

(1925) 03 BOM CK 0027
In the Bombay High Court

Bai Kasturbai

APPELLANT

Vs

Vanmalidas Lakmidas

RESPONDENT

Date of Decision : 05-03-1925

Acts Referred:

Citation : 88 Ind. Cas. 709

Hon'ble Judges : Crump, J

Bench : Single Bench

Judgement

Crump, J.—This matter arises out of a suit No. 4310 of 1923, which was beard by Mulla, J., and disposed of by him on July 3, 1924. The suit was one by the plaintiff Kasturbai for a dissolution of partnership and for partnership accounts. Among the other defences pleaded by the defendant, he said that there was no partnership between himself and Kasturbai, and that a certain agreement evidencing the partnership had not been acted upon. The learned judge who heard the suit came to a conclusion adverse to the defendant upon that issue, and, in the course of doing so, he expressed himself very strongly as to the conduct of the defendant in the suit. The following passage from his judgment shows his opinion upon this matters:

As regards the defendant I have no hesitation in saying that it is rarely that one comes across a witness of his type, who is not ashamed in telling a series of lies barefacedly in this Court. The story about his brother being the owner I hold is a false invention.

2. The suit ended in a decree in favour of the plaintiff. The plaintiff moved for a Rule to the defendant to show cause why sanction for his criminal prosecution should not be given and why he should not be prosecuted Criminally for having made on oath statements which were false and which he knew or believed to be false and for having given intentionally false evidence on oath in the proceedings in the said suit. The Rule was issued in these terms, and has now come before me for hearing and disposal. It is unfortunate that the day on which this Rule was issued was the last day Mulla, J., held office as a Judge of this Court.

3. Before coming to the merits of this matter I must notice two preliminary points that have been urged by Mr. Lalji on behalf of the defendant. In the first place it is urged that the Rule is not in the correct form. It is no doubt true that the procedure by way of sanction for prosecution is no longer in force since the amendment of the Cr.P.C. in 1922; but this is a matter of form and not of substance and as a matter of strict law no notice would be necessary to the defendant before taking proceedings against him under the law which now exists. It is not thus open to him to complain of the formal defect of this Rule, and even if he is strictly entitled to notice, before the Court takes action against him--and no doubt it is right that he should have notice--still this Rule fully informs him as to the nature of the proceedings sought to be taken against him. Therefore, there is no substance in this point.

4. The second point raised is that this Court has no jurisdiction to dispose of a Rule granted by Mulla, J. Several decisions have been cited upon that question, but the effect of them is very materially affected by the amendment of the Cr.P.C. since the date when the decisions were pronounced. As the law now stands there is no question of, giving sanction to any private person to prosecute and old Section 195 has now been repealed and Section 195 now enacts that no Court shall take cognizance, of certain offences without a complaint in writing of the Court in or "in relation to which the offence was committed or some other Court to which such Court is subordinate. But before proceeding to the cases it is necessary to turn to Section 476 of the Cr.P.C. That section has made a very considerable change not merely as regards sweeping away the procedure as to applying for sanction but also with regard to those cases where the Court could take summary action u/s 476 as it formerly stood. Section 476, Clause (1), with which I am here concerned, runs as follows:

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 enquiry 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.

5. The question, therefore, which arises is the meaning of the word "Court" as used by the Legislature in this connection. In my opinion, "Court" for the purposes of this application must be taken to mean "High Court" and if that is so--as any Judge of the High Court has power to exercise the powers of the High Court--it would follow that any Judge could dispose of an application u/s 476 whether the matter out of which the action arose was heard by him or some other Judge of the Court. No doubt as a matter of convenience that would seldom be done, but where, as in the present case, the Judge has ceased to hold office, I see nothing in the language of the section to preclude any Judge from

disposing of such a matter as is now before me. As I have stated the result of the amendment of the Cr.P.C. robs decisions upon the terms of the former Code of much of their significance, still there are three decisions which may be cited as bearing out the view which I have expressed.

6. The first of these is *Emperor v. Molla Fuzla Karim* 3 CrI.L.J. 365 in which it was held, that where a Judge of the Small Causes Court had heard the suit and had ceased to hold office, it was open to another Judge of the same Court to deal with the grant of sanction for prosecution arising out of the suit. This is really analogous to the present case, for procedure u/s 476 as it now stands is very close to the old procedure u/s 195 for the grant of sanction. Again in *Sheikh Bahadur v. Sheikh Eradatullah Mallick* 6 Ind. Cas. 801 : 14 C.W.N. 799 : 12 C.L.J. 45 : 11 CrI.L.J. 407 it was held that in Section 476 as it stood before the amendment there was nothing to warrant their Lordships from withholding from the word "Court" its natural meaning with the sense of continuity thus implied, notwithstanding any change of officers." The learned Counsel for the defendant relied upon the Full Bench ruling in *Begu Singh v. Emperor* 5 C.L.J. 508 : 11 C.W.N. 568 : 5 CrI.L.J. 398 : 2 M.L.T. 298 but this is overruled by the case last cited, and it is also obvious from a reference to the, section itself as it stood and it now stands that the main grounds on which the decision rests are no longer in force. The learned Judges relied on the words "committed before it or brought under its notice in the course of a judicial proceeding" which are no longer to be found in the section, and, secondly, they thought that the case was one which it was proper to have recourse to the alternative procedure u/s 195, which is no longer open, and further they appear to have laid stress on the fact that u/s 476 there was no appeal from the action of the Court, but an appeal is provided now by Section 476(b) of the amended Cr.P.C. In my opinion, therefore, there is no want of jurisdiction and I am glad to come to that conclusion, for any other conclusion, in my opinion, would lead to inconvenient results.

7. Passing now to the merits of the case, I would observe at the outset that what I have to do here is to consider after such preliminary enquiries as appear necessary, whether it is expedient in the interests of justice that an enquiry should be made into any offence referred to in Section 195, Sub-section (1), Clause (b) or Clause (c). If I come to that conclusion that it is expedient, then a finding to that effect must be recorded and upon such finding a complaint in writing must be made to the Magistrate.

8. I am not here to decide whether or not the defendant is guilty of the offence of giving false evidence, but I have to consider whether in the interests of justice there is a prima facie case, which ought to be enquired into.

9. Now I have heard the evidence upon the merits and I do not consider that it is my function to state at any considerable length the reasons which actuated me in the conclusions to which I have come. I do not think that it is desirable in any case to do so. For what we are considering here is merely a step in limine. In the first instance I naturally attach very great weight to the expressed opinion of the

learned Judge who heard the suit, which I have set out above, which shows that he obviously considered the case as a proper one in which a rule should issue. I also find it is extremely difficult to reconcile the defendant's interpretation of Ex. A, the document of partnership with the contents of Ex. F, another document which he also admits. This latter document was given pursuant--so it is expressed--to the writing made between Bai Kasturbai, the plaintiff in the suit, and the defendant, Venmalidas Lakhmidas, and if that is so it is difficult to understand how there can be no partnership. In addition to that there is positive evidence given by Rai Kasturbai, her husband, and one Chandulal that the partnership was in fact acted upon, and that evidence was believed by the learned Judge who heard the suit. It has also been made to appear to me that the defendant's brother Dharsey, who according to his story was the sole owner of the partnership business, was in fact nothing of the kind, but at most a paid servant of the firm. There are also affidavits, no doubt subsequent in date to the decision of the suit, in which the defendant has himself stated that he and Kasturbai were partners. Had he confined himself to stating that the High Court had decided that point of partnership against him, little importance could be attached to these affidavits, but he goes further than that and deliberately says that he and Kasturbai were partners.

10. Having regard to all these matters it appears to me that this is a case in which in the interests of justice it is expedient that an enquiry should be made into offence u/s 193 of the Indian Penal Code or such other sections as may be applicable committed in the course of the suit in question, and I, therefore, record a finding to that effect. The action to be taken upon this finding is of course to be taken by the Court itself, and a complaint will be drafted and sent to the Magistrate for disposal.

11. I direct that the words "why sanction for the criminal prosecution of the said defendant Vanmalidas Lakmidas should not be given" should be deleted from the Rule.

12. In other respects Rule made absolute with costs.