

S. L. Goswami vs High Court Of Madhya Pradesh At Jabalpur on 23 November, 1978

Equivalent citations: 1979 AIR 437, 1979 SCR (2) 385, AIR 1979 SUPREME COURT 437, (1979) 1 SCC 373, 1979 CRILR(SC MAH GUJ) 371, (1979) 2 SCR 385 (SC), (1979) 2 SCR 385, 1979 CRI APP R (SC) 61, 1979 SCC(CRI) 311, (1979) MADLW(CRI) 82

Author: P.S. Kailasam

Bench: P.S. Kailasam, D.A. Desai, A.D. Koshal

PETITIONER:

S. L. GOSWAMI

Vs.

RESPONDENT:

HIGH COURT OF MADHYA PRADESH AT JABALPUR

DATE OF JUDGMENT 23/11/1978

BENCH:

KAILASAM, P.S.

BENCH:

KAILASAM, P.S.

DESAI, D.A.

KOSHAL, A.D.

CITATION:

1979 AIR 437

1979 SCR (2) 385

1979 SCC (3) 373

CITATOR INFO :

R 1983 SC1053 (6)

ACT:

Cognizance of an offence under section 466 I.P.C. with section 120-B, without the sanction of the Government under section 196-A(2) of the Criminal Procedure Code. whether valid.

Criminal Procedure Code 1973 Section 195(1)(c)-Scope of-Whether the section covers an offence under section 466 I.P.C.

HEADNOTE:

On a complaint by the Additional Registrar of the

Madhya Pradesh High Court alleging that, while the Paper Book in the Supreme Court appeal was being prepared, the appellant entered, into a conspiracy with two of the translators of the Court and tampered with the of original deposition of one Dr. S. C. Barat (D.W. 1) in an earlier criminal case against the appellant which was under appeal in the Supreme Court for which the aforesaid paper book was being prepared, the First Class Magistrate committed the appellant and two others to the Sessions Court to take their trial for offences under section 466 read with section 120-B of the Penal Code. The appellant and another preferred a revision petition before the High Court against the said order of committal. The High Court dismissed the revision petition.

Allowing the appeal by special leave, the Court

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HELD :

1. An offence under section 466 I.P.C is covered by clause (c) of section 195(1) of the Criminal Procedure Code and comes within the purview of that section, as the offence under section 463 I.P.C. is dealt within section 466 I.P.C. Section 466 I.P.C. is an aggravated form of forgery in that the forgery should relate to a document specified in that section. Section 466 I.P.C., is therefore an offence as described in section 463 I.P.C. which is committed in relation to a record or proceeding of or in a court of justice. [390F, H, 391 A-B]

The offences that fall within the purview of section 195(1)(c) Criminal P.C. are offences described in section 463 I.P.C. and offences punishable under section 471, 475 or 476 of the Penal Code. The language of section 195(1) (c) of the Crl. P.C. is very significant for while referring to sections 471, 475 or 476 I.P.C., it uses the word punishable in the case of section 463 I.P.C. the words are 'the offences described in section 463'. An offence under section 466 I.P.C. is an offence which falls within the description of section 463 I.P.C., as the offence under section 463 I.P.C. is dealt with therein. [391B-D]

Section 195(1)(a) of the Criminal Procedure Code uses the words "of any offences punishable under section 172.." while in clause (b), the words used are "offences punishable under any of the following sections mentioned therein". In clause (e) the words are "of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same code". Thus a clear distinction is maintained in the section between offences

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punishable under various sections mentioned and the offence described in section 463. Even on the test laid down in Govind Mehta v. State of Bihar [1971] Suppl. S.C.R. 777, section 466 I.P.C. would be included within the purview of section 195(1)(c) of the Criminal Procedure Code. [391D-E]

Govind Mehta v. State of Bihar [1971] Suppl. SCR 777;

explained and over ruled.

2. The requirement; of section 195 (1)(c) is that the document in question should be produced or given in evidence in the proceeding before the Court. The offence committed must in some manner have affected the proceedings or had been designed to affect them or come to light in the course of them, but an offence committed after their conclusion is wholly outside the scope of the provision. [392F-H, 393A]

Legal Remembrancer of Govt. Of West Bengal v. Hari Das. Mundra [1976] 2 SCR 933, applied.

Pendyala Suhbarayudu v. Gudivada Gopayya A.I.R. 1932 Madras 290; approved.

Nirmal Jit Singh Hoon v. State of West Bengal and Anr. [1973] 2 SCR 66 and Abdul Khadar and ors. v. Meera Saheb I.L.R. 15 Mad. 224; referred to.

3. In the instant case (a) section 196A(2) of the Criminal Procedure Code is attracted and a complaint by the State Government or the Chief Presidency Magistrate empowered in this behalf by the State Government in writing consenting to the initiation of the proceedings for an offence under section 120 I.P.C. is necessary. [393B]

(b) The requirement of section 195(1)(c) having not been satisfied a complaint by the Court in writing is not necessary. [393A]

(c) Equally under sub-section (4) to section 195 relating to criminal conspiracy to commit such offence a complaint by the Court is not necessary. [393A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 144 of 1972.

Appeal by Special Leave from the Judgment and order dated 1-2-1972 of the Madhya Pradesh High Court in Criminal Revision No. 709/71.

R. Nagarathnam for the Appellant.

S. K. Gambhir, Miss B. Ramrakhiani and J. M. Khanna for the Respondent.

The Judgment of the Court was delivered by KAILASAM, J. This appeal is preferred by Dr. S. L. Goswami by special leave granted by this Court against the judgment of the High Court of Madhya Pradesh at Jabalpur in Criminal Revision No. 709 of 1971. Criminal Revision No. 709 of 1971 was filed by the appellant before the High Court for quashing the order of the Magistrate, 1st , Class, Jabalpur committing the appellant to Sessions for trial under section 466 read with section 120-B of the Indian Penal Code.

The appellant was prosecuted before the Special Judge, Jabalpur, in Criminal Case No. S of 1967 for

an offence under section 5 (1) (d) of the Prevention of Corruption Act, 1947, in connection with the defalcations of Government funds. In that case one Dr. S. C. Barat was examined as a defence witness. The appellant was convicted and an appeal against his conviction before the High Court failed. The appellant obtained special leave from this Court to appeal against the order of the High Court. During the pendency of the appeal before the Supreme Court the High Court was required to prepare a paper book for use in the Supreme Court. It is alleged that when the paper book was being prepared in the Supreme Court section of the High Court the appellant Dr. Goswami entered into a conspiracy with two of the translators and tampered with the original deposition of Dr. S. C. Barat, D.W. 1. The Additional Registrar of the High Court filed a complaint before the First Class Magistrate, Jabalpur, against the appellant for an offence under section 466 read with section 120-B of the Indian Penal Code. The case was taken on file by the Magistrate as Criminal Case No. 1924 of 1971. Against the two persons who were alleged to have conspired with the appellant in tampering with the deposition of Dr. Barat a challan was filed by the police before the same First Class Magistrate. The Magistrate by a common order on 15th November, 1971 committed the appellant as well as two others to the Sessions Court to take their trial for offences under section 466 read with section 120-B of the Indian Penal Code. The appellant and another with whom we are not concerned preferred a revision petition against the order of his committal before the High Court. The High Court dismissed the Fr revision filed by the appellant and hence this appeal.

The main contentions that are raised in this appeal are: (i) The Magistrate erred in taking cognizance of an offence under section 466 of the Indian Penal Code read with section 120-B, Indian Penal Code. without sanction of the Government under section 196-A (2) of the Criminal Procedure Code; and (2) the offence, if any, was not committed in any court in respect of a document produced or given in evidence in such proceeding as required under section 195(i) (c) of the Code of Criminal Procedure.

We will take up the first contention urged by the learned counsel for 11 the appellant, namely that the trial court was in error in taking cognizance of the offence without a complaint by the State Government when the offence charged is one of conspiracy under section 120-B of the Indian Penal Code as required under section 196-A(2) of the Criminal Procedure Code. Section 196-A(2) reads as follows:-

"196-A. No court shall take cognizance of the offence! of criminal conspiracy punishable under section 120-B of the Indian Penal Code.

(1) * * * * (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards unless the State Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government had by order in writing consented to the initiation of the proceedings;

Provided that where the Criminal Conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary." Section 466 deals with a non-cognizable

offence and the sub-clause (2) to section 196A provides that where the object of the conspiracy is to commit a non-cognizable offence an order in writing consenting to the initiation of proceedings is necessary by the State Government or the Chief Presidency Magistrate or the District Magistrate empowered in this behalf by the State Government. No such consent in writing was obtained in this case. An exception to this requirement is Made by the Proviso which states that if the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary. It is, therefore, necessary to determine whether the offence complained of is one that falls under section 195(4) in which case consent for initiation of the proceedings is not necessary.

Section 195(1) (c) and section 195(4) which are necessary for the discussion may be extracted.

"195. (1) No Court shall take cognizance-

(a) *	*	*	*
(b) *	*	*	*

(c) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) *	*	*	*
(3) *	*	*	*

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit.

(5) * * * * Sub-section (4) makes the provisions of sub-section (1) with reference to the offences named applicable to criminal conspiracy to commit such offences also. If the offence falls under provisions of subsection (1) to Section 195 then criminal conspiracy to commit such offences would also fall under section 195(1) and require the complaint in writing by the court before the offence can be taken cognizance of. The requirements of section 195(1)(C) are:

(1) The offence must be one as described in section 463 or punishable under sections 471, 475 or 476 of the I.P.C.

(2) Such offences Should be alleged to have been committed by a party to any proceeding in any court;

(3) Such offence should be in respect of a document produced or given in evidence in such proceeding.

The offence for which the appellant is committed to take his trial is that there was consent of the appellant also in committing the conspiracy for committing forgery of the record by tampering the evidence of Dr. Barat while the records were being prepared by the High Court for being sent to the Supreme Court for use in the appeal pending before the Supreme Court.

The first requirement is that the offence should be one as described in section 463 or punishable under section 471, section 475 or section 476 of the Indian Penal Code. It was submitted that as section 466, Indian Penal Code, is not one of the sections mentioned, the offence will not fall under the provisions of section 195(1) (c) and the section will not apply. In support of this view a decision of his Court in *Govind Mehta v. State of Bihar*(1), was relied on. In that case, on a complaint by the District Public Prosecutor the appellant before this Court was committed to the Sessions to take trial under sections 167, 466 and 467 of the Indian Penal Code. One of the contentions raised before this Court was that the offence under section 466, Indian Penal Code, is not covered by clauses (b) and

(c) of section 195(1) and therefore section 195 does not operate as a bar to taking cognizance of an offence under section 466, Indian Penal Code. this Court after agreeing with the view of the High Court that section 195(1) (b) or

(c) is no bar to the Magistrate taking cognizance for an offence under section 167 observed: "The offence under section 466 of the Penal Code is, admittedly, not covered by clause (b) or clause (c) of section 195(1) of the Code. therefore, that section does not operate as a bar in respect of this offence." Again at p. 785 this Court observed:

"Section 463 of the Penal Code is, no doubt, taken in by Clause (c) of Section 195(1) of the Code. Even on the basis that Section 465 of the Penal Code will also be covered by Clause (c) as the offence, under Section 463 is dealt with therein, nevertheless, Clause (c) will not operate as a bar to the jurisdiction of the Magistrate in taking cognizance of the said offence is not alleged to have been committed 'by a party to any proceeding in any court..' We have also referred to the fact that the appellant has been committed only for the offence under Sections 167, 466 and 471 of the Penal Code. Section 465 of the Penal Code is not the subject of the committal order." We have given our careful consideration to the view expressed in the above decision that section 466 of the Indian Penal Code is not covered by clause (c) of section 195(1) of the Criminal Procedure Code. We regret our inability to subscribe to this view. At p.785 of the Report the Court took the view that the section 465 of the Indian Penal Code is not specifically mentioned in section 195(1) (c) of the Criminal Procedure Code as the offence under section 463 Indian Penal Code is dealt with in section 465, Indian Penal Code, clause (c) of section 195(1) will not operate as a bar to the Magistrate taking cognizance the offence. The Court, though section 465 is not specifically mentioned in section ;195(1) (c), held that section 195(1) (c) is applicable as an offence under section 463 is dealt with under section 465, Indian Penal Code. On the same reasoning section 466 should also be held to come within the purview of section 195(1)(c), Criminal Procedure Code, as the offence under section 463 is dealt with in section 466. Section 463, Indian Penal Code, defines forgery. The elements of

(1) [1971] Supp. S.C.R. 777.

forgery are: (1) The making of a false document or part of it; (2) Such making should be with such intention as is specified in the section. Section 464 states when a person is said to make a false document which is one of the requirements under section 463. Section 465 provides the punishment for an offence under section 463. Section 466 is an aggravated form of forgery in that the forgery should relate to a document specified in the section. One of the documents specified is a document purporting to be a record or proceeding of or in a Court of Justice. Section 466, Indian Penal Code, is therefore an offence as described in section 463 which is committed in relation to a record or proceeding of or in a court of justice. The offences that fall within the purview of section 195(1)(c) are offences described in section 463 and offences punishable under sections 471, 475 or 476 of the Indian Penal Code. The language of section 195(1)(c) is very significant for while referring to sections 474, 475 or 476, Indian Penal Code, it uses the word punishable, in the case of section 463 the words used are the 'offences described in section 463'. An offence under section 466 is an offence which falls within the description of section 463 as the offence under section 463 is dealt with therein. Section 195(1)(a) of the Criminal Procedure Code uses the words "of any offence punishable under section 172" while in clause (b) the words used are "offence punishable under any of the following sections"

mentioned therein. In clause (c) as already pointed out the words used are "of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code". Thus a clear distinction is maintained in the section between offences punishable under various sections mentioned and the offences described in section

463. Even on the test laid down by this Court in *Govind Mehta v. State of Bihar* (supra) section 466 would be included within the purview of section 195(1) (c). We are, therefore, of the view that the decision that section 466 of the Indian Penal Code is not covered by clause (b) or clause

(c) of section 195(1) is erroneous and not good law. The question of law was not considered and the decision was reached on an admission made by the parties.

We will now deal with the other requirements of section 195 (1) (c) namely that The offence should be alleged to have been committed by a party to any proceeding and that it should be in respect of a document produced or given in evidence in such proceeding. It is admitted that the appellant was a party in the appeal that he preferred against his conviction before the High Court but the appeal was decided against him and the conviction confirmed. Special leave was granted against his conviction and for hearing of the appeal before the Supreme Court the paper book was being prepared by the High Court. It was during that time that it is alleged that the appellant entered into a conspiracy and tampered with the evidence of one of the defence witnesses which is a record of the court. The appellant was a party to a proceeding in the High Court when the appeal was heard but the document complained of as having been tampered with i.e. the evidence of the defence witness, was not produced or given in evidence in the appeal before the High Court. The document was certainly

not produced or given in evidence in the High Court proceedings. The alleged tampering was after the hearing of the appeal was concluded. No doubt, the tampering was in a proceeding in relation to the preparation of the record whether such tampering would be in relation to a proceeding in Supreme Court in respect of a document produced or given in evidence before it does not arise for consideration before us as the complaint in the case is filed only by the High Court. In Abdul Khader and ors. v. Meera Saheb(1) a Bench of the Madras High Court held that where a decree against Certain defendants had been passed upon the oath of the plaintiffs and where 'the documents alleged to be forgeries have been put into Court but were not given in evidence it would not be an offence committed by a party to any proceeding in any court in respect of a document given in evidence in such proceeding though the documents were put in court in a suit pending before it but were not given in evidence Subsequent to this decision section 195(1)(c) was amended so as to include documents "produced" in addition to documents given in evidence. In Pendyala Subbarayudu v. (Gudivada) Gopayya(2) it was held that it was indispensable that the offence committed must in some manner have affected the proceedings or had been designed to effect them or come to light in the course of them but an offence committed after their close is wholly outside the scope of the provision. We agree with the view expressed in the decision. In Nirmaljit Singh Hoon v. The State of West Bengal and Anr.(3) it was held that a document produced in a proceeding before the court during the investigation by the police ordered under section 156(3) of the Criminal Procedure Code would not be a document produced in a proceeding before the court so as to attract the ban under section 195(1) (c) of the Criminal Procedure Code. This Court in a recent decision in Legal Remembrancer of Government of West Bengal v. Haridas Mundra(4) held that the requirement of section 195(1) (c) is that the document in question should be produced or given in evidence in the (1) I.L.R. 15 M d. 224.

(2) A.I.R. 1932 Mad. 290.

(3) [1973] 2 S.C.R. 66.

(4) [1976] 2 S.C.R. 933.

proceeding before the court. We find on the facts of the case that it has not been established that the document was produced or given in evidence in a proceeding before the court. The requirements of section 195(1)(c) having not been satisfied a complaint by the court in writing is not necessary. Equally, under sub-section (4) to section 195 relating to criminal conspiracy to commit such offence a complaint by the court is not necessary. Therefore, section 196-A(2) is attracted and a complaint by the State Government or the Chief Presidency Magistrate or a District Magistrate empowered in this behalf by the State Government in writing consenting to the initiation of the proceedings for an offence under section 120-B, Indian Penal Code is necessary. As in this case no such order consenting to the initiation of proceedings was passed we accept the contention of the learned counsel for the appellant that the Magistrate had no jurisdiction to take cognizance of the offence against the appellant. In the result, we allow the appeal, reverse the judgment of the High Court and quash the order of committal passed by the Magistrate. First Class, Jabalpur.

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Appeal allowed.

