

(1944) 09 MAD CK 0005
In the Madras High Court

Yenam Chinna Venkata Reddi

APPELLANT

Vs

Narvati Lingala Bugga Reddi and Others

RESPONDENT

Date of Decision : 19-09-1944

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195

Citation : AIR 1945 Mad 345 : (1945) 1 MLJ 465

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—In 1937 one Booka Chinnna Venkata Reddi mortgaged certain property to the petitioner in this criminal revision case for a sum

of Rs. 2,500. In 1940, Chinna Venkata Reddi sold the mortgaged property to the petitioner for Rs. 3, 000. On 6th June, 1941, a sale deed was

brought into existence purporting to have been executed by the petitioner by which the same property was sold to who did not include Nooka

Pedda Venkata Reddi and were not parties to the suit, were stated to have been the writer and the attestors of the sale deed respectively. The

District Munsiff, it was said, was being asked to make a complaint against Munsiff of Nandyal. The Stationary Sub-Magistrate was of opinion that

the question of jurisdiction could be left to be considered after the evidence had been recorded; but, the matter having been brought in revision

before this Court, he was directed to decide in limine the question whether the complaint was barred by the provisions of Section 195 of the

Criminal Procedure Code. The Magistrate has now rejected the complaint on the ground that the offence "falls primarily u/s 193 of the Penal Code

and that the Civil Court is accordingly the proper authority to institute a prosecution.

2. It is contended for the petitioner that the view taken by the Magistrate is wrong and that, in the circumstances of this case, there is no bar to the private complaint. The argument advanced is that the offence alleged to have been committed is an offence u/s 467 of the Penal Code as set forth at the heading of the complaint and that it is not alleged that the object of the forgery was that the forged document should be used in any stage of a judicial proceeding but that the object was ""to grab the properties for the benefit of themselves."" There is therefore no allegation of an offence u/s 193 of the Indian Penal Code nor do the facts disclose one, so that Section 195(1), Clause (c) is applicable and not Section 195(1), Clause (b); and against the three accused who unlike Chinna Pedda Venkata Reddi, are not parties to the suit, a complaint in writing by the Court is not necessary for the institution of criminal proceedings.

3. It seems not improbable that the complaint in the present case was framed with an eye on three decisions of this Court in *In re Ravanappa*

Reddi 1, *Thulasiammal v. Danalakshmi Amman* (1933) 66 M.L.J. 471 : ILR 57 Mad. 682 and *In re Appadurai Nainar 3*. The petitioner relies on

the second of these cases and seeks to distinguish the other two. In *re Ravanappa Reddi 1* Jackson, J., observed that "" the allegation is plainly

stated in the complaint, and it is the allegation which attracts the mischief of Section 195(1)(b) of the Criminal Procedure Code,"" and Curgenven,

J., said that "" the section of the Penal Code, i.e., Section 193--was quoted."" In *re Appadurai Nainar*¹ the decision also turned on the construction

of the complaint, and the complaint stated quite clearly that the object of the forgery was "" to collect "" money from the complainant by using the

document in a civil suit. Both cases could have been decided simply on the ground that the complaint itself alleged an offence u/s 193 of the Indian

Penal Code so that the provisions of Section 195(1)(A) of the Criminal Procedure Code were plainly Attracted. Curgenven, J., however in *In re*

*Ravanappa Reddi*² with reference to the fact that the conviction in the case had been for abetment of forgery of a valuable security under Sections

467 and 109 of the Penal Code, referred to an earlier decision of his own in *Appadurai Nainar Vs. Sampath Rao Nainar and Another*, and

observed in effect that it was not open to a Court to permit the provisions of Section 195 of the Criminal Procedure Code to be evaded by an

allegation that the offence was one u/s 467 when in fact it was an offence under both Sections 467 and 193 of the Penal Code. In Appadurai

Nair, In re,¹ Madhavan Nair, J., referring to these observations of Curgenven, J., said:

No doubt a case of forgery may be alleged against the parties. But it has been held in this Court, in re Raoanappa Reddi², that parties should not

be allowed to evade the provisions of Section 195(1)(b) of the Criminal Procedure Code, by filing a complaint under another provision of the

Penal Code, if clearly an offence u/s 193 or any other section mentioned in Section 195(1)(b) has been committed.

The rule as laid down by these two decisions would therefore appear to be this : that it is the allegations in the complaint which attract the mischief

of Section 195(1)(b) of the Criminal Procedure Code subject to the qualification that evasion of the provisions of the section, such as filing a

complaint alleging an offence under another provision of the Penal Code only when an offence under one of the sections mentioned in Section

195(1)(b) has been committed will not be allowed.

4. The facts in Thulasiammal v. Dhanalakshmi Ammal (1933) 66 M.L.J. 471: ILR 57 Mad. are very similar to the facts in the present case. A

settlement deed was brought into existence purporting to have been executed before his death by the husband of two wives under which the

second wife was a substantial beneficiary at the expense of the first wife. Registration of the deed was refused, and a suit was filed by the second

wife, to enforce registration. The suit was decreed, but on appeal this Court held that the deed was a forgery. Criminal proceedings were then

instituted. There was never any difficulty about the position of the second wife. Even if an offence u/s 471 alone had been committed, as a party to

the suit, the complaint against her had to be filed by the Civil Court under the provisions of Section 195(1)(c). It was, however, held that the

intervention by the Court so far as the writer and attestors were concerned (they were not parties to the suit) was unnecessary. The decision, was

based on the finding that the case did not fall within Section 193 of the Indian Penal Code as there was no reason to suppose that the primary

purpose of the forgery of the document was production in Court or that it would necessarily be produced in Court at all. There seems to me to be

no conflict between this decision and the decisions in *In re Ravanappa Reddi*² and *In re Appadurai Nainar*¹ examined above, as is contended by

the learned advocate for the accused. Section 195(1)(6) will not apply because there is no reason to hold that an offence u/s 193 was committed,

and there was no evasion, again because no offence mentioned in Section 195(1)(b) appeared to have been committed. In the same way, - it is

clear in the present case that the allegations in the complaint do not make out an offence u/s 193, and there does not seem to me to be any attempt

to evade the provisions of Section 195(1)(b) of the Code of Criminal Procedure. In this case as in *Thulasiammal v. Dhanalakshmi Ammal* (1933)

66 M.L.J. 471: ILR 57 Mad. the governing factor is really the refusal of registration. Once registration has been refused the document was useless

unless a suit to enforce registration was filed within time. But it does not follow that this position was contemplated when the document was

manufactured. The object may well have been to obtain money by using the document for purposes of negotiation, or, more crudely, by blackmail.

In my opinion, therefore, the statement in the complaint that the object was "" to grab "" the petitioner's property cannot be regarded simply as an

attempt to evade the provisions of Section 195(1)(b) of the Criminal Procedure Code. The facts are not distinguishable from those in *Thulasiampial*

v. Dhanalakshmi Ammal (1935) 69 M.L.T. 812 : ILR 59 Mad. 165 and the decision in that case must be followed.

5. The order of the Stationary Sub-Magistrate is therefore, set aside. He is directed to restore the complaint to his file and to proceed with the

hearing of the case in accordance with law.