

Supreme Court of India

Legal Remembrancer Of Govt. Of ... vs Haridas Mundra on 9 December, 1975

Equivalent citations: 1976 AIR 2225, 1976 SCR (2) 933

Author: P Bhagwati

Bench: Bhagwati, P.N.

PETITIONER:

LEGAL REMEMBRANCER OF GOVT. OF WEST BENGAL

Vs.

RESPONDENT:

HARIDAS MUNDRA

DATE OF JUDGMENT 09/12/1975

BENCH:

BHAGWATI, P.N.

BENCH:

BHAGWATI, P.N.

GOSWAMI, P.K.

UNTWALIA, N.L.

CITATION:

1976 AIR 2225 1976 SCR (2) 933

1976 SCC (1) 555

CITATOR INFO :

R 1979 SC 437 (8)

ACT:

Code of Criminal Procedure, 1898-Sec. 195(1)(C)-Scope of.

HEADNOTE:

The respondent, a director of a company was charged with offences under ss. 418 and 471 read with ss. 468 and 477A, I.P.C. on the ground that he defrauded the company. At the trial, a single Judge of the High Court discharged the respondent on the view that he had no jurisdiction to proceed with the trial by reason of s.195(1)(c) of the Cr. P.C., 1898. The full Bench of the High Court affirmed the view of the single Judge.

Allowing the appeals to this Court,

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HELD: The High Court was entitled to proceed with the trial of the respondent in respect of offences under s. 471 without any complaint in writing from the company Judge whom the proceeding was pending. [938A]

(1) Section 195(1)(c) of the Code of Criminal Procedure provides that no court shall take cognizance of an offence

described in s. 463 or punishable under ss. 471, 475 and 476, Indian Penal Code where such offence is alleged to have been committed by a party to any proceeding in any court in respect of any 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. The High Court had clearly and indubitably jurisdiction to proceed with the trial against the respondent in respect of offences under ss. 418 and 477A. On its plain language the inhibition in s. 195(1)(c) applies only where a person is being tried for an offence under s. 463 or punishable under ss. 471, 475 or 476. Offences under 418 and s. 477A are plainly not covered by s. 195(1)(c) Cr. P.C. [936-D-G]

(2) In regard to offences under s. 471, I.P.C. it could not be said that the respondent could invoke the applicability of s. 195(1)(c). The offence under s. 471 was committed by the respondent long before the proceeding in the Company matter commenced and he became a party to that proceeding, and it was not committed by him in his capacity as such party, i.e. after having become a party to the proceeding. In *Patel Laljibhai Somabhai v. The State of Gujarat* this Court restricted the scope and ambit of s. 195(1)(c) to cases where the offence was alleged to have been committed by a party to a proceeding after he became such party and not before. [936H, 937A-D]

Raghunath v. State of U.P., AIR 1973 S.C. 1100 and *Mohan Lal v. The State of Rajasthan*, AIR 1974 S.C. 299, referred to.

In the instant case since the offence charged against the respondent was one alleged to have been committed by him before he became a party to the proceeding in the company matter, s. 195(1)(c) had no application. Secondly, the forged bills had not been produced in evidence before the Company Judge in the proceeding before him. The requirement of s. 195(1)(c) that the document in question should be produced or given in evidence in the proceeding was, therefore, clearly not satisfied and on this ground also s. 195(1)(c) was not attracted in the present case. [937G, 938A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 115 of 1971.

From the judgment and order dated 16th June 1970 of the Calcutta High Court in Criminal Revision Case No. 650 of 1967 and Criminal Appeals Nos. 256 and 257 of 1971 Appeals by special leave from the judgments and order dated the 27-4-67 and 28-1-71 of the Calcutta High Court in Cases Nos. 2-4/67 and 2/67 Second Criminal Sessions 1967 respectively.

D. Mookherjee and M. N. Shroff for the appellants (in all the appeals).

V. S. Desai, A. G. Menseses, J. B. Dadchanji & Co. for respondents in Crl. 256-57/71.

The Judgment of the Court was delivered by BHAGWATI, J. These three appeals arise out of the same facts and it would, therefore, be convenient to dispose of them by a common judgment. The respondent in all the three appeals is one Haridas Mundra. He was at all material times the managing director of S. B. Industrial Development Co. (Pvt.) Ltd., who were the managing agents of a company called Richardson & Cruddas Ltd. He and his brother Tulsidas Mundra were also directors of Richardson & Cruddas Ltd. The Life Insurance Corporation of India, which was the largest shareholder, filed a petition in the High Court of Calcutta being Matter No. 357 of 1957 seeking relief against mismanagement of Richardson & Cruddas Ltd. under ss. 397 and 398 of the Companies Act, 1956. The respondent and other directors were impleaded as party-respondents to the petition. The High Court, on the application of the Life Insurance Corporation, made an interim order sometime in December 1957 appointing Sir Dharendra Mitra as Special Officer to manage the affairs of Richardson & Cruddas Ltd. There was an audit report made by M/s Gutgutia & Co., Chartered Accountants, in regard to the accounts of Richardson & Cruddas Ltd., but the Special Officer was not satisfied with this report and he, therefore, after obtaining directions from the Company Judge, appointed M/s Ferguson & Co., a reputed firm of Chartered Accountants, to examine the accounts of the Company and submit their report. Ferguson & Co. found, as a result of their investigation, that there were two bills in the records of the Company, one for Rs. 4,12,000 dated 20th June, 1955 and the other for Rs. 6,48,900 dated 27th June, 1955 purporting to be issued by a firm called Indian Machine Tools Co. having its address at 7, Mission Row, Calcutta, showing purchase of certain machinery by Richardson & Cruddas Ltd. from Indian Machine Tools Co. and on the strength of these two bills, entries were made in the books of account of Richardson & Cruddas Ltd. on 24th June, 1955 in respect of the first bill and on 29th June, 1955 in respect of the second bill, crediting the amounts of the bills to S. B. Industrial Development Co. (Pvt.) Ltd. and debiting to the machinery account. On making inquiries, Ferguson & Co. discovered that there was no firm of Indian Machine Tools Co. in existence at 7, Mission Row, Calcutta and no machinery was in fact purchased or received by Richardson & Cruddas Ltd. as shown in the two bills supposed to have been made out by Indian Machine Tools Co. The conclusion reached by Ferguson & Co. as a result of this probe was that Richard-

son & Cruddas Ltd. has been defrauded of an aggregate sum of Rs. 10,60,900 representing the amounts of the two bills and that amount had been siphoned off to S. B. Industrial Development Co. (Pvt.) Ltd. by using these two bills, which were forged, as genuine and they made a report to this effect to the Special officer. The Special Officer, on receipt of the report, made an application to the Company Judge for a direction that he might be authorised to lodge a complaint with the police for further investigation into these facts set out in the report. The Company Judge gave the necessary direction and the Special officer thereupon moved the police for making further investigation in the matter. The Special Police Establishment started the investigation and ultimately submitted a chargesheet against the respondent and Tulsidas Mundra in the Court of the Chief Presidency Magistrate. The respondent and Tulsidas Mundra were committed by the Chief President Magistrate to stand their trial before the High Court on charges under ss. 120B, 409, 471 read with s. 468 and s.

477A against the respondent and ss. 120B and 409 of the Indian Penal Code against Tulsidas Mundra. When the trial commenced before the High Court, the Public Prosecutor made two applications on 17th April, 1967, one for amending the charges against the respondent by dropping ss. 120B and 409 adding s. 418 and the other for withdrawing the prosecution against Tulsidas Mundra. Both these applications were allowed by the High Court, with the result that the trial proceeded only against the respondent on charges under ss. 418, 471 read with s. 468 and s. 477A. Mr. Justice Bagchi, before whom the trial proceeded, felt that he had no jurisdiction to proceed with the trial in view of s. 195(1)(c) of the Code of Criminal Procedure, 1898 and he, therefore, requested the Public Prosecutor as well as the counsel for the respondent to argue the point as to the applicability of that section. The learned Judge, after hearing the arguments advanced before him on both sides, delivered an elaborate judgment holding that by reason of s. 195(1) (c) of the Code of Criminal Procedure, 1898, which applied in the present case, he had no jurisdiction to proceed further with the trial of the respondent and he accordingly discharged the respondent by an order dated 27th April 1967.

The State being aggrieved by this judgment and order passed by Mr. Justice Bagchi in the exercise of original criminal jurisdiction, preferred a revision application against the same on the appellate side of the High Court. The respondent raised a preliminary objection against the maintainability of the revision application on the ground that it was not competent to the High Court to exercise revisional jurisdiction against an order made by a judge of the High Court in a Sessions trial. Since this preliminary objection raised a question of some importance it was referred to a full Bench and by a judgment dated 16th June, 1970, the Full Bench upheld the preliminary objection and held that the High Court had no jurisdiction in revision of some importance, it was referred to a Full Bench and by a judge of the High Court in the exercise of its original criminal jurisdiction and accordingly rejected the revision application.

It appears that the State had in the meantime filed an application in the High Court for leave to appeal to this Court against the judgment and order of Mr. Justice Bagchi. This application was rejected by the learned Judge by an order dated 28th January, 1971 on the ground that it was not a judgment or a final order or a sentence falling within Art. 134(1)(c) of the Constitution. The State thereupon preferred two petitions in this Court for special leave to appeal, one against the judgment and order of Mr. Justice Bagchi discharging the respondent and the other against the judgment and order of the same learned Judge rejecting the application of the State for leave to appeal to this Court. This Court allowed both the petitions and granted special leave and hence we have Criminal Appeal No. 256 of 1971 directed against the judgment and order of Mr. Justice Bagchi discharging the respondent and Criminal Appeal No. 257 of 1971 against the judgment and order of that learned Judge refusing leave to appeal to the State. The State also preferred an application in the High Court for leave to appeal to this Court against the judgment and order of the Full Bench rejecting the revision application of the State and on this application, leave was granted by the High Court under Art. 134(1) (c) of the Constitution and that is how Criminal Appeal No. 115 of 1971 is before us.

We will first deal with Criminal Appeal No. 256 of 1971. If that criminal appeal is allowed and it is held that s. 195(1) (c) has no applicability in the present case, it would become unnecessary to consider the other two criminal appeals. Now, s. 195(1)(c) provides that no court shall take

cognisance of an offence described in s. 463 or punishable under ss. 471, 475 and 476 of the Indian Penal Code where such offence is alleged to have been committed by a party to any proceeding in any court in respect of any 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. Obviously, on its plain language, the inhabitation in s. 195(1) (c) applies only where a person is being tried for an offence described in s. 463 or punishable under ss. 471, 475 or s. 476. Here, the respondent was being tried for three distinct offences under ss. 418, 471 and 477A. So far as the offences under ss. 418 and 477A are concerned, they were plainly not covered by s. 195(1)(c) and even if s. 195(1)(c) were otherwise applicable, it is difficult to see how the trial of the respondent for these two offences could be said to be vitiated on the ground that no complaint in writing was made by the Company Judge. The High Court had, therefore clearly and indubitably jurisdiction to proceed with the trial against the respondent in respect of the offences under ss. 418 and 477A. The question of lack of jurisdiction in the High Court to proceed with the trial could arise only in regard to the offence under s. 471 which is one of the offences specified in s. 195(1) (c). But in regard to this offence also, we do not see how, on the facts of the present case, the applicability of s. 195 (1) (c) could be invoked on behalf of the respondent. The offence under s. 471 which was charged against the respondent was that he had used the two forged bills of Indian Machine Tools Co. as genuine on 24th and 29th June, 1955 by making, on the strength of these two bills, false entries in the books of account of Richardson & Cruddas Ltd. crediting the aggregate sum of Rs. 10,60,900/- in the account of S. B. Industrial Development Co. (Pvt.) Ltd. and debiting it in the machinery account. This offence was alleged to have been committed by the respondent on 24th and 29th June, 1955 long before the proceeding in Matter No. 357 of 1957 commenced and he became a party to that proceeding and it was not committed by him in his capacity as such party, that is, after having become a party to the proceeding. Now, at one time there was sharp cleavage of opinion amongst various High Courts in regard to the true interpretation of s. 195(1) (c). Some High Courts held that to attract the prohibition contained in s. 195(1)(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, while some others took the view that it was sufficient to attract the applicability of s. 195(1) (c) even if the alleged offence was committed by the party to the proceeding prior to his becoming such party, provided that the document in question was produced or given in evidence in such proceeding. This divergence of opinion amongst different High Courts was set at rest by this Court by its decision in *Patel Lal Gbhai Somabhai v. The State of Gujarat*(1) where this Court accepted the former view in preference to the latter. This Court pointed out that the words of s. 195(1) (c) clearly meant 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. Sections 195(1)(c), 476 and 476A read together indicated beyond doubt that the legislature could not have intended to extend the prohibition contained in s. 195(1) (c) to the offences mentioned therein when committed by a party to a proceeding prior to his becoming such party. The scope and ambit of s. 195(1) (c) was thus restricted by this Court to cases where the offence was alleged to have been committed by a party to a proceeding after he became such party and not before. This view as to the interpretation of s. 195(1) (c) was reaffirmed by this Court in *Raghunath v. State of U.P.*(2) and *Mohan Lal v. The State of Rajasthan*(3). It must inevitably follow, on this view, that since the offence charged against the respondent was one alleged to have been committed by him before he became a party to the proceeding in Matter No. 357 of 1957, s. 195(1)(c)

had no application. It may also be noted that neither of the two forged bills of Indian Machine Tools Co. was produced or given in evidence in the proceeding in Matter No. 357 of 1957. Both these forged bills formed part of the record of Richardson & Cruddas Ltd. and they were taken possession of by the Special Officer along with the other record of the Company and nobody produced them or tendered them in evidence before the Company Judge in the proceeding in Matter No. 357 of 1957. The requirement of s. 195(1) (c) that the document in question should be produced or given in evidence in the proceeding was, therefore, clearly not satisfied and on this ground also, s. 195(1) (c) was not attracted in the present case. We must, therefore, hold that the High Court was entitled to proceed with the trial of the respondent in respect of the offence under s. 471 without any complaint in writing from the Company Judge before whom the proceeding in Matter No. 357 of 1957 was pending.

We accordingly allow Criminal Appeal No.256 of 1971, set aside the judgment of Mr. Justice Bagchi discharging the respondent and remand the case to the City Sessions Court, to which the original criminal jurisdiction in Sessions cases has now been transferred, for disposal according to law. Since the case is a very old one, we would direct the City Sessions Court to take it up for hearing at an early date. In the view taken by us in Criminal Appeal No. 256 of 1971, Criminal Appeals Nos. 115 and 257 of 1971 do not survive for consideration and we accordingly dismiss them.

P.B.R.

Cr. A. 256 of 1971 allowed.
Cr.As. 115 & 257 of 1971 dismissed.