State Of Karnataka vs Hemareddy Alias Vemareddy And Anr on 27 January, 1981

Equivalent citations: 1981 AIR 1417, 1981 SCR (2) 695, AIR 1981 SUPREME COURT 1417, 1981 CRI APP R (SC) 168, 1981 ALLCRIC 112, 1981 SCC(CRI) 395, 1981 2 SCR 695, 1981 (2) SCC 185, 1981 83 BOM LR 233

Author: A. Varadarajan

Bench: A. Varadarajan, Syed Murtaza Fazalali

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
HEMAREDDY ALIAS VEMAREDDY AND ANR.

DATE OF JUDGMENT27/01/1981

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
FAZALALI, SYED MURTAZA

CITATION:
1981 AIR 1417 1981 SCR (2) 695
1981 SCC (2) 185 1981 SCALE (1)206

ACT:
Code of Criminal Procedure 1973, S. 195(1)(b)(i) & Indian Penal Code 1860. Ss. 467, 193 and 114-Suit for redemption of mortgage-Conspiracy by accused to deprive complainant of land-Sale deed forged-Prosecution without written complaint of Court-Maintainability.

HEADNOTE:
Section 195(1) (b) (i) of the Code of Criminal Procedure 1973 provides that no court shall take cognizance of any offence punishable under any of the sections enumerated therein (one of which is S. 193 I.P.C.) when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except upon a written complaint from a Court.

The prosecution alleged that both the respondents alongwith two others conspired to cheat the complainant and to deprive him of certain lands by fabricating a sale deed.

The complainants' paternal grand-uncle mortgaged certain lands with possession to the father of respondent No. 1 for a period of 20 years with the condition that possession would be surrendered to the owner after the expiry of the period. The father of the complainant executed a will bequeathing the aforesaid lands to him. The period of 20 years having expired the complainant requested respondent No. 1 to surrender possession. Respondent No. 1 having failed to deliver possession, the complainant filed a suit for redemption of the mortgage. Subsequent to the institution of the suit the complainant came to know that respondent No. 1 had purchased the lands in question from respondent No. 2 who had impersonated the real owner, i.e. wife of the complainant's paternal grand-uncle. On inquiries made in the office of the Sub-Registrar, the complainant learnt that the sale deed had been registered on 10-11-1970. After obtaining a registration copy of the sale deed and ascertaining that respondent No. 2 had no property of her own, the complainant filed a criminal complaint in the Court. After investigation, the Sub-Inspector of police filed a charge-sheet against both the respondents and two others for having committed offences under sections 120B, 193, 465, 468 and 420 read with section 114 I.P.C. The Sessions Court to which only the respondents were committed, convicted respondent No. 1 under section 467 read with section 114 and section 193 I.P.C. and respondent No. 2 under section 467 I.P.C. and sentenced them to imprisonment and fine.

In the appeals, against their conviction and sentence, the High Court found that respondent No. 1 was guilty under section 467 read with section 114 and section 193 I.P.C., but acquitted him on the ground that the complaint in the criminal case which ended in the conviction of both the respondents was filed by a private individual i.e. the complainant and not by a Civil Court. As regards respondent No. 2 it found her to be guilty under section 467 I.P.C. but finding that she forged the document independently of respondent No. 1 and
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being an illiterate woman who had merely put her thumb impression on the document to admit its execution before the Sub-Registrar modified the sentence awarded to her

In the appeal to this Court.

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HELD:

1(i) The High Court was not right in law in holding that the complaint was totally not maintainable against respondent No. 1 in view of the provisions of S. 195(1)(b) of the Code of Criminal Procedure 1973, and in not only acquitting him of the offence under s. 467 read with s. 114

I.P.C. but also in finding that he has committed an offence punishable under section 193 I.P.C. [710H]

1(ii) The High Court was justified in coming to the conclusion on the evidence that respondent No. 1 was guilty under section 467 read with section 114 I.P.C. and that respondent No. 2 was guilty under section 467 I.P.C, [711A]

1(iii) The conviction of respondent No. 1 under section 467 read with section 114 I.P.C. and of respondent No. 2 of 467 I.P.C. are confirmed. [711B]

2. S. 195(1)(b) of the Code of Criminal Procedure requires that the offence under s. 193 I.P.C. should be alleged to have been committed in or in relation to, any proceeding in any court, Since the forged sale deed was not produced in evidence in any stage of the redemption suit, s. 195(1)(b) of the Code of Criminal Procedure is not attracted. Therefore, the Magistrate who committed, the accused to the Sessions, could not have taken cognizance of any offence under s. 193 I.P.C. so far as respondent No. 1 is concerned. The complaint could have been taken on file only for an offence punishable under s. 467 read with s. 114 I.P.C. so far as that accused is concerned. No complaint by the court for prosecuting respondent No. 1 for offence under s. 467 read with s. 114 I.P.C. is therefore required and he could be validly convicted for that offence on the complaint given by the private individual. [701E-G]

3. The Legislature could not have intended to extend the prohibition contained in s. 195(1)(c) Cr. P.C. to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party. [708H]

4. In cases, where in the course of the same transaction an offence for which no complaint by a Court is necessary under section 195(1)(b) of the Code of Criminal Procedure, and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in s. 195(1)(b) of the Code of Criminal Procedure should be upheld. [702G]

In the instant case the document forged by Respondent No. 2 was the sale deed dated 10-11-70. The suit for redemption of the mortgage was filed by the complainant P.W. 3 on 24-11-70. He filed the complaint before the police on 24-11-70 and before the court subsequently on 15-12-70. The forged sale deed dated 10-11-70 was not produced in the suit filed by the complainant for redemption of the mortgage. [703A]

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5. The offence of abetment of forgery was complete when the forged sale deed dated 10-11-70 was registered. But no offence under s.195(1)(b) of Cr. P.C. was committed as the forged sale deed was not at all put in evidence at any stage in the redemption suit filed by the complainant. [710B]

In Re. V. V. L. Narasimhamurthy, [1955] A.I.R. Madras

21 approved.
Vasudeo Ramchandra Joshi [1923] A.I.R. Bombay 105 disapproved.
In re. Khanderao Yeshwant (1912) 14 Bombay Law Report 362 & Mahadev Yadneshwar Joshi (1912) 14 Bombay Law Report 715 distinguished.
Girija Nandini Devi v. Bigendra Nandini Choudry [1967] 1 S.C.R. 93 & Patel Laljibhai Somabhai v. The State of Gujarat [1971] Supp. S.C.R. 834 referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 341 of 1975.

Appeal by Special Leave from the Judgment and Order dated 19-4-1974 of the Karnataka High Court in Criminal Appeal Nos. 324 and 335 of 1973.

N. Nettar, and R. C. Kaushik for the Appellant. P. Ram Reddy and A. V. V. Nair for Respondent No. 1. The Judgment of the Court was delivered by VARADARAJAN,J. This appeal by special leave has been filed by the State of Karnataka against the judgment of a Division Bench of the Karnataka High Court in Criminal Appeals Nos. 324 and 335 of 1973 against the acquittal of Hemareddy alias Vemareddy (A-1) in Crl. A. No. 324 of 1973 and against the order in Crl. A. No. 335 of 1973 modifying the sentence awarded by the learned Sessions Judge, Raichur to Pyatal Bhimakka (A-2) in Sessions Case No. 25/72. The learned Sessions Judge convicted Hemareddy alias Vemareddy under s. 467 read with s. 114 and s. 193 Indian Penal Code and sentenced him to undergo R.I. for two years and to pay a fine of Rs. 500/-, and in default to undergo R. I. for three months under s. 467 read with s. 114 and to undergo R.I. for six months and to pay a fine of Rs. 200/-and in default to undergo R.I. for one month for the offence under s. 193 I.P.C. He convicted Pyatal Bhimakka (A-2), the appellant in Crl. A. No. 335 of 1973 before the High Court, under s. 467 I.P.C. and sentenced her to undergo R.I. for six months and to pay a fine of Rs. 200/- and in default to undergo R.I. for one month. Both the accused filed appeals before the High Court against their convictions and sentences awarded to them by the learned Sessions Judge.

In Crl. A. No. 324 of 1973 filed by Hemareddy alias Vemareddy, the learned Judges held that on the facts there could be no doubt that he is guilty under s. 467 read with s. 114 and s. 193 I.P.C. In the appeal filed by Pyatal Bhimakka, Crl. A. No. 335/73, also the learned Judges found that there could be no doubt that she is guilty under s. 467 I.P.C. They confirmed the conviction of Pyatal Bhimakka, observing that she forged the document independently of Hemareddy alias Vemareddy but taking into consideration the fact that Pyatal Bhimakka is an illiterate women who had been taken to the Office of the Sub-Registrar by Hemareddy alias Vemareddy and asked to put her thumb impression to the document and to admit execution of the document, which she did, for which Hemareddy alias Vemareddy paid her a sum of Rs. 100/-, the learned Judges felt that the sentence awarded to Pyatal Bhimakka by the learned Sessions Judge was harsh and that the ends of justice would be met by sentencing her to undergo rigorous imprisonment for one day, which she had already undergone

before she was probably released on bail, and to pay a fine of Rs. 200/- and in default to suffer R.I. for a period of one week and thus modified the sentence awarded to Pyatal Bhimakka accordingly. The State has filed the appeal by special leave also against this order modifying the sentence awarded to Pyatal Bhimakka.

The learned Judges of the High Court, however, acquitted Hemareddy alias Vemareddy, the appellant in Crl. A. No. 324 of 1973 and set aside the sentence awarded to him by the learned Sessions Judge on the ground that the complaint in the criminal case which ended in the conviction of both accused in the Sessions Court, was filed by the private individual Narsappa Eliger, P.W. 3 and not by the Civil Court. As stated earlier the Criminal Appeal has been filed by the State against the acquittal of Hemareddy alias Vemareddy by the High Court.

It is necessary to set out briefly the facts of the case. One Narsappa is the son of one Thimmaiah who had an elder brother Nagappa Thimmaiah and Nagappa were the sons of one Thayappa. Nagappa's wife was one Bhimakka alias Bhieamma. Thimaiaha and Nagappa lived for sometime in Underaldoddi. Nagappa purchased lands bearing Survey Nos. 93, 94 and 96 in Underaldoodi. Those lands were in the possession and enjoyment of Narsappa's father Thimmaiah. Subsequently, Nagappa and his wife left Underaldoddi and settled down in Alkur village. While Nagappa was living in Alkur village, he mortgaged the aforesaid lands with possession to one Kurbar Bhimayya, the father of Hemareddy alias Vemareddy, A-1. According to the terms of the mortgage, Kurbar Bhimayya was to be in possession of the lands for twenty years and surrender possession thereof to the Owner after the expiry of the period. Subsequently, Nagappa and his wife as well as Nagappa's brother Thimmaiah came and settled down at Raichur. Bhimakka alias Bhisamma, the wife of Nagappa, died in or about 1953 and Nagappa died two or three years later. Nagappa's brother also died leaving behind him his son Narsappa as the only heir in the family. Meanwhile Kurbar Bhimayya, the mortgagee and father of Hemareddy alias Vemareddy (A-1) died. Hemareddy alias Vemareddy continued in possession of the lands. Narsappa, son of Nagappa's brother Thimmaiah executed a will in favour of the complainant Narsappa Eliger, bequeathing the aforesaid lands to him.

Narsappa Eliger, the legatee under the will of Thimmaiah's son Narsappa, approached Hemareddy alias Vemareddy, the son of the mortgagee Kurbar Bhimayya, who was in possession of the lands and requested him to surrender possession of the lands on the ground that the period of twenty years had expired. Then Hemareddy alias Vemareddy informed the complainant Narsappa Eliger that he would consider his request a few days later as it was harvesting time. Finding that there was no response from Hemareddy alias Vemareddy, Narsappa Eliger wrote a letter, for which, according to the prosecution, Hemareddy alias Vemareddy sent the reply, Ex. P-3 Subsequently, Narsappa Eliger filed a suit for redemption of the mortgage. Subsequent to the institution of the suit, Narsappa Eliger came to know from Shivareddy (P.W. 12) that Hemareddy alias Vemareddy has purchased the lands in question from Pyatal Bhimakka (A-2) and another and that A-2 had impersonated the real owner Bhimakka, wife of Nagappa, who, as stated earlier, had died in or about 1953. Thereupon, Narsappa Eliger made inquiries in the Office of the concerned Sub-Registrar and learned that the sale deed had been registered on 10-11-1970. After obtaining a registration copy of the sale deed and after making inquiries at Alkur Narsappa Eliger learnt that

Pyatal Bhimakka (A-2) had no properties of her own. Narsappa Eliger thereafter filed a criminal complaint in the Court, which was referred to the Police. After investigation, the Sub- Inspector of Police, P.W. 21 filed a charge-sheet against both the accused and two others alleging that they had conspired to cheat Narsappa Eliger and to deprive him of the lands and that in pursuance of that conspiracy they put forward Pyatal Bhimakka as Nagappa's wife Bhimakka and got the sale deed executed by her and they thereby committed offences under ss. 120B, 193, 465, 467, 468 and 420 read with s. 114 of the Indian Penal Code. Only Hemareddy alias Vemareddy and Pyatal Bhimakka, A-1 and A-2 were committed to the Court of Sessions at Raichur, and they were found guilty and convicted and sentenced as mentioned above.

We were taken through the judgment of the learned Judges of the High Court. We are satisfied that the learned Judges were justified in coming to the conclusion on the evidence that Hemareddy alias Vemareddy is guilty under s 467 read with s. 144 I.P.C. and that Pyatal Bhimakka is guilty under s. 467 I.P.C. Since we agree with the learned Judges of the High Court on the question of fact in so far as it relates to A-2 in full and as regards Hemareddy alias Vemareddy (A-2) in respect of his conviction under s. 467 read with s. 114, it is unnecessary for us to refer to the evidence relied upon by the learned Judges for coming to the conclusion that Hemareddy alias Vemareddy is guilty under s. 467 read with s.114 I.P.C. and that Pyatal Bhimakka is guilty under s. 467 I.P.C. This Court has observed in Girija Nandini Devi v. Bigendra Nandini Choudry that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with reasons given by the court the decision of which is under appeal, will ordinarily suffice. We shall deal with the case of the prosecution. against Hemareddy alias Vemareddy under s. 193 I.P.C. separately. We, therefore, confirm the conviction of Hemareddy alias Vemareddy under. s. 467 read with s. 114 I.P.C. all and of Pyatal Bhimakka under s. 467 I.P.C. We are of the opinion that no interference with the judgment of the learned Judges of the High Court in regard to the sentence awarded to Pyatal Bhimakka is called for having regard to the fact that the learned Judges have given sufficient reasons for taking a lenient view in regard to that accused on the question of sentence. We, therefore, dismiss the Criminal Appeal in so far as it relates to the question of sentence awarded to Pyatal Bhimakka.

It is seen from the judgment under appeal that the learned Public Prosecutor of Karnataka had contended before the learned Judges of the High Court that the case against Hemareddy alias Vemareddy for fabricating false evidence may not be maintainable in view of the provisions of s. 195(1)(b) of the Code of Criminal Procedure, that he may be prosecuted for abetting the offence of forgery and that the conviction of that accused under s. 467 read with s. 114 I.P.C. is justified on the facts of this case for while s. 193 I.P.C. is one of the sections mentioned in s. 195(1)(b) of the Code of Criminal Procedure, s. 467 I.P.C. is not mentioned in that sub-clause of s. 195(1). The learned Judges rejected that submission, relying upon three decisions of the Madras High Court in Perianna Muthirian v. Vengu Ayyar, Ravanaoppa Reddy v. Emperor and in re. V.V.l. Narasimurthy. In the first of those cases the complainant stated that certain persons conspired with others and forged a document with the object of using it in evidence in certain proceedings pending in a court and other proceedings which might follow. That document was actually used in the proceedings pending before a court, and it has been held that the offence complained of fell under s. 195(1) (b) of the Code

of Criminal Procedure and, therefore, the complaint cannot be taken cognizance of unless it was in writing and by the court in which the offence was alleged to have been committed. It has been observed in that decision that to hold in such a case that although a private person was barred from prosecuting the accused for fabricating false evidence, he would still be at liberty to prosecute him for fraud would result in the provisions of s. 195(1) (b) of the Code of Criminal Procedure being evaded and that it is not open to the court to try the accused either for fabricating evidence or for fraud because the specific offence of fabricating false evidence should be given preference over the more general offence of forgery. In the second case the complaint was filed by a private person alleging that the accused had fabricated a promissory note and induced a third party to file a suit against the complainant so as to obtain a fraudulent decree, and it has been held that the allegation made in the complaint attracted the provisions of s. 195(1) (b) of the Code of Criminal Procedure and the Court must refuse to take cognizance. In the third case, Somasundaram, J. has observed :

> "The main point on which Mr. Jayarama Aiyar appearing for the petitioner seeks to quash this committal is that on the facts an offence under s. 193 I.P.C. is disclosed for which the court cannot take cognizance without a complaint by the court as provided under s. 195(1)(b) Criminal P.C. The first question which arises for consideration is whether on the facts mentioned in the complaint, an offence under s. 193 I.P.C. is revealed. Section 193 reads as follows :
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> "Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine."
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> "Fabrication of false evidence" is defined in s.
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> 192. The relevant part of it is :
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> "Whoever causes any circumstance to exist intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance may cause any person who in such proceeding is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence."

The effect of the allegations in the complaint preferred by the complainant is that the petitioner has caused this will to come into existence intending that such will may cause the Judge before whom the suit is filed to form an opinion that the will is a genuine one and, therefore, his minor daughter is entitled to the property. The allegation, therefore, in the complaint will undoubtedly fall under s. 192, I.P.C. It will, therefore, amount to an offence under s. 193, I.P.C., i.e. fabricating false evidence for the purpose of being used in the judicial proceeding. There is no doubt that the facts disclosed will also amount to an offence under ss. 467 and 471 I.P.C. For prosecuting this petitioner for an offence under ss. 467 and 471, a complaint by the court may not be necessary as under s. 195(1)(c), Criminal P.C. a complaint may be made only when it is committed by a party to any proceeding in

any court.

Mr. Jayarama Aiyar does not give up his contention that the petitioner, though he appears only a guardian of the minor girl, is still a party to the proceeding. But it is unnecessary to go into the question at the present moment and I reserve my opinion on the question whether the guardian can be a party to a proceeding or not, as this case can be disposed of on the other point, viz., that when the allegations amount to an offence under s. 193, I.P.C., a complaint of court is necessary under s. 195(1)(b), Criminal P.C. and this cannot be evaded by prosecuting the accused for an offence for which a complaint of court is not necessary.

We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under s. 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in s. 195(1)(b) of the Code of Criminal Procedure should be upheld.

However, it is not possible to agree with the learned Judges of the High Court that the complaint in this case given by the private individual Narsappa Eliger, P.W. 3 against Hemareddy alias Vemareddy for the offence under s. 467 read with s. 114 I.P.C. is not cognizable and that s. 195(1)(b) of the Criminal Procedure Code is attracted so far as Hemareddy alias Vemareddy is concerned. The document forged by Pyatal Bhimakka, A-2 is a sale deed dated 10-11-70. The suit for redemption of the mortgage was filed by the complainant Narsappa Eliger, P.W. 3 on 17-11-

70. He filed the complaint before the Police on 24-11-70 and before the court subsequently on 15-12-70. It is not disputed that the forged sale deed dated 10-11-70 was not produced in the suit filed by the complainant for redemption of the mortgage. Mr. P. Ram Reddy, learned counsel appearing for A-1, who assisted the court as Amicus Curiae for Pyatal Bhimakka, A-2, invited our attention to the decision in re. Vasudeo Ramchandra Joshi and submitted that the complaint should have been filed by the court in which the suit for redemption of the mortgage was filed by the complainant Narsappa Eliger in view of the provisions of s. 195(1)(b) of the Code of Criminal Procedure and that as the complaint was filed directly by the private individual, the prosecution of Hemareddy alias Vemareddy for offences under s. 467 read with s. 114 I.P.C. and s. 193 I.P.C. is bad. In that decision reference has been made to the decisions of the Bombay High Court in (1912) 14 Bombay Law Reporter 362 and

715. In that case there was a proceeding before the Magistrate at Bhusaval against one Vana Khusal in respect of the charge under s. 401 I.P.C. An application was made for bail on behalf of that person by Vasudeo Ramachandra Joshi, the petitioner before the High Court, but that application was refused on April 1, 1922. The statements of three witnesses were recorded under s. 164, Criminal Procedure Code on April 18, 1922 from which it appeared that on April 10, 1922 those three witnesses had an interview with the Pleader Vasudeo Ramachandra Joshi and he had instigated them to give false evidence. On April 15, 1922 another case against Vasudeo Ramachandra Joshi in respect of a dacoity was sent up to the Magistrate. The case of the prosecution was that in

connection with that case of dacoity the alleged instigation by the Pleader to give false evidence was made. Those witnesses were examined before the Magistrate on June 2, 1922 in the dacoity case, and on June 7, 1922 a complaint was filed by the Police against Vasudeo Ramachandra Joshi, charging him with having abetted the giving of false evidence. The learned Judges of the Bombay High Court who heard the Civil Revision Case have observed :

> "On behalf of the Crown it is urged that no sanction is necessary because at the date of alleged abetment no proceeding in relation to which the offence is said to have been committed, was pending. It is contended that the offence had no relation to the proceedings pending on April 10 and that the proceedings to which it related, were sent up to the Magistrate on April 19 and were not pending at the time.
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> It is quite clear, however, from the very nature of the offence alleged against the present petitioner that if the offence was committed, it was committed in relation to the proceeding in which those three persons were to be examined as witnesses, and it is difficult to understand how it could be said that the present proceedings against the petitioner could go on without the sanction of the Court before which these proceedings are pending at present, and in relation to which the offence is said to have been committed. I assume, without deciding that the offence alleged against the petitioner related to the Budhgaon dacoity case and not to the case under s. 401, Indian Penal Code, then actually pending even then the offence related to proceedings which were clearly under contemplation then and which were sent up to the Magistrate on April 15. The expression used in s. 195(1) (b) is wide enough to cover such a proceeding and the decisions of this Court in re Khanderao (1912) 14 Bombay L.R. 362 and in re Mahadev Yadneshwar (1912) 14 Bombay L.W. 715, support that conclusion. I am unable to follow the reasoning adopted by the learned Magistrate in holding that no sanction is necessary. We, therefore, quash the present proceedings, without prejudice to any proceeding that may be taken after obtaining the necessary sanction.
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> I may also point out that the prosecution of a pleader defending an accused person while that proceeding is pending, and before the evidence of the witnesses who are said to have been instigated to give false evidence has been appreciated by the Court, is inadvisable. If such a prosecution is to be started it ought to be started after the principal proceeding, in relation to which the offence is said to have been committed, has terminated."

We are of the opinion that it is not possible to agree with the view of the learned Judges expressed in that case that even when the offence of instigating the witnesses to give false evidence was committed in relation to a proceeding which was not actually pending in the court but was only under contemplation the provisions of s. 195(1) (b) of the Code of Criminal Procedure would be attracted.

The decisions in 1912 (14) Bombay Law Report 362 and 715 would not apply to the facts of the present case for whereas in those cases the false evidence had been actually put in evidence in the present case, as already stated, the forged sale deed dated 10-11-70 was not at all tendered by Hemareddy alias Vemareddy in the redemption suit filed by the complainant Narsappa Eliger on 17-11-70 at any stage of the proceedings in that suit. In the first of these two decisions-re. Khanderao Yeshwant the petitioner before the Bombay High Court, a Policeman, was present in a village Dhanchi on 20-2-1911 in relation to work about census and on that day a panchnama was filed in that village in regard to an offence alleged to have been committed by a certain Talukdar under the Arms Act. The investigation into the alleged offence was not made by the petitioner Police constable but by the village constable Shamserkhan who sent up the case to the Sub-Inspector by whom in turn it was committed to a Magistrate. In the course of trying the alleged offence the Magistrate found that certain recitals in the panchnama were false. The Talukdar was discharged as the Magistrate came to the conclusion that the charge imputed to him was false. In that view he issued a notice to the village constable Shamserkhan as to why sanction for prosecution should not be granted under s. 195 Crl. P.C. After hearing Shamserkhan the Magistrate issued notice against the Police Constable and on 8-9-1911 directed the prosecution of the Police Constable under s. 211 I.P.C. Thus it is seen that the panchnama containing false recitals prepared by the Police Constable was actually used in a criminal proceeding against the Talukdar who had been implicated as a culprit in the panchnama. In the second case re Mahadev Yadneshwar Joshi, Mahadev and five others were being prosecuted for offences under s. 193 read with s. 109 I.P.C.-in that they were alleged to have abetted the making of a false statement during the police investigation in a theft case. The theft case was subsequently tried by a Magistrate who convicted the accused. The appeal filed against the conviction by the Magistrate was unsuccessful. During the trial the accused raised an objection that before they could be prosecuted, sanction of the competent Court should have been obtained. The Magistrate over-ruled the objection. The learned Judges of the Bombay High Court held that sanction was necessary and that the offences cannot be tried in the absence of a complaint by a court before which the evidence, which is now said to be fabricated, was adduced. In that case also the fabricated evidence had been actually used in a criminal proceeding and s. 195 (1) (b) of the Code of Criminal Procedure was therefore attracted. But in the present case, as stated earlier, the fabricated sale deed dated 10-11-70 had not been put in evidence at any stage of the suit for redemption filed by the complainant Narsappa Eliger in the Civil Court on 17-11-1970.

Mr. N. Nettar, appearing for the State, invited our attention to the decision of this Court in Patel Laljibhai Somabhai v. The State of Gujarat. In that case the appellant before this Court had filed a suit for recovery of a certain amount on the basis of a forged cheque. A private complaint was filed in the Court of a Judicial Magistrate against the appellant and another person under ss. 467 and 471 I.P.C. The Magistrate prima facie found on the evidence that the appellant had fraudulently used in the Civil Court a forged document and he committed the appellant to Sessions for trial. The appellant raised an objection that under s. 195 (1) (c) of the Code of Criminal Procedure no cognizance of the offence could be taken on a private complaint. The High Court upheld the committal order. But this Court held on the scope and effect of s. 195 (1)(c) and its applicability to cases where a forged document had been produced as evidence in a judicial proceedings by a party thereto and the prosecution of that party sought for offences under ss. 467 and 471 I.P.C. that the words "to have been committed by a party to any proceeding in any court" according to s. 195 (1) (c)

mean that the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is, after having become a party to the proceeding. This Court has observed:

> "We are directly concerned only with cl. (c) of s. 195(1). What is particularly worth noting in this clause is (i) the allegation of commission of an offence in respect of a document produced or given in evidence in a proceeding in a court; and (ii) the commission of such offence by a party to such proceeding. The use of the words "in respect of" in the first ingredient would seem to some extent to enlarge the scope of this clause. Judicial opinion, however, differs on the effect and meaning of the words "to have been committed by a party to any proceeding in any court". As cl. (b) of s. 195(1) does not speak of offence, committed by a party to the proceeding, while considering decisions on that clause this distinction deserves to be borne in mind. Broadly speaking two divergent views have been expressed in decided cases in this connection. According to one view, to attract the prohibition contained in cl. (c) the offence should be alleged to have been committed by the party to the proceeding in his character as such party, which means after having become a party to the proceeding, whereas according to the other view the alleged offence may have been committed by the accused even prior to his becoming a party to the proceeding provided that the document in question is produced or given in evidence in such proceeding. The language used seems to us to be capable of either meaning without straining it. We have therefore, to see which of the two alternative constructions is to be preferred as being more in accord with the legislative intent, keeping in view the statutory scheme and the purpose and object of enacting the prohibition contained in s. 195(1)(c). .... The underlying purpose of enacting s. 195(1) (b) and (c) and s. 476 seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of these offences and it is only by misleading the courts and thereby preventing the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by s. 190 Cr. P.C. of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the

commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embark-

ing upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in s. 195 (1) (c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party. It may be recalled that the superior court is equally competent under s. 476A Cr. P.C. to consider the question of expediency of prosecution and to complain and there is also a right of appeal conferred by s. 476B on a person on whose application the Court has refused to make a complaint under s. 476 or s. 476A or against whom such a complaint has been made. The appellate court is empowered after hearing the parties to direct the withdrawal of the complaint or as the case may be, itself to make the complaint. All these sections read together indicate that the legislature could not have intended to extend the prohibition contained in s. 195(1)(c) Crl. P.C. to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party. It is no doubt true that quite often-if not almost invariably-the documents are forged for being used or produced in evidence in court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents forged long before the commencement of a proceeding in which they may happen to be actually used or produced in evidence, years later by some other party would also be subject to ss. 195 and 476 Crl. P.C. This in our opinion would unreasonably restrict the right possessed by a person and recognized by s. 190 Cr. P.C. without promoting the real purpose and object underlying these two sections. The Court in such a case may not be in a position to satisfactorily determine the question of expediency or making a complaint."

We are bound by the view expressed in this decision that the Legislature could not have intended to extend the prohibition contained in s. 195(1) (c) Cr. P.C. to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party. In the decision in Raghunath and Others v. State of U.P. and Others it is observed :

"In this Court the main contention raised on behalf of the appellants by their learned counsel was that even prosecution for an offence under Section 465 I.P.C. requires complaint by the revenue court concerned as such an offence is covered by Section 195(1)(c), Cr.P.C. This contention is difficult to accept. This Court has recently in Patel Laljibhai Somabhai v. The State of Gujarat [1971] 2 SCC 376 after considering the conflict of judicial opinion on this point, approved the view taken in Kushal Pal Singh case (supra). According to that decision the words "to have been committed by a party to any proceeding in any court" in Section 195(1)(c) mean that the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is, after having become a party to the proceeding. The

appellants' learned counsel tried to distinguish the decision of the Allahabad High Court in Kushal Pal Singh case (supra) by pointing out that in that case the offence of forgery was alleged to have been committed in 1898, more than 25 years before it was produced or given in evidence in court and it was for this reason that Section 195(1)(c), Cr.P.C. was held to be inapplicable. In our view, the duration of time between the date of forgery and the production or giving in evidence of the forged document in court is not a governing factor. The principle laid down in Sombabhai's case (supra) was not founded on any such consideration. Reference to such delay was made in that decision in another context. After taking notice of the fact that Section 195(1)(c), Cr. P.C. deprives a private aggrieved party of the general right recognized by Section 190 Cr.P.C. of directly initiating criminal proceedings this Court observed in the case:

"The offences about which the Court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to be more appropriate to adopt in strict construction of confining the prohibition contained in Section 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party".

In the present case, the offence of abetment of forgery was complete when the forged sale deed dated 10-11-70 was fabricated and registered. But no offence under s. 193 I.P.C. falling within the scope of s. 195(1)(b) of Cr.P.C. could be stated to have been committed by Hemareddy alias Vemareddy as the forged sale deed was not at all put in evidence at any stage in the redemption suit filed by the complainant on 17-11-70. Section 195(1)(b) of the Code of Criminal Procedure reads:

"(195) (1) No Court shall take cognizance,

(a).....

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or .....

....." It could be seen that the section requires that the offence under s. 193 I.P.C. should be alleged to have been committed in or in relation to, any proceeding in any court. Since the forged sale deed was not produced in evidence in any stage of the redemption suit, s. 195(1) (b) of the Code of Criminal Procedure is not attracted. Therefore, the Magistrate who committed the accused to the Sessions, could not have taken cognizance of any offence under s. 193

I.P.C. so far as Hemareddy alias Vemareddy (A-1) is concerned. The complaint could have been taken on file only for an offence punishable under s. 467 read with s. 114 I.P.C. so far as that accused is concerned. It would follow that no complaint by the court for prosecuting Hemareddy alias Vemareddy for the offence under s. 467 read with s. 114 I.P.C. is required, and he could be validly convicted for that offence on the complaint given by the private individual. We are, therefore, of the opinion that learned Judges of the High Court were not right in law in holding that the complaint in this case was totally not maintainable against Hemareddy alias Vemareddy in view of the provisions of s. 195(1) (b) of the Code of Criminal Procedure, and in not only acquitting Hemareddy alias Vemareddy of the offence under s. 467 read with s. 114 I.P.C. but also in finding that he has committed an offence punishable under s. 193 I.P.C. We accordingly confirm the judgment of the High Court as regards modification of the sentence awarded to Pyatal Bhimakka (A-2) and the acquittal of Hemareddy alias Vemareddy under s. 193 I.P.C. and dismiss the appeal to that extent but allow the appeal in part so far as Hemareddy alias Vemareddy is concerned and find him guilty under s. 467 read with s. 114 I.P.C. and convict him and sentence him to undergo R.I. for one year and also pay a fine of Rs. 500/- and in default to undergo R.I. for three months.

N.V.K. Appeal dismissed.