Section 476 of the old Code which is embodied without any change in Section 195 (1) (b) and Section 340 of the new Code. Dealing with the underlying purpose of enacting Section 195 (1) (b) and (c) and Section 476 of the old Code, this is what the Supreme Court observed in *Patel Laljibhai Somabhai Vs. The State of Gujarat*,

The underlying purpose of enacting Section 195 (1) (b) and (c) and Section 476 seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public Justice, which is the direct and immediate object or victim of those offences and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the court is considered to be the only party entitled to

consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by Section 190 Cr. P.C. of the aggrieved parties directly initiating the criminal proceedings.

22. There is another ruling of the Bombay High Court in *Sanjiv Ratnappa v. Emperor* AIR 1932 Bom 545 : 34 Cri LJ 357 which also would lend considerable support to the view I take. In that case, on a complaint of theft, the police, during investigation, arrested some Katabus, members of a criminal tribe, on suspicion and produced them before the Sub-Inspector. Some of them were alleged to be beaten by the Sub-Inspector and a constable to extort confession from them as to where they had concealed the stolen property. They were placed in confinement. During the course of the investigation, one of the persons arrested and kept in confinement, committed suicide by cutting his throat with a razor. The other persons arrested were thereupon let off in view of the serious aspect the case had assumed. One of the Katbus applied to the higher police authorities for enquiry into the matter and lodged a complaint against the Sub-Inspector and the constable. During the investigation several injuries were found on the bodies of Katbus who were arrested earlier by the Sub-Inspector and no property was recovered. It came to the notice of the District Superintendent of Police that the copy of the case diary submitted to him in the ordinary course differed considerably from the original and he came to the conclusion that the original had been altered by the Sub-Inspector A-I after the inception of the proceedings against him, in order to create evidence in his favour. One of the offences for which he was convicted was u/s 465 I.P.C. for having made a false document viz., a copy of the case diary, as evidence in his favour. Before the High Court of Bombay, one of the contentions urged on behalf of the accused-appellants was that in view of the provisions of Section 195 (1) (c) of the old Code, it was not open to the Sessions court to take cognizance of the offence of forgery described in Section 463 without the complaint of the committing Magistrate. Number of rulings were cited in support of the said contention. Rejecting the contention, His Lordship Baker, J., speaking for the Bench observed thus:

But the point which arises in all these cases is not one which arises in the present case at all. Those are all cases in which a document produced in a court in connection either with civil proceedings or with proceedings under the Criminal Procedure Code, Section 145, or in some matter unconnected with the actual offence of forgery has been found to be a forged document and no prosecution for the offence of forgery could be taken cognizance of by a criminal court except on the complaint of the Court in which the document was produced or given in evidence. But that is entirely different to the facts of the present case where the document was produced in Court, not in connection with any other case, but in a prosecution founded upon it, for the purpose of convicting the accused of an

offence in relation to it, and none of the cases which have been quoted will apply. No question of giving sanction by the committing Magistrate could arise when he himself was considering the question of what charge should be framed on this document.

23. In this case, the offence of forgery u/s 471 I.P.C. was alleged to have been committed by the appellant in respect of documents which were not produced or given in evidence in any proceedings before any court earlier to the proceeding in which the appellant was tried for the very offence of forgery committed in respect of those documents for having used them as genuine knowing them to be forged for the purpose of deceiving the defence authorities by dishonestly and fraudulently inducing them to deliver certain sum of money. The police on coming to know that certain offences including one punishable u/s 471 were committed by the appellant, registered a case against him, investigated and placed a charge-sheet before the learned Special Judge. They did not initiate criminal proceeding against the appellant because the appellant had produced those documents or given them in evidence in any proceeding before any court. The learned Special Judge took cognizance of the offence on the charge-sheet placed by the police as required u/s 190 of the new Code. If the argument of Srinivasachar is to be accepted and it is to be held that a complaint by the learned Special Judge is required for taking cognizance of the offence alleged against the appellant merely because those documents were produced in the prosecution of the appellant for the very offence of forgery committed by him in respect of those documents, it would amount to interference with the statutory powers of the police to investigate a crime. That may not be the intention of the legislature in amending the provisions contained in Section 195 (1) (b) (ii) of the new Code. For the reasons aforesaid, the legal objection raised by Sri V. V. Srinivasachar, learned Counsel for the appellant, is rejected.

24. This takes me to the merits of the appeal. As regards the merits of the appeal, there is very little to be said in favour of the appellant.

25. The appellant was prosecuted for the offences punishable under Sections 420 and 471 I.P.C. and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act on the allegations that he, being a public servant working as Upper Division Clerk in 26, Equipment Depot, Air Force, H. A. L. Bangalore, cheated the defence establishment by dishonestly and fraudulently inducing the defence authorities to deliver a sum of Rs. 500/- by submitting a forged medical advance application Ex. P. 1 as if the same was purported to have been certified by P. W. 20 Dr. Mir Asif Ali for the alleged treatment of his wife Khurshid Mumtaz Begum at the Bowring and Lady Curzon Hospital, Bangalore, as an in-patient being admitted on 24-2-1972 for Asthma and later by submitting medical reimbursement application Ex. P. 2 enclosing prescription chits, cash memos and essentiality certificate Exs. P. 3 to P. 11, all forged, and got a sum of Rs. 238/- passed by dishonestly and fraudulently inducing the defence authorities by way of medical reimbursement. The learned Special Judge, after scrutiny of the

evidence adduced in the case found the appellant guilty of all the offences and convicted and sentenced him as per his judgment dated 28-6-1976.

26. It was not disputed both during the trial of the case as well as during the argument of this appeal that the appellant was a public servant at the relevant time. Besides, the validity of the sanction order obtained to prosecute the appellant was also not challenged. As regards the facts of the prosecution case as well as the evidence adduced, the appellant has admitted having given the medical advance application Ex. P. 1 and the medical reimbursement application Ex. P. 2 enclosing the documents Exs. P. 3 to P. 11 and received a sum of Rs. 250/- on 4-3-1972 and another sum of Rs. 250/- on 11-3-1972 by way of medical advance and got a sum of Rs. 238/- passed on his application Ex. P. 2 by way of medical reimbursement and got the same adjusted towards the medical advance drawn by him. Thus, there is no dispute in this case that the appellant obtained a sum of Rs. 238/- by way of pecuniary benefit towards the alleged medical expenses incurred by him for the treatment of his wife by presenting the applications Exs. P. 1 and P. 2 and also by producing the documents Exs. P. 3 to P. 11. P. W. 20 Dr. Mir Asif Ali, purported to have certified the application Ex. P. 1 and signed the documents Exs. P. 3 to P. 11 has denied having signed them. He has denied the signatures found on those documents purported to be his signatures. P. W. 18 A. K. Gupta, the Handwriting expert has also given evidence that the signatures found on Exs. P. 1 and P. 3 to P. 11 purported to be the signatures of P. W. 20 are not the signatures of P. W. 20. It is further proved by the prosecution that P. W. 20 was not working as Assistant Surgeon in the Bowring and Lady Curzon Hospital, Bangalore, during the relevant time. It is further established by the evidence of P. W. 8 S. T. Arasu, one of the partners of Geetha the Pharmacy that the medical bills produced by the appellant purported to have been issued by Geetha Pharmacy were not issued by them. The evidence of P. W. 17 Theja Kumar, who was an employee of the Bowring and Lady Curzon Hospital at the relevant time and in-charge of the in-patient and out-patient registers has clearly proved that the wife of the appellant Khurshid Mumtaz Begum was not at all admitted as an in-patient in the Bowring Hospital on 24-2-1972 as alleged by the appellant in his applications submitted to the defence department for medical charges. As I said before, the appellant has clearly admitted that he had presented the applications Exhibits P. 1 and P. 2 enclosing the documents Exhibits P. 3 to P. 11 to Ex. P. 2 to the Defence Authorities in support of his claim for medical reimbursement for the alleged treatment of his wife in the Bowring Hospital. As regards the signatures of P. W. 20 found on Exs. P. 1 and P. 3 to P. 11, the appellant in his 313 Cr. P.C. statement has admitted and asserted that they are the signatures of P. W. 20 but the evidence adduced by the prosecution in the case proved otherwise i. e., those signatures were not the signatures of P. W. 20. The stand taken by the appellant on this aspect of the prosecution case was that the evidence of P. W. 20 was false. When it is proved by satisfactory evidence that the appellant's wife was not admitted as an in-patient in the Bowring Hospital, it must be presumed that

the appellant deemed to have had the knowledge that all the documents viz,, Ex. P. 1 and Exs. P. 3 to P. 11 were forged documents when he produced them in support of his claim for medical reimbursement before the defence authorities. The stand taken by the appellant in his defence was that his wife was under the treatment of P. W. 20 and P. W. 20 had signed Exs. P. 1 and P. 3 to P. 11. According to him, there was some misunderstanding between him and P. W. 20 regarding payment of fees and therefore, P. W. 20 gave false evidence against him. As regards the evidence of the staff members of Geetha Pharmacy, the appellant similarly contended that there was some quarrel between him and the staff members of the Geetha Pharmacy and therefore, they gave false evidence. As regards the evidence of the other witnesses, the appellant stated that he was unable to state as to why those witnesses gave false evidence against him. In view of the admitted facts of the case and also the evidence adduced by the prosecution, it seems to me that there is no force in the defence set up by the appellant. The learned Special Judge, in my opinion, has assessed both oral and documentary evidence adduced in the case and reached a correct conclusion. I see no good reasons to interfere with the findings recorded by the learned Special Judge.

27. In the result, for the foregoing reasons, the appeal fails and the same is dismissed. The appellant shall surrender to his bail and undergo the unexpired portion of the sentence.