PETITIONER:
SACHIDA NAND SINGH AND ANR.

Vs.

RESPONDENT:
STATE OF BIHAR AND ANR.

DATE OF JUDGMENT: 03/02/1998

BENCH:
K.T. THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas, J.

Can prosecution be maintained in respect of a forged document produced in court unless complaint has been filed by the court concerned in that behalf? In other words, the question involved in this appeal is, whether the prohibition contained in Section 1951(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short 'the Code) would apply to such prosecution. The aforesaid question, ticklish it may appear to some extent, seemed to have received a quietus from this Court with the pronouncement in Patel Laliibhai Somabha vs. The State of Gujarat (AIR 1971 SC 1935) while considering the scope of its corresponding provision in the old Code of Criminal Procedure 1989. But a subsequent decision of this Court in Gopalakrishna Menon & anr. vs. D.Raja Reddy & anr., [1983(4)SCC 240] which struck a different note thereon seemed to have revived the issue and kept it buoying up in the legal stream. That question, in this appeal, has arisen from the following facts:

A complaint was filed by second respondent (Lal Narain Singh) in the court of a Chief Judicial Magistrate, alleging offences, inter alia, under Sections 468, 469 and 471 of the Indian Penal Code on the facts that appellants had forged a document (certified copy of Jamabandi - Rent Roll) and produced it in a court of Executive Magistrate which was then dealing with proceedings under Section 145 of the Code. Chief Judicial Magistrate forwarded the complaint to the police as provided in Section 156(3) of the Code. Police registered an FIR on the basis of the said complaint and after investigation laid a charge-sheet against appellants for those offences. The Chief Judicial Magistrate took cognizance of those offences and issued process to the accused. Appellants then moved Patna High Court under Section 482 of the Code for quashing the prosecution on the main ground that the Magistrate could not have taken cognizance of the said offences in view of the bar contained in Section 195(1)(b)(ii) of the Code.

Before the High Court, appellants sited the decision of the Court in Gopala Krishna Menon (supra) b ut a single judge of the High Court dismissed the said petition filed

under Section 482 b y relying on a later decision of this Court in Mahadev Bapuji Mahajan and anr. vs. State of Maharashtra (AIR 1994 SC 1549). Appellants therefore, filed this appeal by special leave.

Shri K.B. Sinha, learned senior counsel contended that though the decision in Patel Laljibhai Somabhai vs. The State of Gujarat (supra) was rendered by a three judge Bench of this Court it is no longer relevant as the said decision was rendered under the corresponding provision of the old Code which has a subtle difference from the new provision in Section 195(1)(b)(ii) of the Code and that difference makes all the change. According to the learned senior counsel, the ratio laid down by this Court in Gopalakrishna Menon would hold the field since that decision was rendered under the new Code.

Shri B.B.Singh, learned counsel for the first respondent (State of Bihar), on the other hand, argued that the slight change made in Section 195(1)(b)(ii) of the Code vis-a-vis the corresponding provision in the old Code was not for deviating from the legal position settled b y this Court in Patel Laljibhai Somabhai (supra). Learned counsel has highlighted the consequences of adopting a wider construction as to the scope of Section 195(1)(b)(ii) of the Code. For deciding the issue it is appropriate to extract here the material portion of the said clause here:

We Court shall take cognizance-

Even if the clause is capable of two interpretation we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the Court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise [Abdul Waheed Khan vs. Bhawani (1996 (3) SCR 617].

That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a b ar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the court. Any such construction is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected an the forgery is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long drawn litigation which was either instituted by himself or some body else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of pendency of that litigation. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted. Quoting from Gill vs. Donald Humberstone & Co. Ltd. (1963-1-W.L.R.929) Maxwell has stated in his treaties (Interpretation of Statutes, 12th Edn. Page 105) that "if the language is capable of more than one interpretation we ought to discard the more natural meaning if it leads to unreasonable result and adopt that interpretation which leads to a reasonable practicable result". The clause which we are now considering contains enough indication to show that the more natural meaning is that which leans in favour of a strict construction, and hence the aforesaid

observation is eminently applicable here.

As Section 340(1) of the Code has an inter-link with Section 195(1)(b) it is necessary to refer to that sub-section in the present context. The said sub-section reads as follows:

> "When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section(1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-
>
> (a) record a finding to that effect;
>
> (b) make a complaint thereof in writing;
>
> (c) send it to a Magistrate of the first class having jurisdiction;
>
> (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
>
> (e) bind over any person to appear and give evidence before such Magistrate."

The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195(1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. It h as to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the Chapter appellates. So the offences envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.

The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice ha been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as on affecting administration of justice merely because that document later reached the Court records.

The three Judges Bench of this Court in Patel Laljibhai Somabhai’s case (supra) has interpreted the corresponding

section in the old Code, [Section 195(1)(c)] in almost the same manner as indicated above. It is advantageous in this context to extract clause (c) of Section 195(1) of the old Code.

> "No Court shall take cognizance-
> of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Coda, when each 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 complain in writing of such Court, or of some other Court to which such Court is subordinate."
> (underline supplied)

The issue involved in Patel Laljibhai Somabhai's case related to the applicability of that sub-section to a case where forged document was produced in a suit by a party thereto, and subsequently a prosecution was launched against him for offences under Section 467 and 471 of IPC through a private complain. The ratio of the decision therein is the following:

> "The offences about which the court alone, to the exclusion of the aggrieve 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 reasonable close nexus with the proceedings in the 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(c) only to hose cases in which the offences specified therein committed by a party t the proceeding in the character as such party."

After stating so their Lordships proceeded to observe that the legislature could not have intended to extend the prohibition in the sub-section to offences committed by a party to the proceedings prior to his becoming such a party. According to their Lordships, any construction to the contrary would unreasonably restrict the right of a person which was recognized in Section 190 of the Code.

The aforesaid legal position was followed by this Court in Raghunath & ors. vs. State of U.P & ors, 1973(1)SCC 564. Mohan Lal & ors. vs. The State of Rajasthan & ors., 1974(3) SCC 628, and Legal Remembrance of Govt, of West Bengal vs. Haridas Mundra, 1976(2) SCR 933.

But in Gopalakrishna Menon & ors. vs. D. Raja Reddy & ors. (supra) Desai. J.and R.N.Misra, J.(as he than was) h

ave found that a persecution initiated on the basis of a private complaint, in the absence of any complaint from the appropriate civil court (before which the alleged forged receipt was produced) was whether offences under section 461 and 471 of IPC are also offences described in Section 463 of IPC falling within the ambit of Section 195(1)(b)(ii) of the Code.

Of course in the end of that decision it was mentioned that prosecution on the basis of a private complaint, in the absence of a complaint from appropriate civil court, is not sustainable. Learned Judge made reference to the decisions in Patel Laljibhai Somabhai (cited supra) and Goswami vs. High Court of M.P., 1979(1) SCC 373, and observed that the ratio in those decisions support the view taken b y them. The forgery alleged in Goswami's case took place during the period when the document in question was in the custody of the court and in such a case t he bar under Section 195(1)(b)(ii) would certainly apply. But, with great respect, we are unable to agree that the ratio in Laljibhai Somabhai would support the conclusion reached in Gopalakrishna Menon's case (supra).

Shri K.B. Sinha learned senor counsel contended that the position which held the field pursuant to Patel Laljibhai Somabhai's case decision has since been changed with the enactment of the new Code because of absence of the words ("by a party to any proceeding in an y court") in Section 195(1)(b)(ii) of the Code. On the other hand learned counsel for the respondents contended that the only object for deletion of those words was to advance the protection of the section to other persons as well who might not have been parties to the litigation.

A scrutiny of the sub clause in juxtaposition with the corresponding provision in old Code dissuades us from attaching any significance to the deletion of the words ("by a party to any proceeding in any court") except to the extent that the deletion was intended to stretch the advantage to non-parties to the proceedings as well.

The Law Commission in its 41st Report has observed in paragraph 15.93 as follows:

> "15.39 The purpose of the section is to b ar private prosecutions where the course of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige. On principle there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of S. 195."

The above reasons of the Law Commission which eventually led to the parliamentary exercise in deleting the words referred to earlier would unmistakably point to the legislative object in doing so.

The same issue came up before a Full Bench of the Punjab and Haryana High Court, particularly in the light of change made in Section 195(1)(b)(ii) of the Code vis-a-vis the corresponding provision in the old Code. In Harbans Singh and others vs. State of Punjab - [AIR 1987 Punjab & Haryana 19], the Full Bench observed that deletion of those words would not help to take a wider view as the restrictive view is more in consonance with the scheme of the Code. We have notice that Karnataka High Court in Govindaraju vs. State of Karnataka [1995 Crl.L.J.1491] and the Bombay High Court in Alka Bhagwant Jadhav vs. State of Maharashtra [ILR 1986 (Bombay) 64] have also adopted the same view.

The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to case where forgery of the document was committed before the document was produced in a Court. Accordingly we dismiss this appeal.