

(1951) 04 MAD CK 0029
In the Madras High Court
Case No : A. A. O. No. 478 of 1948

K. Chunilal Sowcar

APPELLANT

Vs

The District Judge of Chingleput

RESPONDENT

Date of Decision : 21-04-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 476
Penal Code, 1860 (IPC) — Section 471

Citation : (1951) 04 MAD CK 0029

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : V.T. Rangaswami Ayyangar and K. Kalyanasundaram, for the Appellant; E. Venkatesam for The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—This is an appeal against an order of the learned District Judge of Chingleput directing a complaint to be filed in the Court of the nearest First Class Magistrate having jurisdiction, patchy, the Court of the Sub Divisional Magistrate, Chingleput, for an offence under S. 471, I. P. C. The learned District Judge made the order under appeal, as he says at its very beginning, because : both the District Munsif of Chingleput and myself found in O. S. No. 311 of 1914 and A S. No. 14 of 1916 respectively that the plaintiff (appellant) K Chunilal Sowar has fraudulently and dishonestly used as genuine a schedule of liabilities (Ex. P.5) filed by the first defendant knowing or having reason to believe the same to be a forged document.

At the commencement of the hearing of this appeal, Mr. Rangaswami Aiyangar drew my attention to a decision of this Court reported in Kuppaswami Chettiar v. Subbaraya Chettiar 1941 M.W.N. CrL. 369=53 L W. 677 which holds that in an appeal against an order of a District Judge under S. 476, CrL. P. C. notice should go to the Public Prosecutor rather than to the Government Pleader. In the case before me it is the Government Pleader to whom notice has gone, and if the

decision of Mockett J. cited to me were correct, it would mean that I should have to post one the hearing of this appeal till after notice to the Public Prosecutor. The reason which the learned Judge gives in the ruling cited for the view taken by him is this :

In this case" says the learned Judge, "the question has arisen as to whether notice should go to the Public Prosecutor or Government Pleader in appeals such as this. The decision in *Kumaravel v Shanmuga I. L. R. 1940 Mad. 762= 51 L. W. 542 (F. B.)* makes it clear that this is a civil matter from the point of view of whether the C. P. C applies. I think however that owing to the nature of the proceeding it is desirable that notice should go to the Public Prosecutor rather than to the Government Pleader as he is the appropriate Law Officer to deal with the question relating to prosecutions e.g. forgery and similar offences. I may add that I think this case has shown how necessary it is that notice should go to a Law Officer who can bring an impartial eye to bear upon this question and thereby assist the Court.

2. I am not satisfied that this reasoning of the learned Judge is correct. Although it is not binding upon me I should certainly in the interests of comity of judicial decision follow this decision, if I merely felt it to be of doubtful soundness. It seems to me however that the reasoning of the learned Judge is erroneous in both the parts of it which are contained in the quotation just made by me. I think that if regard be had only to the nature of the proceedings it may be that the case itself will have to be treated not as a civil matter but as a criminal one. It is not therefore, in my opinion, a question which can be decided by reference exclusively to the nature of the proceedings as such. Notwithstanding the criminal nature of the proceeding; it has been definitely ruled by a Full Bench of this Court in *Kumaravel v. Shanmugha ILR 1940 Mad 762 : 51 L.W. 542 (F.B.)* that if in connection with a civil proceeding the question of initiating a prosecution for an offence committed in relation there, to arises, the proceeding by which the criminal prosecution is initiated must be regarded as a civil matter for purposes of appeal. As the head note to that Full Bench ruling rightly bears :

A civil Court does not cease to be a civil Court when it is considering an application made to it under S. 476 CrI. P. C and if for the purposes of that application it remains a civil Court, it must be governed by the provisions of the Civil procedure Code and not by those of the Criminal Procedure. The Fact that an appeal from an order passed on an application when it has been dealt with by a civil Court lies to an appellate civil Court emphasises the civil character of the Court dealing with the application S. 433 CrI. P. C. only applies to cases which come before the criminal Courts within the meaning of the Criminal Procedure Code.

3. Nor am I satisfied that the consideration that in a matter like this it must be borne in mind how necessary it is that notice should go to a law officer who can bring an impartial eye to bear upon this question and thereby assist the Court necessarily indicates that the Public Prosecutor and not the Government Pleader

is the appropriate Law Officer to whom notice ought to go.

4. It seems to me that whatever the soundness or unsoundness of the considerations relied upon by the learned judge and of the conclusion expressed by him, there is no serious jurisdictional objection to the case going on with the notice already issued to the Government Pleader. Mr. Rangaswami Aiyangar beyond citing the ruling did not himself suggest that there should be a postponement of this matter for issue of notice to the Public Prosecutor as the proper Law Officer in whose presence this cause must be heard and decided. In these circumstances I propose to deal with the merits of the appeal without giving effect to what may seem to be a preliminary objection deductible from the ruling in *Kuppuswami Chettiar v. Subbaraya Chettiar*. (1941) M.W.N. CrL. 36=53. L.W. 677. There is no doubt-and Mr. Venkatesam for the respondent did not seriously dispute the position-but that the learned District Judge has overstated the position in the order under appeal when saying that the learned District Munsif of Chingleput and himself found in O. S. No. 341 of 1944 and A. S. No. 14 of 1946 respectively that the plaintiff K. Chunilal Sowcar had fraudulently and dishonestly used as genuine the schedule of liabilities. Ex. P. 5, filed by the first defendant, knowing or having reason to believe the same to be a forged document. As I read the order under appeal, that in fact is the beginning as well as the end of the reasoning in support of the conclusion reached by the learned Judge that a complaint should be filed in the present case for an offence under S. 471, I. P. C. Mr. Venkatesam has endeavoured to satisfy me that quite apart from this overstatement of the learned District Judge there is sufficient material on record in support of his conclusion that the case is one in which it is expedient in the interests of justice that there should be launched a complaint against Chunilal Sowcar for an offence under S. 471, I. P. C.

5. Before dealing with the merits of this contention of Mr. Venkatesam it is necessary for me to state a few facts connected with the suit and the appeal respectively in which Ex. P. 5 came to be filed and relied upon by the plaintiff in the suit appellant in the appeal. The suit was instituted on foot of a mortgage document of 1930 as executed for a sum of Rs. 2565. The mortgage deed was executed in renewal of a prior promissory note of 1929 which itself was a consolidation of two promissory notes of 1928 for Rs. 400 and Rs. 200 respectively, executed by the first defendant in favour of the plaintiff. The suit was actually instituted in the year 1944, but before this was done, it would appear that a creditor's petition had been filed in the year 1932 to adjudge the first defendant insolvent. The first defendant was duly adjudged insolvent In the list of creditors attached to the petition for adjudication there was reference made in item 16 of the list to the mortgage deed in favour of K. Chunilal Sowcar on which Rs. 2565 was the sum due, with the actual principal thereof noted as Rs. 2250, as the certified copy of the list. Ex P 5 (a) snows, The first defendant mortgagor remained ex parte in the suit without filing even a written statement. His son, the second defendant, similarly remained ex parte. The person who contested the suit by filing a written statement was the third defendant who

happened to have been the purchaser of a portion of the hypothecs The evidence in the case consisted of what the plaintiff himself give in the box as P. W. 1 and what the first defendant gave in the box as D.W. 1 in addition to the evidence of a pleader of the first defendant in the insolvency proceedings-D. W. 2. The learned District Munsif of Chingleput and on appeal the learned District Judge in concurrence with him decreed the suit for a sum of Rs. 259 only with principal and interest thereon from 1-10-1937 at the rate of 61 per cent per annum till the date fixed for redemption and at 6 per cent per annum thereafter. The basis on which the Courts proceeded was that there was no proof sufficiently convincing that a sum of Rs. 2250 was the actual principal of the mortgage instrument. Both the Courts in the suit and in the appeal respectively found that there was tampering with the document in so far as the figure, 2250 seems to have been written upon some other figure which originally found a place in the document [original of Ex. P. 5 (a)]. It was not necessary for the Courts to go so far as to find, nor in fact did they find, that there was a tampering with the document by any particular individual or at a particular time and that knowing the document to be one accordingly forged the plaintiff actually used the document fraudulently and dishonestly as genuine. The learned District Judge in his order under appeal gives no further reasons in support of his order. No doubt he has referred to a certain enquiry which he directed of the Circle Inspector of Police and he says that the record of the enquiry only confirms the conclusion arrived at judicially by the Courts meaning thereby the conclusion supposed to have been arrived at by him and the District Munsif of Chingleput that the plaintiff fraudulently and dishonestly used as genuine a forged document knowing or having reason to believe the same to be a forged document The offence according to the learned Judge was committed somewhere between 29.11.1943 and 1.12.1943, and so long a time has elapsed since the date of the commission the alleged offence that I do not think it is proper that there should be further enquiry into this matter at this stage. Mr. Venkatesam has contended that the finding of the learned Judge that it is expedient in the interests of justice that a complaint should be launched is a discrete natty matter with which I ought not to interfere. Ordinarily I should agree that this is so; but when the conclusion of the learned Judge is based upon a mistaken impression that already there was a finding recorded by him and the learned District Munsif of Chingleput to the effect that the plaintiff fraudulently and dishonestly used as genuine a forged document knowing or having reason to believe it to be a forged document, I do not find any alternative open to me to a reversal of his order in the present case. In these circumstances the appeal is accordingly allowed, and the order of the learned District Judge directing prosecution to be launched against the plaintiff in O. S. No. 341 of 1944 on the file of the District Munsif of Chingleput set aside. There will be no order as to costs in this appeal.