

(2009) 10 BOM CK 0095
In the Bombay High Court
Case No : Criminal Appeal No. 22 of 2009

Shri Narayan M. Dessai, Advocate

APPELLANT

Vs

Shri Vishnu Chandru Gaonkar and Others

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 2, 2(9), 238
Penal Code, 1860 (IPC) — Section 120B, 193, 196, 205, 420

Citation : (2009) 10 BOM CK 0095

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S.G. Bhobe, for the Appellant; Rohit Bras De Sa, for the Respondent

Final Decision : Allowed

Judgement

N.A. Britto, J.—This is an appeal filed u/s 341 of the Code of Criminal Procedure, 1973, and is directed against the order dated 31.7.2008 of the Learned Principal District and Sessions Judge, Margao, by which the Learned Principal District Judge filed a complaint under Sections 193, 196, 465, 205 and 120-B I.P.C. against the appellant herein, and others.

2. There is no dispute that the entire controversy arises from the application filed by the present appellant who was an Advocate of the appellants in Regular Civil Appeal No. 91/S/2004/II.

3. Some more facts are required to be stated to dispose of the present appeal.

4. Laxman Rama Gaonkar and Janu Narayan Gaonkar had filed a civil suit bearing No. 4/1993 against Kusta Nagu Gaonkar and upon his death his legal representatives namely (a) Prakash Kusta Gaonkar (b) Surekha Suresh Gaonkar, (c) Smt. Manjula Laxman Gaonkar, (d) Laxman Pandu Gaonkar, (e) Smt. Kamal aias Babita Balkrishna Gaonkar, (f) Balkrishna Rama Gaonkar, (g) Smt. Vimal Shaba Velip, (h) Shaba Manju Velip and (i) Shri Suresh Kusta Gaonkar were brought on record. It is stated that Suresh Kusta Gaonkar was the original

defendant along with the said Kusta Nagu Gaonkar. The said civil suit came to be decreed by Judgment dated 7.12.01 and the execution proceedings were filed bearing Execution Application No. 1/03 to execute the decree passed therein. The said legal representatives of the said Kusta Nagu Gaonkar namely the said Prakash Kusta Gaonkar and others filed an appeal against the said Judgment/Decree dated 7.12.2001 bearing No. 91/2004 and at that time Shaba Manju Velip namely the son-in-law of the said Kusta Nagu Gaonkar was living. After filing the said appeal, both Laxman Rama Gaonkar and Janu Narayan Gaonkar i.e. the original plaintiffs and respondents in the said appeal, expired. After their death, their legal representatives were brought on record. The legal representatives of the said Laxman Rama Gaonkar were (a) Ram Laxman Gaonkar (b) Rekha Ram Gaonkar, (c) Premanand Ram Gaonkar, (d) Harischandra Gaonkar, and (e) Smt. Chandravati Harischandra Gaonkar. After the death of the said Janu Narayan Gaonkar, his legal representatives were also brought on record namely the legal representatives mentioned under letters No. (a) to (n). The legal representative under letter (n) is no other than Vishnu Chandru Gaonkar who had filed the complaint against the appellant and the said Prakash Kusta Gaonkar and others ie. respondents Nos. 2 to 9 herein whose names have been deleted by order dated 8.12.2008.

5. There is no dispute that the said appeal bearing No. 91/2004 came to be withdrawn pursuant to the application filed by the appellants (respondents 2 to 9, herein) on 18.7.06.

6. By that time Shaba Manju Velip i.e. legal representative (h) of the said Kusta Gaonkar had expired on 2.3.05. Prior to the withdrawal of the said appeal on 18.7.06, the said Vishnu Chandru Gaonkar, the son-in-law of the said Janu Narayan Gaonkar, along with some other respondents had executed sale deeds dated 19.6.06 and 20.6.06 in favour of M/s. Gold Resorts and Hotels Pvt. Ltd. The application for withdrawal dated 18.7.06 filed on the same day, was granted by the same Additional District Judge who passed the impugned order. On 21.7.04 the said Vishnu Chandru Gaonkar and others withdrew the Execution Application No. 1/03 filed through Advocate Vijay Gaykar. There are certain allegations made against Advocate Shri Vijay Gaykar regarding the withdrawal of the said Execution Application and it appears that subsequently a complaint was filed to the police against the said Vijay Gaykar on 9.1.08, but one does not know what is the outcome of the said complaint to the police. It appears that it was not pursued further.

7. After the withdrawal of the said appeal on 18.7.06, the complainant Vishnu Chandru Gaonkar filed a review application bearing No. 74/06, and, it is interesting to note that in the said review application filed by him, he stated that the appeal be dismissed as abated upon the death of the said Shaba Manju Velip and not as withdrawn. In other words, the complainant had no grievance of the appeal being dismissed one way or other. That application came to be rejected by order of the Court dated 8.10.07.

8. The complainant Shri Suresh C. Gaonkar then filed private complaint against the said Prakash Kusta Gaonkar and others (respondents 2 to 9 herein) but not against the Advocate Shri N.M. Dessai. The said complaint was registered under No. 278/P/06 and process was issued against them under Sections 420 and 463 I.P.C. Thereafter, the said complainant filed an application u/s 319 of the Code on or about 3.7.07 to implead the present appellant-Advocate, as accused in the said complaint but the same came to be dismissed by order dated 15.3.08 and it is stated that the said order has attained finality.

9. In the meantime, the present complaint by the said Vishnu Chandru Gaonkar was filed. The grievances in the complaint were two fold (1) the thumb impression of Shaba Manju Velip was forged as he had expired on 2.3.05 and it was filed on 18.7.06, 16? months later. It was also stated that the said application was signed before the respondent No. 9 (appellant herein) who had signed in his capacity as their advocate. (2) It was also stated that the signatures of some others were forged as represented by the signatures on the Vakalatnama filed by the respondent No. 9 (appellant herein). However, there was no specific allegation as to whose signatures were forged. The said application having been filed, a notice thereof was given to the said respondents namely Prakash Kusta Gaonkar and others including the appellant herein. A reply was filed by the said Prakash Kusta Gaonkar and others. Vimal Shaba Velip i.e. legal representative (g) filed separate reply and so did respondent No. 9/ appellant herein. The respondent Vimal Shaba Velip took it upon herself to say that the thumb impression which was put as of Shaba Manju Velip was put by her and she further explained that the said Shaba Manju Velip was not legally married to her and she was evicted from the house of the said Shaba Manju Velip by his family members. She further stated that she was not informed about the death of the said Shaba Manju Velip by his family members nor she was allowed to go and see the dead body of the said Shaba Manju Velip. She further stated that she was aware of the suit filed by Vishnu Gaonkar on behalf of his father-in-law Janu Gaonkar against her father and brother relating of their house as she along with Shaba Velip had signed the papers after the death of her father and that she received a message from one known person that the paper sent by her brothers was relating to her father's suit filed by Vishnu Gaonkar and the same was going to be disposed of and therefore her signature was required on the said paper where the other family members had signed and since she had noticed that her other sisters and their respective husbands had signed the said paper along with her brothers, she put her signature in Marathi as usual and since her husband Shaba Velip also used to sign along with her, in good faith, she put her thumb impression on the said paper as said Shaba Velip used to put his thumb impression.

10. The appellant herein/respondent No. 9 also filed a reply and in the said reply he raised the issue of jurisdiction as the application for withdrawal was pending in the said appeal before the Court of Additional District Judge, 11, and further stated that the complainant was harboring a grudge against him as he was

appearing in some cases against the complainant who was restrained by the order of the Court from selling the property and hence the complainant has attempted to implicate him in order to malign his reputation and with a view to embarrass him. The appellant/respondent No. 9 also stated that the complainant as also the other Gaonkars were interested to sell a part of the property known as "Tanasso" and as such Advocate Vijay Gaykar had informed him that the execution application was pending before the Civil Judge, Junior Division at Canacona and that would be withdrawn as all the parties were interested in settling all the matters pending in the Court and Advocate Vijay Gaikar gave a copy of the application dated 20.6.05 which should have been of the year 2006 duly signed by the said complainant Vishnu Gaonkar and Advocate Vijay Gaikar and it was suggested that the appellant in R.C.A. No. 91/04/II which was pending before the Court of Additional District Judge II should be withdrawn in order to settle the cases. The appellant/respondent No. 9 also stated that the complainant Vishnu Gaonkar had also approached him at his residence at Aquem Baixo, Margao, and informed him that all the Gaonkars of Tanshi village had jointly decided to settle all the disputes in order to enable them to sell a part of the property Tanasso. The appellant/respondent No. 9 further stated that as he was informed about the talks of settlement amongst the Gaonkars of Tanshi and as a xerox copy of the application for withdrawal of Execution Application No. 1/03 was handed over by Advocate Vijay Gaykar, he, as per instructions of his clients, drafted and handed over the application of withdrawing RCA No. 91/04/II to respondent No. 8 Suresh K. Gaonkar in order to obtain the signatures of the remaining respondents (appellants in the appeal). The appellant/respondent No. 9 specifically denied the allegation about the forged thumb impression of Shaba M. Velip as he was not aware of anything about the death and alleged forged thumb impression of Shaba. The appellant/respondent No. 9 stated that he had no knowledge about the forged thumb impression of Shaba M. Velip as the application was not signed before him in order to withdraw the appeal. He stated that the application was prepared as per instructions of the appellant and was handed over to them in order to obtain the signature of the appellant.

11. No rejoinder was filed by the complainant. Admittedly, no inquiry was conducted by the Learned District Judge and only show cause notice was given to the respondents in the said complaint and after considering the said complaint of the said Vishnu C. Gaonkar and the replies filed by the respondents that the Learned District Judge, by the impugned order, filed the complaint against them.

12. There was another suit R.C.S. No. 36/02 in respect of the same property filed by Smt. Gunu Purso Velip and Prasad Purso Velip against Janu Narayan Gaonkar through the appellant as their advocate which was also withdrawn on 19.6.06 and probably with a view to enable the parties to execute the sale deeds dated 19.6.06 and 20.6.06.

13. It is interesting to note that as far as the withdrawal of Regular Civil Appeal No. 91/04/II as well as Regular Civil Suit No. 36/02 (Special Civil Suit No.

140/97/II), neither the appellants nor the plaintiffs in the said appeal and in the said civil suit nor for that matter the heirs of Shaba M. Velip, if there are any, have made grievance against the appellant as their Advocate atleast till today and it is only the complainant who was one of the respondents in the said appeal who filed the complaint.

14. Be that as it may, the Learned District Judge by the impugned order dated 31.7.08, as far as the appellant's Advocate is concerned observed that he had filed his appearance on behalf of the said Shaba M. Velip and others and as such was duty bound to confirm the identity of the parties whom he was representing in the said application for withdrawal namely C.M.A. No. 83/02. The Learned District Judge further observed that although the appellant/respondent No. 9 had contended that he was totally unconnected with any of the said transaction, such contention would not lie in his mouth when he was representing the said appellants and one of whom was Shaba M. Velip, since deceased and was instrumental in seeking withdrawal of the appeal on 18.7.06 despite the said Shaba having expired prior to that date and therefore on the basis of the material on record it was apparent that offence of forgery u/s 463 I.P.C. was committed. As regards the other respondents, the Learned District Judge held that the role of other respondents could not be segregated from that of respondent Vimal S. Velip in the transaction of the disposal of a substantial part of the property Tanasso which had spawned further litigation, including the suit last in point of time for a declaration that the sale deeds dated 19.6.2006 and 20.6.2006 in favour of M/s. Gold Resorts were null and void. In other words, the Learned District Judge appears to have implicated the said other respondents (respondents No. 2 to 9) because their conduct had given rise to the filing of the said civil suit bearing No. 28/07. At the same time the Learned District Judge also noted that the complainant was defendant No. 26 in the said suit for self and as constituted attorney of the defendants Nos. 21 to 25 and 27 and 32 and had conceded the claim of the plaintiffs in the said civil suit. Learned Principal District Judge entirely lost sight of the fact that the sale deeds were executed on 19.6.06 and 20.6.06 and the R.C.A. No. 91/S/2004/II was withdrawn only on 18.7.06 and which they were certainly entitled to and till date they have not made any grievance against their advocate.

15. Sub-section 1 of Section 340 of the Code, inter alia, provides that:

(1) when upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

a) record a finding to that effect;

- b) make a complaint thereof in writing;
- c) send it to a Magistrate of the first class having jurisdiction;
- d)....
- e)....
- (2)....
- (3)....

16. The Learned District Judge referring to the said application for withdrawal filed on behalf of the appellants (C.M.A. No. 83/02) in the said Regular Civil Appeal No. 91/04/II held that the application was a document in the context of the Evidence Act.

17. Shri Bhobe, the Learned Counsel appearing on behalf of the appellant, submits that the impugned order has proceeded on non application of mind by the Learned District judge in that the Learned District Judge has proceeded to consider the said application u/s 195(1)(b) of the Code when in fact it ought to have been considered u/s 340(1) of the Code. Learned Counsel further submits that the application filed for withdrawal could not have been considered as the document which was produced or given in evidence as contemplated by Sub-section 1 of Section 340 of the Code and in that regard Learned Counsel has placed reliance on two Judgment of the Apex Court to which reference will be made hereinafter. Learned Counsel further submits that only because the said respondent Vimal S. Velip had put the thumb impression of deceased Shaba M. Velip would itself give no cause for filing of the complaint unless the Learned District Judge had found it to be expedient in the interest of justice that an inquiry should be made into the said offence of forgery. Learned Counsel further submits that the complainant has lost nothing in as much as no injury has been caused to him because after the withdrawal of the appeal by the appellant, the complainant as one of the decree holders in Execution application No. 1/03 was free to prosecute the said decree but in fact had withdrawn the same on 21.7.04 and as such, the Learned Counsel submits, that this is not a case where justice was made a casualty. Learned Counsel further submits that by withdrawal of the appeal by the appellant, the decree holders including the complainant, were benefited in that they were free to prosecute the said decree and therefore there was no question of any injury being caused to the said complainant. Whether the complainant was forced to sign the application for withdrawal of the said execution proceedings by his Advocate Shri V. Gaykar is entirely a different matter and has nothing to do with the withdrawal of the appeal by the appellant herein. Learned Counsel further submits that the said advocate Shri Vijay Gaykar has not been prosecuted by the complainant by filing a similar application before the said executing Court. Learned Counsel submits that the appellant's action in withdrawing the appeal had caused no injury to the complainant but on the contrary had benefited him and therefore in such a case it was certainly not

necessary that any inquiry should have been conducted as contemplated under Sub-section 1 of Section 340 of the Code. Learned Counsel submits that in the entire impugned order, the District Court has not at all come to the conclusion that any inquiry or for that matter filing of the complaint was necessary in the interest of justice and that on that count also the impugned order deserves to be set aside.

18. Shri Bras De Sa, Learned Counsel appearing on behalf of the respondent/complainant submits that the application for withdrawal was stamped, punched and was presented to the Court and as such was in custody of the Court and therefore was a document which was produced as contemplated by Sub-section 1 of Section 340 of the Code. Learned Counsel therefore submits that the present case is very much covered by the decisions which have been cited by the Learned Counsel Shri Bhohe. Learned Counsel further submits that the application for withdrawal was also taken on record and marked as Exhibit and this again shows that the said application was a document produced before the court as contemplated by Sub-section 1 of Section 340 of the Code.

19. The scope of Section 340 of the Code has been dealt with by the Apex Court in the case of *Pritish Vs. State of Maharashtra and Others*, a decision relied upon by Shri Bras De Sa. The Apex Court in this decision has stated that "the hub of Sub-section 1 of Section 340 is formation of an opinion by the Court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This Sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again to be remembered that the preliminary inquiry contemplated in the Sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed".

20. The Apex Court further stated that "inquiry" is defined in Section 2(9) of the Code as "every inquiry" other than a trial, conducted under this Code by a

Magistrate or court". It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" (as defined in Section 2(x)) of the Code, the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. The Apex Court pointed out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made u/s 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed u/s 238 to Section 243 of the Code".

21. Non application of mind on the part of the Learned District Judge is writ large in the impugned order. Though the complainant filed the application as an application u/s 195(1)(b)(ii) of the Code, the District Judge, proceeded with it to be so but any inquiry to be conducted had to be u/s 340 of the Code and not u/s 195(1)(b)(ii). There is no dispute that both the Sections namely 195 and 340 of the Code are inter connected but the inquiry or filing of the complaint is contemplated under Sub-section 1 of Section 340 and not u/s 195 of the Code. If the Learned District Judge in the impugned order has stated that an offence of forgery u/s 463 I.P.C. was committed, the complaint shows that it is filed under Sections 193, 196, 465, 205 and 120B I.P.C when there is not even a whisper of the said Sections in the impugned order. The finding in para 16 as regards the remaining respondents except respondent Vimal S. Velip appears to be rather strange in that they appear to have been roped in only because their conduct in withdrawal of the appeal had given rise to the filing of the civil suit No. 28/07 which in fact would not at all have been the reason to implicate them in the offence of forgery, more so when the respondent Vimal S. Velip had owned the said offence u/s 463 I.P.C. That apart, there is no finding at all given by the Learned District Judge that the prosecution of the appellant who was only an advocate of the appellants was expedient in the interest of justice, more so, when the said appellant-advocate had explained under what circumstances he had drafted the application for withdrawal and sent for the signatures of his clients, when this was not at all an unusual practice adopted by advocates.

22. The object of Section 340 of the Code is to safeguard against frivolous and vexatious prosecutions by private individuals in respect of offences which relate to the administration of justice and it is not only enough that an offence should be committed in relation to administration of justice but it should also be expedient in the interest of justice to file a complaint and this is one of the requirement of the Section, but there is no whisper or finding in this regard in the impugned order. It is well settled that the provisions of Section 340 of the Code are mandatory and lack of finding in that regard would vitiate the order. I am supported in this view by the decision in K.K. Khanna and Anr. v. Expo

Enterprises 1984 Cr. L.J. 1723 wherein the Delhi High Court has held that this requirement of law was of fundamental importance and the omission in that regard vitiates the order. A complaint is permissible only when the Court making the complaint is of the positive view that lodging of the complaint would be expedient in the interest of justice. In G.B. Mallapur and Anr. v. State of Karnataka 1994 (1) Crimes 668 the Karnataka High Court has held that lodging of criminal complaint would be vitiated if it was nowhere opined or recorded in the order as a fact that lodging of complaint was expedient in the interest of justice. On this count alone the impugned order deserved to be set aside. That apart, the said Vimal S. Velip had owned the forgery in respect of the thumb impression of a person who apparently did not even have a right to the property and the appellants themselves, who withdrew the appeal, had no grievance against their advocate, and no loss or injury was caused to anybody by the withdrawal of the appeal. The plaintiffs in R.C.S. No. 36/02 also had no grievance against their advocate, though the withdrawal of that suit had nothing to do with the withdrawal of R.C.A. No. 91/S/2004/II. In a case of this nature, it was inadvisable or inexpedient that a complaint should have been made. This is a clear case of wrong exercise of discretion. Interest of justice did not require that a complaint ought to have been made.

23. That apart, the question still remains whether the application for withdrawal of the appeal could be considered as the document produced or given in evidence in the proceedings before the Court?

24. In my view, this question is no longer *res integra*. Firstly, it must be held that an application filed for withdrawal of suit cannot be termed as a document produced or given in evidence as contemplated by Section 340 of the Code. No decision to the contrary has been cited on behalf of the parties.

25. That apart, the view held by the three Judges of the Apex Court in Sachida Nand Singh and Another Vs. State of Bihar and Another, has been approved by the Constitution Bench of the Apex Court in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, . In the first decision (of three Judges) it was stated thus:

11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in *custodia legis*.

12. It would be a strained thinking that any offence involving forgery of a document if continued far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the

document was committed before the document was produced in a Court.

26. The Constitution Bench in *Iqbal Singh Marwah and Anr.* (supra) observed that:

7. On a plain reading Clause (b)(ii) of Sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable u/s 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.

23. In view of the language used in Section 340 Cr.P.C. the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of Clause (b)(ii), as canvassed by Learned Counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

27. The Constitution Bench further observed at para 31:

31. That apart, the Section which we are required to interpret is not a penal

provision but is part of a procedural law, namely, the Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal Act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned Counsel for the appellants can, therefore, have no application here.

28. Ultimately, the Constitution Bench held that:

In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.

29. Learned Counsel on behalf of the respondents has also relied upon two decisions of older vintage, if I may use that expression, namely one of this Court in the case of Emperor Vs. Gulabchand Rupji, and that of the Apex Court in Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, which are not required to be referred to in the light of the more recent authoritative pronouncements now available of the Apex Court in view of the aforesaid two decisions.

30. The document which is punched and stamped can be taken away by the party without the same being produced before the Court. The application for withdrawal was marked as exhibit before it was presented to the Court. It is not any body's case herein that after the application for withdrawal was filed and exhibited, that the said Vimal S. Velip forged the thumb impression of deceased Shaba M. Velip. If that was the case it would have been a different matter and the application would have been forged after it was in custodia legis. However, according to the said Vimal S. Velip, she had put her thumb impression when the application was brought in Cuddi Cola, Canacona and according to the appellant himself, the application duly signed/thumb impressed was brought and given to him by his clients. In other words, the forgery in this case, now owned by the said Vimal S. Velip was committed much before the application for withdrawal was even presented before the Learned District Judge and therefore it could not have been a case where there was forgery of the said application while it was in custodia legis and in this view of the matter as well, the Learned District Judge was not at all justified in lodging the complaint by the impugned order.

31. Consequently, the appeal deserves to succeed and the impugned order as well as the complaint filed pursuant thereto is hereby quashed and set aside, leaving the parties to bear their own costs. It is clarified that the complaint is

quashed against all the accused.