Supreme Court of India
Patel Laljibhai Somabhai vs The State Of Gujarat on 7 May, 1971
Equivalent citations: 1971 AIR 1935, 1971 SCR 834
Author: I Dua
Bench: Dua, I.D.

PETITIONER:
PATEL LALJIBHAI SOMABHAI

Vs.

RESPONDENT:
THE STATE OF GUJARAT

DATE OF JUDGMENT07/05/1971

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SIKRI, S.M. (CJ)
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 1935 1971 SCR 834
1971 SCC (2) 376

ACT:
Code of Criminal Procedure, 1898-Section 195(1)(c), Scope of.

HEADNOTE:
The appellant had filed a suit for the recovery of certain amount on the basis of a forged cheque. A private complaint was filed in the Court of the Judicial Magistrate against the appellant and another person for offences punishable under sections 467 and 471 Penal Code. The Magistrate found prima facie evidence that the appellant had fraudulently used in the Civil Suit a forged cheque, and committed him to the Sessions for trial. The appellant raised an objection that in view of section 195(i)(C) of the Code of Criminal Procedure no cognizance of the offence could be taken on a private complaint. The High Court upheld the commitment order. On the-scope and effect of section 195(i)(C) and its applicability to cases where a forged document has been produced as evidence in a judicial proceeding by a party thereto and prosecution of that party is sought for offences under sections 467 and 471 Penal Code,
HELD: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. Sections 195(1)(C), 476 and476A Code of Criminal Procedure, read together indicate that the legislature could not have intended to extend the prohibition contained in section 195(1)(c) to the offences mentioned therein when committed by a party to a proceeding in that court prior to his be-coming such party. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain, may 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. [842-D-H]

In this case the offence under section 471 Penal Code is clearly covered by the prohibition contained in section 195(1) (C); but the offence under section 467 Penal Code can be tried in the absence of a complaint by the Court unless it is shown by the evidence that documents in question were forged by a party to the earlier proceeding in his character as such a party; in other words after the suit had been instituted. [847B]

Emperor v. Kushal Pal Singh, I.L.R. [1953] AU. 804 approved. State of Gujarat v. Ali Bin Rajak, 9 Guj. Law Reporter 1, Emperor v. Mallappa, A.I.R. 1937 Bom. 14, Har Prasad v. Hans Rai, A.I.R. 1966 All. 124, Vivekanand V. State A.I.R. 1969 AU. 189, Harinath Singh v. State 1964 All. L. J. 467, Basir-ul-Haq v. State of West Bengal, A.I.R. 1953 S.C. 293, Krishna Nair v. State of Kerala, (1962) 1 Crl. L. J, 340 and State v. Bhikubhai, A.I.R. 1965 Guj. 70, referred to.

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JUDGMENT:

CRIMINAL APPELLATE Jurisdictionally : Criminal Appeal No. 169 of 1969.

Appeal from the judgment and order dated April 30, 1968 of the Gujarat High Court in Criminal Reference No. 49 of 1966. N. N. Keswani, for the appellant.

S. K. Dholakia and S. P. Nayar, for the respondent. The Judgment of the Court was delivered by J,-This appeal with certificate under Art. 134(1)(c.) of the Constitution dated against the judgment and order of the Gujuat High Court in Criminal reference made by the Sessions Jung, Ahmedabad, rains an important question of law on which there appears to be conflict, of judicial opinion. Even in the Gujarat High Court the correctness of the majority view in the Full bench demon in the State of Gujarat v. Ali Bin Rajak(1) has boon doubted by the learned Judge hearing the criminal reference in

the present case, who followed the majority view merely because he felt bound by it. The learned single Judge did not consider the case to be fit for reference to a larger bench for reconsidering the majority view in the case of All Bin Rajak(2). Certificate of fitness for appeal to this Court was, however. granted by the learned Judge.

The question raised relates to the scope and effect of s. 195(1)(c), Cr.. P.C. and its applicability to cases where a forged document has been produced as evidence in a judicial proceeding by a party there to and prosecution of that party is sought for offences under ss. 467 and 471, I.P.C. in respect of that document.

The relevant facts of the case may now be briefly stated, The appellant Patel Laljibhai Somabhai instituted a: civil suit (No. 11 of 1964) in the court of Joint Civil Judge at Dholka against Vora Safakat Husaian Yusufali (hereafter called the complainmant) and his brother Vora Ahmed Huseian Yusufali for the recovery of Rs 2,000 on the basis, of a cheque dated November 22, 1963 (alleged to have been been given to him on June 27, 1963) under: the signature of the complainant Vora Safakat Huseian Yusufali Lakadwala on the Bombay Mercantile Cooperative Bank Ltd., Ahmedabad _Branch. The defence in the suit was that the cheque in question and certain coupons which were produced and relied upon in that suit were forged and the suit was false. The suit was, dismis on January 30,,1965 by ,the Joint,, civil Judge, Dholka. The Court did not believe the (1) 9 Guj. Law Reporter I.

plaintive's story about the cheque. On November 16, 1965 the complainant filed a complaint in the court of the Judicial Magistrate, First Class, Dholka against two accused persons for offences punishable under ss. 467 and 471, I.P.C. The two accused were Vora Saifuddin Akbarali and the appellant. Vora Saifuddin Akbarali (accused no. 1) is described in the complaint as the complainant's sister's husband. It was averred in the complaint that the complainant's elder brother Ahmedbhai had started a business in milk in Ahmedabad and accused no. I used to help him in that business from time to time. This business had been started in the shop of the brother of accused no. I who was also dealing in milk. Ahmedbhai used to stay at the house of accused no. 1. The books, coupons and cheque books of the milk business had been kept at the residence of accused no.

1. This business was carried on till July, 1962 when it was closed and Ahmedbhai left Ahmedabad for Limbdi for staying there. The appellant had been appointed as the commission agent through accused no. 1 and milk was collected from various milkmen through him (the appellant). When the business was closed on July 28, 1962 a sum of Rs. 231-1-0 remained to be paid to the appellant and nine cans of milk remained in balance with him. A notice was given in this connection after settling all the accounts and the appellant paid Rs. 200/- in cash to Ahmedbhai and thereafter nothing was due to the appellant. November 30, 1962 the defendants in the suit at the instance of accused no. I started a milk shop at Jamalpur and they used to stay at the house of accused no. I who was employed in the Mercantile Bank and through whom an account was opened with that bank in the name of the defendants. Accused no. I used to utilise this account for himself and his brothers. Being a relative, accused no. I was trusted by the complainant and his brother and they used to act according to the instructions of accused no. 1. In June, 1962 accused no. I had come to Limbdi and asked for a loan of Rs. 15,0001- from the complainant's father. But this request was declined with

the result that accused no. I got annoyed and threatened him with ruinous consequence. Thereafter accused no. I conspired with the appellant to harm the complainant and his brother and father. Cheque books containing blank cheque forms but bearing the complainant's signatures and all the books of account were at that time kept in the house of accused no. 1, where the complainant and his brother used to stay. It is in this background that the accused no. I prepared a cheque for Rs. 2,000/- in his own handwriting on a blank cheque form bearing the complainant's signature and the appellant utilised that cheque. The appellant and accused no. I were, on these averments, alleged to have forged the cheque. Civil Suit No. 11/64 was then filed in which this cheque was used knowing the same to be forged. The Magistrate found prima facie evidence that the appellant (accused No. 2) had fraudulently used in the civil suit the forged cheque in question. The Magistrate also found prima facie evidence that accused no. I had committed an offence punishable under s. 467, I.P.C. and the appellant was liable under s. 34, I.P.C. The forgery of the cheque and the use of the forged cheque as genuine were considered by the Committing Magistrate to form part of the same transaction and the two charges could, therefore, be tried together. The question of the necessity of complaint by the Civil Court under s. 195(1)(c), Cr. P.C. was also raised in the committing court but following the decision of the Bombay High Court in Emperor v. Mallappa(1) the Magistrate held that provision to be inapplicable to the present case. On behalf of the appellant an application was then made in the court of the Assistant Sessions Judge in which the trial was to be held, praying for quashing the commitment proceedings because in face of s. 195(1)(c) no cognizance of the offence could be taken by the court on a private complaint. As the Assistant Sessions Judge could not make any reference to the High Court the case was withdrawn by the Sessions Judge to his own court who after hearing the application referred the case to the High Court with a recommendation that the commitment order be quashed. The High Court, considering itself bound by the majority view in the case of Ali Bin Rajak(2) declined the recommendation and upheld the commitment order as already noticed. In view of the conflict of judicial opinion amongst the various High Courts and even in the Gujarat High Court itself we would prefer first to consider the relevant statutory provisions on their own language and thereafter to consider the decided cases. Section 195 occurs in Division B of Chapter XV in Part VI of the Code of Criminal Procedure. Part VI consisting of Chapters XV to XXX is headed "Proceedings in prosecution". Chapter XV deals with "The jurisdiction of criminal courts in inquiries and trial". It consists of ss. 177 to 199B and is divided into two divisions. Sections 177 to 189 (Division A) deal with the "Place of inquiry or trial" and ss. 190 to 199B (Division B) deal with the "Conditions requisite for initiation of proceedings". We are only concerned with Division B but it is unnecessary to deal with each one of the sections contained in that Division. Only two sections require to be noticed, namely, ss. 190 and 195. Section 190 deals with "cognizance of offences by Magistrates". This section, subject to the exceptions contained in the succeeding provisions of the Code, empowers the Magistrates mentioned therein to take cognizance of any offence upon complaint, police report, or information or on the knowledge or suspicion of the (1) A. I. R. 1937 Bom. 14.

(2) 9 Guj. Law Reporter 1.

Magistrate about the commission of an offence. The main purpose of this section is to ensure freedom and safety of the subject by giving him a right to approach the court if he considers that a wrong has been done to him. Sub-section (1) of S. 195 which is concerned with (a) "Prosecution for

contempt of lawful authority of public servants", (b) "Prosecution for certain offences against public justice", and (c) "Prosecution for certain offences relating to documents given in evidence" places some restrictions on the general power conferred on courts of Magistrates by s. 190 to take cognizance of offences. This section may here be reproduced.

> " 195. Prosecution for contempt of lawful authority of public servants.- (1) No Court shall take cognizance-
>
> (a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate-,
>
> (b) Prosecution for certain offences against public justice.-of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in or in relation to any proceeding in any Court, except on the complaint in writing of such Court or some other Court to which such Court is subordinate; or
>
> (c) Prosecution for certain offences relating to documents given in evidence. 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) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub- Registrar under the Indian Registration Act, 1877. (3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :
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> Provided that-
>
> (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and
>
> (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been

committed. (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 them.

(5) Where a complaint has been made under subsection (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint."

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).

In construing this clause we consider it appropriate to read it along with S. 476 Cr. P.C. which prescribes the procedure for cases mentioned in S. 195(1)(b) and (c), also bearing in mind that under S. 476A a superior court is empowered to complain when the subordinate court has omitted to do so and that S. 476B confers on an aggrieved party a right of appeal from an order refusing to make a complaint under S. 476 or S. 476A as also from an order making such a complaint. All these provisions, forming part as they do of the statutory scheme dealing with the subject of prosecution for offences against administration of justice, require to be read together and when so read would help us considerably in having a more vivid picture of the legislative intendment in prescribing the prohibition in the two clauses of S. 195(1) and the procedure for initiating prosecutions for offences mentioned therein. Section 476 reads :

"476. Procedure in cases mentioned in section

195.-

(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided."

This section quite clearly postulates formation of judicial opinion that it is expedient to hold an inquiry into an offence referred to in cl. (b) or in cl. (c) of s. 195(1) which appears to the Court to have been committed either in or in relation to a proceeding in that court. Offences mentioned in cl. (b), it may be recalled, would be covered by that clause even if they are alleged to have been committed in relation to a proceeding in a court, whereas those mentioned in cl. (c) should be alleged to have been committed by a party to a proceeding in a court in respect of a document produced or given in evidence in that proceeding. Section 476, it is also noteworthy, empowers the court even suo motu to take up the question of expediency of making a complaint. As a general rule, the courts consider it expedient in the interest of justice to start prosecutions as contemplated by s. 476 only if there is a reasonable foundation for the charge and there is a reasonable likelihood, of conviction. The requirement of a finding as to the expediency is understandable in case of an offence alleged to have been committed either in or in relation to a proceeding in that court in case of offences specified, in cl. (b) because of the close nexus between the offence and the proceeding. In case of offences specified in cl. (c) they are required to be committed by a party to a proceeding in that court with respect to a document produced or given in evidence in that court. The offence covered by s. 471 I.P.C. from the its very nature must be committed in the proceeding itself by a party thereto. With respect to such an offence also expression of opinion by the court as to the

expediency of prosecution would serve a useful purpose. It is only with respect to the offence described in s. 463 I.P.C. and the offences punishable under ss. 475 or 476 I.P.C. that two views are possible and therefore the effect of reading s. 195(1)(c) and s. 476 Cr. P.C. together has to be examined for discovering the true legislative intendment in respect of these offences.

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 perverting 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 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 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) 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. 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 Cr. 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 of making a complaint. We may now consider the decisions cited at the bar. In Emperor v. Kushal

Pal Singh(1) it was held by a Full Bench, of that Court that s. 195(1)(c) Cr. P.C. applies only to cases where an offence mentioned therein is committed by a party as such to a proceeding in any court in respect of a document which has been produced or given in evidence in such proceeding. The words "committed by a party to a proceeding" in s. 195(1)(c) were interpreted in that case to mean "committed by a person who is already a party to a proceeding". The court in that case read both s. 195 and s. 476 Cr. P.C. together because s. 195 was held to lay down the bar against the cognizance of certain offences and s. 476 the method for removing the bar. On the view taken by the court a complaint cannot be filed by a court under its inherent jurisdiction outside the provisions of s. 476 Cr. P.C. In Hari Prasad v. Hans Rai(1) a learned single Judge of the Allahabad High Court, dealing with the allegations made in a complaint under ss. 476 and 471 I.P.C. that a forged sale deed had been got executed and registered in pursuance of a criminal conspiracy amongst three opposite parties one of whom had filed an application for the mutation proceedings on the basis of the said forged deed observed that a close nexus was established between the conspiracy and its resulting in a forged deed and the subsequent filing of the mutation application on its basis, all of which form various links of the same chain. On this premise it was observed that cognizance of the offences was a bar on a private complaint under s. 195(1)(b) Cr. P.C. The learned Judge in the course of the judgment also said that even if it is held that the allegations made in the complaint disclose offences under ss. 467 and 471 I.P.C. as alleged therein and not under s. 193 I.P.C. their cognizance would be barred under s. 195(1)(c). The words "in respect of" were considered to be wide enough to include even a document which was prepared before the proceedings started in a court of law but was produced or given in evidence in that proceeding. According to this decision, when a document is produced in a court or is given in evidence, it is for that court to decide whether it is genuine or forged and if (1) I. L. R. [1953] All. 804.

(2) A. T. R. 1966 All. 124.

a private party is allowed to lodge a complaint on the basis of that document describing it as forged and if that complaint is ,entertained without affording opportunity to the court before whom the document had been produced to give its opinion it would amount to forestalling its decision and is likely to lead to anomalous situation and also sometimes the contradictory findings by two competent courts. Incidently it may be pointed out that the earlier Full Bench decision of the Allahabad High Court was not cited in this case. In Vivekanand v. State(1) another single Judge of the Allahabad High Court observed that when the main finding is the one under S. 471 I.P.C., namely, the finding of using a forged document as genuine and the other. offences all flow from it, in, the sense that if the charge under S. 471 fails, the charges for the other offences would also fail, none of which offences can in truth and substance be said to be of a distinct nature, the mere fact that ss. 406, 467 and 420 I.P.C. are also tacked on to the offence under S. 471 I.P.C. would not serve to take the case out of the scope and ambit of S. 195 (1) (c). In this case a forged vakalatnama was produced before the Compensation Officer for withdrawing certain amount. The Cornpensation Officer was held to be a Court. Of the offence charged, viz. under ss. 406. 420 and 467 I.P.C. along with S. 471 I.P.C., the first three sections were held to be cognate to S. 471 I.P.C. In this case too the earlier Full Bench decision was not noticed and the learned single Judge followed an earlier Division Bench decision of that Court reported as Hari Nath Singh v. State(1) In Hari Nath Singh's case(2), distinguishing the decision of this Court in Basr-ul-Huq v. State of West Bengal(1) it was observed

that offences under ss. 193 and 218 I.P.C. in that case were both barred. In Krishna Nair v. State of Kerala(1) a learned single Judge of the Kerala High Court observed that the words "when such offence has been committed by a party to any proceedings in any court" used in S. 195(1)(c) referred not to the date of the commission of the alleged offence but to the date on which the cognizance of the criminal court is invited and that when once a document has been produced or given in evidence before a court the sanction of that court or perhaps of some other court to which that court is subordinate is necessary before a party to the proceedings in which the document was produced or given in evidence can be prosecuted notwithstanding that the offence alleged was committed before the document came into the court at a date when the person complained against was not a party to any proceeding in court. In this case reference was made to several decisions of various High Courts including some decisions of the Allahabad High Court prior to (1) A. I. R. 1969 All. 189.

(3) A. I. R. 1953 S. C. 293.

(2) 1964 All. L. J. 467.

(4)(1962) 1 Crl. L., J. 340.

the Full Bench decision which was significantly not noticed. The Full Bench of the Gujarat High Court in State of Gujarat v. Ali Bin Rajak(1) by majority held that under s. 195 (1)

(c) Cr. P.C. sanction for prosecuting a party to a proceeding for an offence under s. 471 I.P.C. was not necessary in respect of a use made outside the court in which the document was subsequently used, as the bar to cl.

(c) would apply only to those cases where the offences mentioned therein were committed in regard to the documents produced or given in evidence in proceeding. The facts in the reported case were, that one Har Govind Kalidas had obtained a decree against Ali Bin Rajak of Junagadh from the court of a civil Judge, Junior Division, Visavadar, District Junagadh. Har Govind filed an execution application for re- covering his decretal dues in the course of which the amount payable by the Mamlatdar, Dhari to the judgment-debtor under an annuity card was attached. Garnishee order was served on the Mamlatdar, Dhari. Rajak thereafter appeared before the Mamlatdar and stated that he had paid the decretal amount to Har Govind. The Mamlatdar, required Rajak to produce the receipt which was produced on July 27, 1964. The receipt bore the date May 23, 1964, purporting to be signed by Har Govind. Thereupon the Mamlatdar paid the amount due under the annuity card to Rajak and made a report to the Civil Court enclosing the receipt produced by Rajak. The Civil Court called upon Har Govind to show cause why the execution application should not be disposed of. Har Govind denied receipt of any amount from Rajak and alleged the receipt to be forged. The Civil Court thereupon issued notice to the Mamlatdar requiring him to show cause why he should not be held up for contempt of court. The Mamlatdar regretted his action in making payment without the Civil Court's order and explained how he relied upon Rajak's word. The Mamlatdar got the amount produced by Rajak and forwarded the same to the Civil Court.- The amount was produced by Rajak under protest and subject to his right to claim the same. Thereafter Har Govind lodged a F.I.R. with the police at Dhari and on completion of the investigation the P.S.I. sent a charge-sheet against Ali

Bin Rajak to the court. The Magistrate finding prima facie case committed Rajak to the Sessions Court for trial. One of the charges was under s. 420 I.P.C. and the other was under s. 471 I.P.C. The second charge with which alone the court was concerned was based on the allegation that Rajak had made use of the receipt dated May, 23, 1964, alleged to be forged before the Mamlatdar by producing the same before that officer on July 16, 1964. The objection taken by Rajak was that by virtue of s. 195(1)(c) the court could not take cognizance of this case whereas on behalf of the prose-

(1) 9 Guj. Law Reporter 1.

cution it was contended that the forged receipt had been produced before the Mamlatdar before its production in the civil court and, therefore, s. 195(1)(c) was inapplicable. It was in this context that the majority of the judges held that no complaint by the court was necessary whereas one learned Judge took the contrary view. It appears to us that in the Gujarat case the use of the forged power of attorney before the Mamlatdar occurred while the execution proceedings were pending but since it was not this user which was the subject matter of the charge the majority of the Judges rightly held that this was not barred by s. 195(1)(c). It was apparently not argued that the complaint of the Mamlatdar was necessary.

In State v. Bhikubhai(1) a Division Bench of the Gujarat High Court observed that s. 195(1)(c) Cr. P.C. would apply even when the person accused of the offence referred therein in respect of a document produced in a court was not a party to the proceeding in which the document was produced provided such offence was committed by him jointly with a person who was a party to the proceeding or provided the offence with which he is charged is the same as alleged to have been committed by the persons who were parties to the proceedings. The Bench also observed that the words "party to a proceeding" are used in an abstract manner to indicate the only class or category of offenders. It was further said that cl. (c) of s. 195(1) must be strictly construed because it encroaches upon the jurisdiction of the ordinary criminal courts empowered to punish offences under s. 195 and is engrafted by way of an exception to the ordinary powers of criminal courts. It would, therefore, be improper to construe it in a manner which would restrict the jurisdiction of criminal courts unless the restriction is expressly provided for or necessarily follows. Broadly speaking we are inclined to agree with the reasoning of the Allahabad Full Bench in Kushal Pal Singh's case(2). This in our opinion reflects the better view,. The purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in s. 195(1)(b) and (c) is both to save the accused person from vexatious or baseless prosecutions inspired by feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between findings of the courts in which forged documents are produced or false evidence is led and the conclusions of the criminal courts dealing with the private complaint. It is for this reason as suggested earlier, that the Legislature has entrusted the court, whose proceedings bad been the (1) A. I. R. 1965 Guj. 70.

(2) I. L. R. [1953] All. 804.

target of the offence of perjury to consider the expediency in the larger public interest, of a criminal trial of the guilty party.

In this case the offence under s. 471 I.P.C. is clearly covered by the prohibition contained in S. 195(1)(c) but the offence under s. 467 I.P.C. can in our view be tried in the absence of a complaint by the court unless it is shown by the evidence that the documents in question were forged by a party to the earlier proceeding in his character as such party, in other words, after the suit had been instituted.

The appeal is accordingly allowed in part, in the terms just ,stated. The lower court, we hope, will dispose of the case with due despatch.

K.B.N. Appeal allowed in part.