CHAPTER 8

Cases Relating to Offences

Affecting the Administration of Justice and Contempt of Court

Part A
OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

1. Only Court or public servant can file complaint—Under Section 195 of the Code of Criminal Procedure, no Court can take cognizance of the offences mentioned in that section, except on the complaint in writing of the public servants or Courts mentioned in the section. The institution of proceedings does not now depend on the discretion of a private individual as was the state of law before the amendment of this section by Act XVIII of 1923.

2. Successor of an officer before whom offence was committed can lodge complaint—Section 476 and 479A [Sec. 340, 345 of new Code] are supplementary of Section 195. The Civil, Revenue or Criminal Court can take action either *suo motu* or on application. The power to make a complaint is conferred on the Court and not on the particular officer who presides over the Court. Consequently the successor of a Magistrate or Judge is competent to direct prosecution in respect of an offence committed before his predecessor *[vide* I.L.R. 4 Lahore 58 and Section 559 (Sections 48 and 35 of new Code) of the Code].

COMMENTS

Mr. Malan, Sessions Judge of Jhelum, on the 21st of June 1922, directed, under Section 476, Criminal Procedure Code, the prosecution of the petitioner K. M. for an offence under Section 193 of the Penal Code. It was contended that the alleged false evidence having been given before his predecessor, Mr. Malan had no jurisdiction to direct the prosecution under section 476 of the Code of Criminal Procedure, also that the order was bad, having been passed 3 months after the conclusion of the trial by the Additional Sessions Judge.

Held, that the word "Court" in section 476, Criminal Procedure Code, includes the successor of a Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceedings. *Khan Muhammad vs. The Crown,* (1923) I.L.R. IV Lah. 58. (*Bahadur vs. Eradatullah Mailiok,* (1910) I.L.R. 37 Cal. 642 (F. B.), *In the matter of the petition of Nawal Singh,* (1912) I.L.R. 34 All. 393, *In re Lakshmidas Lalji,* (1907) I.L.R. 32 Bom. 184, and *Runga Ayyar vs. Emperor,* (1905) I.L.R. 29 Mad. 331, followed.) (*Crown vs. Mst. Dauli,* 6 P. R. (Cr.) 1909, *Begu Singh vs. Emperor,* (1907) I.L.R. 34 Cal. 551 (F. B.), and *Kartik Ram vs. Emperor,* (1907) I.L.R. 35 Cal. 114, dissented from.)

[1]**[3. Expediency and interests of justice—the main consideration—**The main point which the Court has to consider in initiating proceedings under Section 340 of the Code is whether it is expedient in the interests of justice that an inquiry should be made and a complaint filed. The mere fact that there is reason to believe that an offence has been committed is by itself not sufficient to justify a prosecution. The objective is to prevent abuse of process of Court by use of perjury. The Court is empowered to hold a preliminary inquiry but it is not peremptory. Even without a preliminary inquiry the Court can form an opinion when it appears that an offence has been committed in relation to a proceeding in that Court. Sub-section (1) of Section 340 does not contemplate that the Court should give a finding whether any particular person is guilty or not. In fact no expression on the guilt or innocence of person should be made by the Court while passing the order under Section 340 of the Code. The purpose of inquiry, even if the Court ought to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed. It is not mandatory that person concerned should be called upon to give any explanation before ordering his prosecution. [Ref.: (1) **M.S. Shriff and anr. V. State of Madras and ors., AIR 1954 SC 397** and (2) **Pritish V. State of**

[1] Rule 3 substituted vide Notification No. 127/Rules/DHC dated 14.3.2011

Maharashtra, AIR 2002 SC 236].

COMMENTS

The only relevant consideration is whether "it is expedient in the interests of justice" that an enquiry should be made and a complaint filed. That involves a careful balancing of many factors. Where the lower Court has scrutinised the evidence minutely and disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is a matter which requires investigation in a criminal Court and that it is expedient in the interests of justice to have it enquired into, there is no reasons for interfering with the lower Court's discretion.

The Court in passing an order under Section 476 should not express any opinion on the guilt or innocence of the accused. *M. S. Sheriff and another, vs. State of Madras, and others,* AIR 1954 SC 397 : 1954 SCR 1144.

4. [2][Deleted]

5. Gross cases **to be brought to book**—The offences of giving and fabricating false evidence are unfortunately very common in the Courts and it may not always be possible to prosecute every person who is guilty of these offences. It is, however, expedient in the interests of justice that all gross or serious cases of such offences are properly taken notice of and brought to book. The 'Judges consider that the law against perjury and allied offences should be fully vindicated against all persons who are convicted and Magistrates should impose deterrent sentences when convictions are obtained.

6. Special care to be taken in recording evidence where a witness appears to be giving false evidence. Contradictory statements : and liability of being charged—When a witness appears to be giving false evidence and there is possibility of his being prosecuted, special care should be taken in recording the evidence in a precise and clear manner reading it over to the witness and bringing it in conformity with what he declares to be the truth. For, ambiguities in the statement often furnish loopholes for plausible explanations and result in failure of justice. It should be noted that when contradictory statements are made before different Courts and it is difficult to decide which of the two statements was false, the person making such statements can be charged in the alternative *[Vide* Section 236, Criminal Procedure Code [See Section 221(1) of new Code), illustration (b)].

7. Complaint must set forth all material facts. No examination of complainant—As stated already, Courts are now required to file a regular complaint when a prosecution is ordered in respect of an offence specified in Section 195, Section 487 of the Code [now see Section 352 of new Code precludes the Court from taking cognizance of the offences itself. As in the case of a complaint by a private individual, the complaint must set forth all the material facts constituting the alleged offences. Section 200 of the Code dispenses with the examination of the presiding officer of the Court making the complaint in such cases.

8. complaint can be lodged by the Court or by appellate Court—Section 195 provides that when any offence of the kind mentioned therein is committed in or in relation to proceedings in a Court, cognizance of the offence can be taken either on the complaint of that Court or some other Court to which such Court is subordinate. It is laid down in sub-section (3) of that section that for the purposes of the Section a Court is to be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such Court and in the cases of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court of original

[2]. Rule 4 deleted vide Notification No.261/Rules/DHC dated 18.7.2012

jurisdiction. It is further provided that where appeals lie to more than one Court, the appellate Court of inferior jurisdiction is the Court to which the Court making the complaint is to be deemed to be subordinate for the purposes of the section. As a result, a Subordinate Judge from whose decrees appeals lie to the Senior Sub-Judge as well as the District Judge must be deemed to be subordinate to the former for the purposes of Section 195 (cf. I.L.R. 2 Lahore 57). Similarly a Magistrate empowered under Section 30 of the Code from [no parallel Section in new Code] from whose decisions appeals lie to the Sessions Court as well as the High Court, would be deemed to be subordinate to the Sessions Court.

It may however, be pointed out that in view of the new Section 479-A [no parallel provision in new Code] the provisions of law mentioned above have ceased to be applicable to cases of perjury and fabrication of false evidence which may be proceeded against only under the new section.

9. Appeal when Court files or refuses to file a complaint—Section 476-B [now see Section 341(1) of new Code] provides an appeal to the aggrieved party when the Court files or refuses to file a complaint under Section 476 [now see Sections 340 and 343 of new Code]. Section 479-A, however, provides that there shall be no appeal from a finding recorded and complaint made under sub-section (1) of that Section and the provisions of the later Section would override the provisions of Sections 476, 476-A, 476-B [see Sections 340, 343 of new Code] 478 and 479 in cases of giving and fabricating false evidence mentioned in Section 479-A [no parallel provision in new Code].

10. Complaint of offence committed in course of commitment proceedings—When an offence is discovered or is alleged or suspected to have been committed in the course of commitment proceedings the Committing Magistrate should leave the matter in the hands of the Sessions Judge or should at least refrain from taking any steps until the case is decided by the Court of Sessions.

11. Prosecution of Commissioner appointed by Court—When any person, who is a Commissioner, appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner, no Court shall take cognizance of such offence except with the previous sanction of the Court which appointed him as Commissioner. [Section 197-A, (of old Code) deemed to have been inserted in the Code by Punjab Act No. XXVIII of 1949].

Part B
CONTEMPTS OF COURT

1. Court can try the offence itself or send the case to another Court. Appeal from conviction—"Contempt of Court" is not defined either in the Indian Penal Code or in the Criminal Procedure Code. Section 480 of the latter Code, however, deals with certain offences under Sections 175, 178, 179, 180 and 228 of the Indian Penal Code, which are in the nature of 'Contempt of Court' when such offences are committed in view and presence of the Court. The Court has the power to try such offences itself, but the punishment is limited to fine up to two hundred rupees or simple imprisonment in default of payment up to one month. The procedure laid down in Section 481 of the Code [Sec. 345 of new Code] should be very carefully followed.

If the Court considers that the offender should receive a higher penalty, it has discretion to send the case to another Magistrate *(vide* Section 482). An appeal lies in every case of conviction for contempt to the Court which appeals from the decrees or orders of the convicting Court ordinarily lie. In the case of a conviction by a Court of Small Causes an appeal lies to the Sessions Court.

2. Cases tried by Magisterial Courts should be sent to District Magistrates for examination—Every case in which a person is punished summarily for contempt of Court by an officer exercising less than full magisterial powers should be sent, on the completion of the proceedings in which the contempt occurred, to the District Magistrate for inspection. District Magistrates should carefully consider the cases thus submitted to them, and make such comments thereon as appear called for, or if necessary, report the case for the consideration of the High Court on the revision side.

3. Contempt by ignorant people—It must be distinctly understood that it is not intended do lay down that the power given to Courts by the Code of Criminal Procedure to punish contempts summarily is never to be resorted to. It is the duty of every Court to maintain the order and dignity of its proceedings, and some times this can only be effected by the punishment of the offender. In this connection, however, it is pointed out that a distinction may well be drawn between a disrespect committed by an ignorant villager, who hardly understands the impropriety of his conduct and disrespectful behaviour on the part of a person higher up in the scale of society. In the case of an ignorant rustic, a Court may often be content to pass over without punishment an act which would properly call for punishment if committed by a person of higher education and fuller knowledge of what is due to the dignity of a Court of Justice.

4. High Court powers in respect of Subordinate Courts—No Court except the High Court can take cognizance of "Contempts out of Court," such as for example comments in news papers on pending cases, etc. Under Section 3 of the Contempt of Courts Act, 1952 (XXXII of 1952), the High Court has and exercises the same jurisdiction, powers and authority in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself.

The High Court cannot however take cognizance of contempts alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

5. Defamations of public servants—Complaints for defamation of public servants in respect of their conduct in the discharge of public functions can also be made under Section 198-B of the Code of Criminal Procedure [*see* 199 of 237 and new Code] as inserted by Act No. 26 of 1955. It may, however, be pointed out that if the accusation by the public servant is found by the Court to be false and frivolous or vexatious, the public servant can be ordered by the Court to pay compensation to the accused, up to an amount of one thousand rupees.

6. Non-attendance of witnesses—Section 485-A [see Section 350 of new Code] provides a summary procedure for punishing a witness for non-attendance in obedience to a summons issued for his appearance before a Criminal Court. If the Court before whom the witness was to appear is satisfied that it is expedient, in the interests of justice, to try the witness summarily, the Court may take cognizance of the offence and after giving the witness an opportunity of showing cause why he should not be punished, sentence him to fine not exceeding one hundred rupees. The Court should, so far as practicable, follow the procedure prescribed for summary trials in cases in which an appeal lies.