
(1963) 03 KL CK 0014
In the High Court Of Kerala

Kanhirakolla Chamukuttan Nair

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 22-03-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 181, 182, 195, 471, 475
Penal Code, 1860 (IPC) — Section 181, 182, 193, 463, 467

Citation : (1965) CriLJ 387

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Judgement

P. Govinda Menon, J.—This revision petition arises out of a complaint Wed by the Principal Munsiff, Palghat, under Sections 195 and 476, Cr.P.C. The revision petitioner is a Vakil's clerk at Palghat Against him and another person, the learned Munsiff filed a complaint before the District Magistrate, Palghat, for an offence of fabrication of false evidence in connection with a petition, I.A. No. 2842 of 1960. On receipt of the complaint, the learned District Magistrate found that the facts of the case really disclosed offences triable exclusively by the Sessions Court, and treating the case as a preliminary enquiry case, transferred the same to the Sub-Magistrate, Palghat. The Sub-Magistrate on finding that a prima facie case was made out committed the accused to stand their trial before the Court of Session, Palghat.

2. The case was tried by the Assistant Sessions Judge, Palghat, who convicted the first accused for offences under Sections 467 and 471, I.P.C. and the petitioner for abetment of the above said offences. On appeal, the Additional Sessions Judge of Trichur acquitted the first accused on the ground that the charge laid against the first accused under Sections 467 and 471, I.P.C., cannot be taken cognizance of for want of a proper complaint and his conviction and sentence were set as aside The conviction and sentence passed on the petitioner was confirmed. The petitioner has, therefore, come up revision to this Court.

3. The main point that was pressed before me by the learned Counsel was that

the petitioner, being not party to the suit or the criminal proceedings, no complaint could have been lodged against him by the learned Munsiff and the trial was, therefore without jurisdiction and the conviction cannot be maintained. Reliance was placed on certain decisions which have taken the view that a Court cannot u/s 195(1)(c) prefer complaint against a person who is not a party.

In *Lala Mathur Prasad Vs. Pitambar Singh*, , it was held:

From Section 195, Sub-section (1), Clause (c) it is clear that it bars the cognizance of the offence of forgery and certain connected offences, when the offence committed by a party to any proceeding In Court, the creates no bar if such offence is committed by any person who is not a party to any proceedings in Court. Consequently, in such a case, Section 476 has no application. Hence a Court Is not competent to start a proceeding against a pleader u/s 476 and inquire into the alleged offence of forgery, since he cannot be said to be a party to the proceeding.

4. This decision was followed In the case in *Akloo Prasad Vs. Nandan Prasad*, . There the accused had filed a plaint in the name of his father be forging his signature on the Vakalatnama as also on complaint. It was held that the petitioner not being a party to the suit which had been filed In the name of hit father, no complaint could be lodged against him for forgery by the Court.

5. Likewise in *Sengoda Goundan v. Vayapuri Goundan* 61 MLJ 684 : AIR 1932 Mad 129, the accused sought to revise the order of the District Judge Salem, u/s 476, Cr.P.C. complaining against them for abetting a forgery. Following the Full Bench decision in *Govinda Iyer v. Rex* ILR Mad 540 : AIR 1919 Mad 7, it was held:

The Court can complain u/s 476 of in offence referred to in Section 195(1)(c) only if it one alleged to have been committed by a party to the proceeding in Court. The Court has no power under that section to complain against witness for abetting a forgery.

6. In *Bombay*, it has always been held that Section 476 in reference to Section 195(1)(c) is not confined to parties vide the decisions in *In re Devji Valad Bhavani* ILR Bom 581 and *Emperor v. Balgaunda* ILR Bom 296 : AIR 1931 Bom 305. In the case *In AIR 1931 Bom 305, Beaumont, C.J.*, delivering the judgment of the Bench stated:

Section 476 Is a corollary of Section 195. Section 195 Is a disabling section while Section 476 Is mi enabling section and there is no Inherent reason why the powers conferred by Section 476 should be strictly limited by reference to the disabilities imposed by Section 195. If once it is ascertained In Judicial proceedings that there is an offence described in Section 463, I.P.C. or punishable under Sections 471, 475 or 476 of that Code and such offence appears to have bean committed fear a party to the proceedings then, u/s 476, the Court can Inquire into the matter, and if it comas to the conclusion that other persons also, for example witnesses, are guilty of the offence, it can refer the

whole case to a Magistrate for an inquiry and committal.

7. The Allahabad High Court in the case in Channu Lal and Another Vs. Rex, , also took the same view. There a liquidation officer, acting under the provisions of the U.P. Encumbered Estates Act (Act 25 of 1934), ordered that an applicant whose debt he was liquidating be prosecuted. That order, communicated to a Magistrate with a view to taking action under the Criminal Procedure Code, would amount to a filing of a complaint.

A complaint is defined in Section 4(1)(h), Cr.P.C. as meaning:

the allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but it does not include the report of a police officer.

Since the order of the Munsiff communicated to the District Magistrate was made with a view to action being taken under the Code and had set out the facts which constituted the offence, it was held that it would amount to "a complaint". As public officer, it was the duty of the Munsiff to bring to the notice of the Magistrate the commission of the offence. The fact that he; could not have taken any action u/s 476, Cr.P.C. in his capacity as a "Court" does not debar him from taking any action in his capacity as a public officer or authority. It was, therefore, held that the Magistrate could validly take cognizance of the complaint and proceed with the case. In none of the cases referred to by the learned Counsel has this aspect of the matter been considered.

8. This view has been approved by the Supreme Court in the case in Shri Virindar Kumar Satyawadi Vs. The State of Punjab, . There the accused was a candidate for election to the House of the People. For a false declaration triads by him the District Magistrate who was the returning officer initiated proceedings and laid a complaint for offences under Sections 181, 182 and 193, I.P.C. It was argued that as the application for initiation of prosecution u/s 193 was made u/s 476 on the assumption that the returning officer was a court which really he was not, the order passed by him for filing the complaint has to be quashed, being without jurisdiction. Their Lordships stated:

It has no doubt been held that Section 476 must be taken to be exhaustive of all the powers of a Court is such to lay a complaint, and that a complaint filed by it otherwise than under that section should not be entertained. But there is abundant authority that Section 476 does not preclude the officer presiding over a Court from himself preferring a complaint and that the jurisdiction of the Magistrate before whom the complaint I laid to try it like any other complaint is not taken away by that section-Vide Mehr Singh v. Emperor AIR 1933 Lab 884; Emperor v. Nanak Chand AIR 1943 Lah 208 ; Channu Lal and Another Vs. Rex, .

There is thus no legal impediment to a returning officer filing a complaint under Sections 181 and 182 as provided in Section 195(1)(a) and charging the accused therein with also an offence u/s 193.

9. The petitioner handed over a blank paper with the signature of the opposite party which he had with him to the first accused and the document was forged. After getting up the forged document, the first accused fraudulently and dishonestly used it in Court with the full knowledge that it was a forged document. The petitioner has, therefore, abetted the commission of the offence. But for his abetment, the first accused would not have been able to commit the offence. The evidence has been fully discussed by the Courts below and need not be restated. On a careful consideration of the facts and circumstances of the case, I have no hesitation in finding that the petitioner is clearly guilty of the offence charged. He is a Vakil's clerk who has abused the confidence and trust placed on him by his clients regardless of the ethics and standards of the profession to which he belonged. The offence is a grave one deserving a deterrent sentence. Rigorous imprisonment for one year cannot at all be said to be excessive. If at all, it has only erred on the side of leniency.

10. In the result the conviction and sentence are confirmed and the revision petition is dismissed.