

PETITIONER:
GOVIND MEHTA

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT 07/05/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
1971 AIR 1708 1971 SCR 777
1971 SCC (3) 329

ACT:
Code of Criminal Procedure, 1898, s. 195(1)(c), 476-Transfer applications before District Magistrate of cases pending before magistrate-Magistrate charged with offence under s. 471 for committing forgery on the order sheets of the cases on complaint by District Public Prosecutor-Applicability of bar of s. 195(1) (c)-Magistrate cannot be said to be "party to any proceeding in any court."

HEADNOTE:

When the appellant came to know that transfer applications had been filed in respect of certain cases on his file he recorded orders on the order sheets of the cases making serious allegations against the District Magistrate before whom the transfer applications were pending to the effect that, the latter was attempting to interfere with the course of justice in the proceedings connected with the cases. The Additional District Magistrate, who heard the transfer applications sent a report for initiation of proceedings against the appellant for having committed forgery in the order-sheets. On a complaint by the District Prosecutor the appellant was committed to the sessions to take trial under ss. 167, 466 and 471 Penal Code. The appellant filed applications questioning the legality of the trial on the grounds that the mandatory provisions of ss. 195 and 476 of the Code, of Criminal Procedure were not complied with. These were rejected by the Sessions Judge. Revisions to the High Court were also dismissed, In appeal to this Court it was contended : (i) the authority to file the complaint against the appellant was the Court to which the appellant was subordinate at the material time as is mandatory under s. 195(1)(b) and (c) and, therefore, cognizance could not be taken of the complaint filed by the District Prosecutor; and (ii) there was violation of the mandatory provisions of s. 476 of the Code, inasmuch as the complaint was not filed by the Additional District Magistrate.

Dismissing the appeal,

HELD: (i) The High Court has, after analysis and very elaborate consideration, come to the conclusion that the charge framed under s. 167 of the Penal Code is justified. Therefore, the contention that with a view to evading the bar of cl. (b) of s. 195(1) the prosecution adopted the

device of not charging the appellant under s. 193, Penal Code, cannot be accepted. As the charge has been framed under s. 167, the bar under s. 195(1)(b) and (c) has no application. [782F, G.]

(ii) The offence under s. 466, Penal Code, is not covered by cls. (b) or (c) of s. 195(1). Therefore s. 195 does not operate as a bar in respect of this offence. [783A]

(iii) Though s. 471 of the Code is taken in by cl. (c) of s. 195(1), for the clause to operate as a bar to taking cognizance of an offence under s. 471 it is essential that the offence must be alleged to have been committed "by a party to any proceeding in any Court". Merely on the basis that the applications for transfer of certain cases pending before the appellant had been filed making allegations against the appellant will not make the

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appellant a party to those proceedings. He was functioning as Magistrate and had no personnel interest in the outcome of the transfer applications. Therefore, cl. (c) of s. 195(1) also does not bar the jurisdiction of the magistrate to take cognizance of the offence under s. 471 of the Code. [783B, G]

(iv) Because s. 195(i) (b) or (c) does not apply to the case of the appellant section 476 of the Code does not come into the picture. Even otherwise, the section does not apply for the reason that the order of the I Additional District Magistrate clearly shows that all the findings recorded against the appellant were only reasons for transferring the cases from the file of the appellant; the Additional District Magistrate himself had not taken any action as contemplated under s. 476 of the Code. U84B, F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal NO. 154 of 1969.

Appeal by special leave from the judgment and order dated December 16, 1968 of the Patna High Court in Criminal Revision Nos. 345 and 346 of 1968 and Criminal Misc. Nos. 248 and 249 of 1968.

Jyoti Narain, S. N. Misra and U. P. Singh, for the appellant.

R. C. Prasad for the respondent. ,

The Judgment of the Court was delivered by Vaidialingam, J.-The accused in this appeal, by special leave, challenges the common order dated December 16, 1968 passed by the Patna High Court dismissing Criminal Revision Nos. 345 and 346 of 1968 and the connected Criminal Miscellaneous Petition Nos; 248 and 249 of 1968. The Criminal Revisions and the Criminal Miscellaneous Petitions were all directed against the orders passed by the criminal courts directing that the appellant should stand his trial for offences under Sections 167, 466 and 471 of the Indian Penal Code (hereinafter called the Penal Code).

The facts giving rise to the Criminal Revisions and the Criminal Miscellaneous Petitions may be stated : In 1963 the appellant was posted at Patna as Magistrate, 1st Class, with special powers to try Bad Livelihood Cases (which are called B. L. Cases) under Section 110 of the Code of Criminal Procedure (hereinafter called the Code). In September 1963 two B. L. Cases Nos. 4 and 5 of 1963 had been started against Kailash Gope and Ramprit Gope and others respectively. Those cases were transferred to the file of the appellant for disposal. At the time of the transfer of

cases, the accused persons had already been enlarged on bail. But the appellant claims to have noticed some defects in the bail bonds furnished by those persons. He gave directions that the defects in the bail bonds should be rectified. On the parties failing to rectify the defects, the appellant cancelled the bail bonds and remanded them to jail custody. The parties against whom

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the B. L. Cases had been started, filed two applications before the District Magistrate, Patna for transferring their cases from the file of the court of the appellant to the file of another Magistrate on the ground that they seriously apprehended that they will not get justice at his hands. After coming to know of the filing of the transfer applications, the appellant recorded two orders on the order sheets of cases Nos. 4 and 5 making very serious allegations against the District Magistrate before whom the transfer applications were pending to the effect that the latter was attempting to interfere with the course of justice in the proceedings connected with the case Nos. 4 and 5. 'The appellant is alleged to have inserted these two orders in the order sheets of the two cases long after the last orders were passed in those cases to make it appear that the remarks against the District Magistrate had been made much earlier. The District Magistrate called for a report from the appellant and he sent the records or the proceedings to the District Magistrate with his report. In his report he had also stated that the matter is of great importance and the entire case and the order sheets should be kept intact for favour of any action that the High Court may consider fit and proper.

In view of the allegations made by the appellant against the District Magistrate mentioned in the order sheets, the latter transferred the transfer applications to the file of the Additional District Magistrate on November 11, 1963. The Additional District Magistrate after hearing the parties transferred both the cases from the file of the appellant to another Magistrate and sent a report to the District Magistrate for initiation of proceedings against the appellant for having committed forgery in the order sheets in both the B. L. Cases. The report of the District Magistrate was forwarded to the State Government, who accorded sanction for prosecuting the appellant. The Senior District Prosecutor, Patna filed on December 21, 1964 a complaint in the Court of the Sub-Divisional Magistrate, Patna Sadar against the appellant. In the complaint it was alleged that the appellant has committed offences under Sections 16, 465, 466 and 471 of the Penal Code. The Sub-Divisional Magistrate after taking cognizance of the offences alleged to have been committed by the appellant, transferred the case to the file of the Magistrate, 1st Class, Patna, initiating two commitment proceedings in respect of the alleged offences said to have been committed in each of the B. L. Cases. After examining the witnesses and perusing the documents, the Magistrate, 1st Class, committed the appellant to the Court of Sessions in both cases for trial under Sections 167, 466 and 471 of the Penal Code.

The two Sessions Cases were accordingly started in the court of the Assistant Sessions Judge, Patna and charges were framed

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against the appellant under Sections 167, 466 and 471 of the Penal Code.

The appellant filed two petitions before the Assistant Sessions Judge that trial could not be proceeded with as the

mandatory provisions of Sections 195 and 476 of the Code have not been complied with. In fact his prayer in the applications filed before the Assistant Sessions Judge was that he should be acquitted. The Assistant Sessions Judge by his order dated November 22, 1966 rejected the applications filed by the appellant and declined to consider the competency of trial as a preliminary issue at that stage.

The appellant filed Criminal Revisions before the Sessions Judge against the order made by the Assistant Sessions Judge with a prayer to quash also the commitment orders of the Magistrate. He had also made a prayer for a reference to be made to the High Court to quash the proceedings pending before the Assistant Sessions Judge. The Sessions Judge rejected the applications filed by the appellant. In consequence the appellant filed before the High Court Criminal Revision Nos. 345 and 346 of 1968 against the orders of the Sessions Judge declining to quash the commitment proceedings and to making a reference to the High Court in the two Sessions Cases against the appellant. He also filed Criminal Miscellaneous Petitions Nos. 248 and 249 of 1968 to quash the orders of the Magistrate, 1st Class to stand his trial for offences under Sections 167, 466 and 471 of the Penal Code.

The High Court rejected both the Criminal Revisions and the Criminal Miscellaneous Petitions.

Mr. Jyoti Narayan, learned counsel for the appellant, has urged that the entire proceedings initiated against the appellant were without jurisdiction inasmuch as the Sub-Divisional Magistrate was not competent to take cognizance of the complaint filed by the Senior District Prosecutor. According to the learned counsel the authority to file the complaint against the appellant was the court to which the appellant was subordinate at the material time as is mandatory 'under Section 195 (1) (b) and (c) of the Code. His further contention is that there has been a violation of the mandatory provisions of Section 476 of the Code. The mere sanction given by the State Government under Section 197 of the Code is not, in the circumstances, sufficient to give jurisdiction to the Magistrate to take cognizance of the offences alleged against the appellant.

On the other hand, Mr. R. C. Prasad, learned counsel for the State urged that the offences alleged against the appellant are under Sections 167, 466 and 471 of the Penal Code. None of these sections are covered by Section 195(1) (b) of the Code. Section 466

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is not covered by Clause (c) of Section 195(1) of the Code. Section 471, is, no doubt, taken in by the said clause, but in order to attract that clause it is necessary that the offence alleged should have been committed "by a party to any proceeding in any court." If the conditions mentioned in clause (c) are satisfied, then ... the ... complaint should be made in writing by the court before whom the offence is committed or by some other court to which such court is subordinate. The appellant can by no means be characterized to be a party to any proceeding in any court, in respect of the offence under Section 471 alleged against him. Therefore, there is no violation of either Clause (b) or (c) of Section 195 (1) of the Code. Section 476 of the Code also, according to Mr. Prasad, does not apply as the conditions stated therein do not exist in the present case.

Briefly the allegations in the complaint are as follows. The appellant has recorded serious allegations in the 'order sheets' against the then District Magistrate, Patna, Sri R.

C. Sinha and the counsel Sri Mathura Sharma, appearing on behalf of the accused in the B. L. Cases. The said allegations and certain other entries were interpolations and forgery. The appellant has framed incorrect documents with intent to cause injury and he has committed forgery in judicial records and used the forged documents as genuine with intent to cause injury to others. The said entries, interpolations and forgeries have been committed by the appellant between November 7, 1963 and November 11, 1963 after the appellant received the order dated November 6, 1963 of the District Magistrate Patna directing him to submit a report in respect of the allegations made against him in the transfer applications filed by the parties in the B. L. Cases. The complaint alleged that the appellant has committed offences under Sections 167, 465, 466 and 471 of the Penal Code.

We have already indicated that the appellant has been committed to the Sessions to take his trial only under Sections 167, 466 and 471 of the Penal Code.

According to Mr. Jyoti Narayan, the point of time at which the legality of the cognizance taken by the Magistrate to be adjudged is the time when cognizance is actually taken under Section 190 of the Code and applying that test in the present case, it will be seen that there has been a breach of Section 195 (1) (b) and (c) and Section 476 of the Code. The proposition that the point of time at which the legality of the cognizance taken is to be adjudged is the time when cognizance is actually taken is laid down by this Court in *M. L. Sethi v. R. P. Kapur and another* (1). The Magistrate has normally got jurisdiction to take cognizance under

(1) [1967] 1 S. C. R. 520.

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Section 190 of the Code in the circumstances enumerated therein. Section 195 is in fact a limitation on the unfettered powers of a magistrate to take cognizance under Section 190 of the Code. Therefore, at the stage when the magistrate is taking cognizance under Section 190, he must examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by any of the clauses (a) to (c) of Section 195 (1). Therefore, it is needless to state that if there is a non-compliance with the provisions of Section 195, the Magistrate will have no jurisdiction to take cognizance of any of the offences enumerated therein.

Mr. Jyoti Narayan on the basis of the decision of this Court reported in *Basir-Ul-Huq and others v. The State of West Bengal* (1) urged that though Section 195 made no bar to the trial of an accused person for a distinct offence disclosed by same facts and which is not included within the ambit of that section, the provisions of that section cannot be evaded by resorting to device, of charging a person with an offence to which that section does not apply.

We have already referred to the sections of the Penal Code under which the appellant has been charged. They are sections 167, 466 and 471. Admittedly, none of these sections are covered by Clause (b) of Section 195 (1). Therefore clause (b) prima facie will not in term bar the jurisdiction of the magistrate to take cognizance of the offence under Section 167 of the Penal Code. The contention of Mr. Jyoti Narayan is that the various averments made in the complaint will really show that the nature of the offence, if any, committed by the appellant will really come under Section 192 and 193 I. P. C. If the charge has been framed under Section 193 of the Penal Code, it will squarely fall under Clause (b) of Section 195(1) of the Code. With a

view to really evade the bar of Clause (b) of Section 195(1), the prosecution has adopted the device of not charging the appellant under Section 193 of the Penal Code, though in effect they want him to be convicted for an offence under Section 193 of the Penal Code. We are not inclined to accept this contention of the learned counsel.

The High Court after a careful analysis of the allegations made in the complaint and the materials placed before it and after a very elaborate consideration of the matter has come to the conclusion that the case of the prosecution that the charge framed under Section 167 of the Penal Code is justified. The High Court has considered the ingredients of the offence under Sections 192 and 193 as well as Section 167 of the Penal Code. As the charge has been framed under Section 167, the bar under Section 195 (1) (b) or (c) of the Code has no application. We agree with the view

(1) [1953] S. C. R. 836.

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of the High Court that Section 195 (1) (b) or (c) is no bar to the Magistrate taking cognizance for an offence under Section 167. The offence under Section 466 of the Penal Code is, admittedly, not covered by Clause (b) or Clause (c) of Section 195 (1) of the Code. Therefore, that section does not operate as a bar in respect of this offence.

Section 471 of the Penal Code, is no doubt is taken in by Clause (c) of Section 195 (1). But for Clause, (c) to operate, as a bar to taking cognizance for an offence under Section 471, it is essential that the offence must be alleged to have been committed "by a party to any proceeding in any court..... According to Mr. Jyoti Narayan, the appellant must be considered to be a party to the transfer applications filed by the persons concerned in the B. L. Cases, which transfer applications were pending before the District Magistrate. Allegations have been made against the appellant in the transfer applications and the District Magistrate has called for a report from the appellant in respect of those allegations. The Additional District Magistrate has inquired into the allegations made in the transfer applications and given a decision transferring the cases from the file of the appellant to another Magistrate. AR the above circumstances, according to the learned counsel, will make the appellant a party to the proceedings connected with the transfer applications, which were pending before the Additional District Magistrate.

We have no hesitation to reject the contention of the learned counsel. Merely on the basis that the applications for transfer of certain cases pending before the appellant had been filed making allegation against the appellant will not make the appellant a party to those proceedings. He was functioning as a Magistrate and he has no personal interest in the outcome of the transfer applications. No doubt when the allegations of prejudice have been made against the appellant, it was his duty as a subordinate court and as an officer against whom allegations have been made to offer explanations in his report sent to by his superior or appellate authority, namely, the Additional District Magistrate. Therefore, Clause (c) of Section 195 (1) again does not bar the jurisdiction of the Magistrate to take cognizance of the offence under Section 471 of the Penal Code.

The further contention of Mr. Jyoti Narayan is based upon Section 476 of the Code. According to him the Additional District Magistrate has inquired into the applications filed by the counsel for the parties in the B. L. Cases filed against the appellant under Sections 466 and 471 I. P. C. The Additional District Magistrate inquired into the matter

behind the back of the appellant and after examining the witnesses passed an order on December 16, 1963 holding the appellant guilty of the said offences and

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forwarded a copy of the order to the State Government to sanction criminal and administrative action being taken against the appellant. The complaint filed in this case suffers from an infirmity inasmuch as it has not been filed by the Additional District Magistrate. We are not inclined to accept this contention either. We have already held that Section 195 (1) (b) or (c) of the Code does not apply to the case of the appellant. If that is so, that finding is enough to hold that Section 476 of the Code does not come into picture. Even otherwise, Section 476 of the Code will not apply as we will presently show. The records, no doubt, show that the counsel appearing for the parties in the B. L. Cases in connection with the transfer applications filed by them, filed an application before the Additional District Magistrate that action should be taken by him to file a complaint against the appellant for offences under Sections 467 and 471 of the Penal Code. It is also seen that the Additional District Magistrate has examined certain witnesses and ultimately passed an order on December 16, 1963. This order is a combined order dealing with transfer applications as well as the application filed by the lawyer for filing a complaint against the appellant. The Additional District Magistrate has held that prima facie the appellant must be considered to be guilty of having committed forgery and interpolations in the order sheets and therefore there is a good ground for transferring the B. L. Cases from his file to another magistrate. Accordingly, the Additional District Magistrate transferred the B. L. Cases to the file of the Sub-Divisional Magistrate, Patna Sadar. He had directed that a copy of the order be sent to the State Government for considering the question of giving sanction to take criminal and administrative action against the appellant. It may appear prima facie that the Additional District Magistrate was conducting a preliminary inquiry under Section 476 (1) of the Code. But a perusal of the order passed by the Additional District Magistrate will clearly show that all the findings recorded against the appellant were only reasons for transferring the B. L. Cases from the file of the appellant. He himself has not taken any action as contemplated under Section 476 of the Code. He was merely dealing with the transfer application and incidentally also with the applications filed by the lawyer. It was on the basis of this order that the State Government ultimately gave the sanction. The validity of the sanction given by the State Government as such is not challenged. The contention is that over and above the sanction given by the State Government, the provisions of Section 195 (1) (b) and (c) and Section 476 of the Code should have been complied with. We have already held that the bar of either clause (b) or (c) to Section 195 (1) does not apply. From our discussion of the nature of the inquiry conducted by the Additional District Magistrate on the complaint filed by the lawyer appearing on behalf of the parties of the B. L. Cases, it follows that Section 476 of the Code also

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has no application. In our opinion, none of the provisions relied on by the learned counsel operated as a bar to the jurisdiction of the Magistrate taking cognizance of the complaint in this case.

We have already referred to the fact that in the complaint the offence under Section 465 of the Penal Code was also

included. Section 463 of the Penal Code defines forgery and Section 465 deals with punishment for the said offence. Section 463 of the Penal Code is, no doubt, taken in by Clause (c) of Section 195 (1) of the Code. Even on the basis that Section 465 of the Penal Code will also be covered by Clause (c) as the offence under Section 463 is dealt with therein, nevertheless, Clause (c) will not operate as a bar to the jurisdiction of the Magistrate in taking cognizance of the said offence as the offence is not alleged to have been committed "by a party to any proceeding in any court..... We have already discussed this aspect in the earlier part of our judgement. We have also referred to the fact that the appellant has been committed only for the offences under Sections 167, 466 and 471 of the Penal Code. Section 465 of the Penal Code is not the subject of the committal order. Any how we have discussed about that section also as the appellant was contesting the jurisdiction of the Magistrate to take cognizance on the basis of Section 195 (1) (b) and (c).

Mr. Jyoti Narayan referred to the contempt proceedings that may be started against the appellant. The question whether action for contempt can or cannot be taken against the appellant does not at all arise for consideration at present.

Finally, Mr. Jyoti Narayan contended that the complaint does not disclose any offence and therefore the committal proceedings should be quashed. This contention is absolutely devoid of any merit. Whether the appellant is ultimately found to be guilty or not is a different point. The allegations in the complaint do disclose that the offences alleged against the appellant require investigation. Therefore, it cannot be said that no offence is disclosed in the complaint. This contention is also rejected.

Before concluding, it must be emphasised that any observations made in this judgment agreeing with the views expressed by the High Court are only for the purpose of dealing with the contentions raised on behalf of the appellant based on the provisions of Section 195 (1) (b) and (c) and Section 476 of the Code.

In the result the order of the High Court is confirmed and this appeal dismissed.

K.B.N.

Appeal dismissed.

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Appeal dismissed.

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