DR. S. DUTT

v.

STATE OF UTTAR PRADESH

August 18, 1965

[K. N. WANCHOO, M. HIDAYATULLAH AND J. C. SHAH, JJ.]

Code of Criminal Procedure (Act 5 of 1898), s. 195—Sanction of Court for prosecution for offences committed during judicial proceedings—Court refusing sanction in respect of alleged offence under s. 193 I.P.C.—Prosecution on same facts for offences under s. 465 and s. 471 I.P.C. where no sanction required—Whether proper.

Indian Penal Code (Act 45 of 1860), ss. 193, 196 and 471—Ingredients of—Meaning of 'dishonestly', 'fraudulently' and 'corrupt'.

The appellant was examined as a forensic expert in a sessions trial. He claimed to hold a diploma in criminology which he produced before the Sessions Judge on being asked to do so. On the basis of the appellant's testimony the accused were acquitted. On the allegation that the diploma produced by the appellant was a forged one the prosecution applied to the Sessions Judge under s. 195 of the Code of Criminal Procedure for prosecution of the appellant under s. 193 of the Indian Penal Code. The application was rejected by the Sessions Judge. Subsequently on a report being lodged wih the police the appellant was charge-sheeted for offences under ss. 465 and 471 of the Penal Code. The appellant objected at his trial for these offences that he could not be legally prosecuted as the facts disclosed offences under ss. 193 and 196 of the Indian Penal Code and not under ss. 465 and 471 with which he was charged. He alleged that the prosecution was attempting to evade the provisions of s. 195 of the Code of Criminal Procedure. The trial court having overruled the appellant's objections, he went in revision to the High Court and having failed there as well, he appealed to this Court by special leave.

HELD : (i) The evidence did not disclose any offences under ss. 465 and 471, but rather offences under s. 193 and 196 I.P.C. The distinction between sections 465 and 471 on the one hand and 193 and 196 on the other is that the gist of the offence in the first group is the making of a false document and the gist of the offences in the second group is the procuring of false circumstances or the making of a document containing a false statement so that a judicial officer may form a wrong opinion in a judicial proceeding on the faith of the false evidence. Another important difference is that whereas s. 471 requires a user to be either *fraudulent, dishonest or both,* s. 196 is satisfied if the user is *corrupt.* it was not alleged that the appellant himself forged the diploma and therefore s. 465 was not attracted. For s. 471 it is necessary that the forged document is 'used' by the accused 'dishonestly' and 'fraudulently'. Even if production of the document at the behest of the court can amount to 'using' the document, it could not be said to have been used 'dishonestly' as the appellant did not intend to cause wrongful gain to himself or wrongful loss to another. Nor could he be said to have used it 'fraudulently' within the meaning of s. 25 of the Penal Code, that is to say, with "intent to defraud", inasmuch as his intention in producing the certificate was not to cause any one to act to his disadvantage, since he only complied with the order of the Court. [499 H—500 B; 503 B-E]

The prosecution of the appellant for offences under ss. 465/471 I.P.C. could not therefore be allowed to continue. [504 A-B] A

Assistant Sessions Judge North Arcot v. *Ramammal*, I.L.R. 36 Mad. 387, *Ma Ain Lon* v. *Ma On Nu*, A.I.R. [1925] Rangoon 191 and *Walham* v. *Director of Public Prosecutions*, [1961] A.C. 103 and *In re London and Globe Finance Corpn. Ltd.*, [1903] 1 Ch. 728, referred to.

(ii) If the appellant gave false evidence in court or if he fabricated false evidence the offence under s. 193 was clearly committed. Again when he used his diploma as genuine his conduct was 'corrupt' within the meaning of that word as used in s. 196. That section includes conduct which though neither fraudulent nor dishonest is otherwise blame-worthy or improper. [501 A-B; 500 H] B

Emperor v. *Rana Nana*, I.L.R. 46 Bom. 317 and *Bobkhranjan Gupta* v. *The King*, I.L.R. [1949] 2 Cal. 440, referred to.

The evidence thus disclosed that the appellant committed offences under ss. 193 and 196 of the Penal Code. For prosecution under these sections, the sanction of the Court in writing was necessary. In the lessor offences under ss. 465 and 471 no such sanction was necessary. It is obvious that the lesser offences were chosen to bypass the Sessions Judge who had earlier decided that the appellant should not be prosecuted for perjury. Such a device is not to be commended. [503 H] C

Nur-ul-Huda v. *State of West Bengal*, [1963] S.C.R. 836, re-affirmed. D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 90 of 1965.

Appeal by special leave from the judgment and order dated February 12, 1965 of the Allahabad High Court in Criminal Revision No. 260 of 1963. E

A. S. R. Chari, A. N. Sinha and *A. K. Nag*, for the appellant.

K. K. Jain and *O. P. Rana*, for the respondent.

The Judgment of the Court was delivered by

Hidayatullah, J. Dr. S. Dutt who appeals to this Court by special leave against the judgment and order of Mr. Justice Misra of the Allahabad High Court (Lucknow Bench) dated February 12, 1965 was examined as an expert witness by the defence in a Sessions trial (*State* v. *Matadin and Ors.*—S.T. No. 60 of 1957) in the Court of Additional Sessions Judge, Hardoi. Dr. Dutt claimed to hold a diploma from the Imperial College of Science and Technology, London to the effect that he had specialised in the subject of criminology. He was cross-examined *inter alia* about this claim by the District Government counsel who was assisted by one Mr. Shyam Narain, Deputy Superintendent, Police (C.I.D.) Lucknow. Mr. Shyam Narain earlier had deposed himself as an expert witness for the prosecution. Dr. Dutt's testimony ran counter to the testimony of Mr. Shyam Narain and the credentials of Dr. Dutt were challenged. The Judge asked Dr. Dutt to produce all his academic diplomas and certifi- F G H

A cates for his inspection. Dr. Dutt produced the aforesaid diploma and it was taken on file as Ex. P-71 together with a statement which was marked Ex. P-72. The Sessions Judge pronounced judgment on October 29, 1957 acquitting Matadin and the other accused. He passed strictures on the prosecution and did not accept the evidence of Mr. Shyam Narain. Government B did not appeal against the acquittal and that matter ended there.

On November 12, 1957 prosecution applied to the Session Judge under s. 195 of the Code of Criminal Procedure for the prosecution of Dr. Dutt under s. 193 of the Indian Penal Code. It was stated in the application that "the defence witness No. 3 C Dr. S. Dutt has committed forgery of certain diploma produced in this Hon'ble Court during the course of his evidence and he has used these forged documents as genuine". This application was rejected on November 12, 1957. Two days later Mr. Shyam Narain lodged a report at Police Station, Hardoi alleging that Dr. Dutt had committed an offence under s. 466/477 (subse- D quently changed to s. 465/471) of the Indian Penal Code in the Court of the Additional Sessions Judge, Hardoi while giving evidence in Sessions trial *State* v. *Matadin and others*. The first information report stated that the diploma of the Imperial College of Science and Technology, London and the statement produced by Dr. Dutt were forged and E that Dr. Dutt had "used them in the court with a bad motive, passing them as genuine". On October 26, 1958 a charge-sheet under s. 465/471, Indian Penal Code was filed against Dr. Dutt in the Court of the Judicial Officer III, Hardoi by the C.I.D. Police, Lucknow.

F The case went before the Additional District Magistrate (Judicial) Hardoi on transfer and at the commencement of the trial Dr. Dutt objected that he could not be legally prosecuted as the alleged facts disclosed an offence under s. 193, Indian Penal Code and a complaint in writing of the court was required under s. 195 of the Code of Criminal Procedure before cognizance G could be taken. Dr. Dutt also contended that ss. 465/471 did not apply to the alleged facts and that the prosecution was attempting to evade the provisions of s. 195 of the Code of Criminal Procedure. During arguments on his petition Dr. Dutt also claimed that s. 196 and not s. 471 of the Indian Penal Code applied to the facts of the case and that even that offence required H that the procedure of s. 195 should have been gone through. The prosecution, on the other hand, contended that Dr. Dutt was being prosecuted for forgery of the diploma and for using the said

forged document and, therefore, the offence fell within ss. 465/471 of the Indian Penal Code. The Additional District Magistrate (Judicial) rejected the contentions of Dr. Dutt and held that there was no bar to the trial under s. 465/471, Indian Penal Code. Dr. Dutt filed revisions against the order in the Court of Sessions and in the High Court but without success. The order of the High Court was pronounced on February 12, 1965 and the present appeal is against that order.

Section 195 of the Code of Criminal Procedure which brings in the question of jurisdiction in the case deals with prosecutions for contempt of lawful authority of public servants and provides *inter alia* that prosecutions for certain offences against public justice shall not be taken cognizance of except on the complaint in writing of a court before which the offence is committed or of some other court to which that court is subordinate. These offences are enumerated in the section and among them are ss. 193 to 196, 199 and 200 of the Indian Penal Code. Section 195 further provides that prosecution for any offence of forgery described in s. 463 or of using a forged document as genuine punishable under s. 471, s. 475 or s. 476 of the Indian Penal Code in respect of a document produced or given in evidence in a court by a party requires a complaint in writing of the court. The gist of the provision is that offences of forgery of a document as described in s. 463 I.P.C. and of using such forged documents, if produced or given in evidence by a person other than a party to a proceeding in a court, do not require a complaint in writing of the court concerned, but prosecution in respect of offences under ss. 193 to 196, 199 and 200 (among others) committed in a judicial proceeding by a person (whether a party or not) requires a complaint in writing of the court before which the offence is committed or of some other court to which such court is subordinate. It is this difference which has apparently induced the selection of ss. 465/471 rather than ss. 193/196 of the Indian Penal Code. The former do not require the complaint by the court but the latter do, and this is the main point of controversy before us also.

Mr. Chari for Dr. Dutt first draws attention to certain observations of this Court in *Basir-ul-Huq and Others* v. *The State of West Bengal* and *Nur-ul-Huda* v. *The State of West Bengal*(1), where it is observed that s. 195 of the Code of Criminal Procedure must not be evaded if the bar created by it stands in the way

(1) [1963] S.C.R. 836 at 842.

A of the prosecution. The observations of this Court are as follows :—

> "Though, in our judgment, section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included B within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the C public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, D or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in section 195, Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence cover- E ed by the provisions of section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it."

Mr. Chari concedes that s. 195(1) (c) of the Code of Criminal Procedure would not bar the present prosecution of Dr. Dutt if F the offence fell within s. 465/471 of the Indian Penal Code, because the procedure contemplates a complaint by the court only if the offence is committed by a party. His contention, however, is that the offence, if any, was not under s. 465 nor under s. 471, but one under s. 193 or 196, Indian Penal Code for which the procedure of s. 195 of the Code of Criminal Procedure was im- G perative. It is, therefore, necessary to examine the ambit of the provisions which are set in opposition by the parties.

Sections 465 and 471 occur in Chapter XVIII of the Indian Penal Code which deals with offences relating to documents and to Property Marks and consists of thirty-one sections. It is divided into three parts. We are not concerned with the last two H parts which deal with counterfeiting of Property and other Marks and currency-notes and Bank-notes. The first part deals *inter alia* with forgery, making of false documents and their use.

Sections 193 and 196 occur in Chapter XI which deals with false evidence and offences against public justice. Section 193 punishes the giving or fabricating of false evidence and section 196 punishes the using of evidence known to be false. Which of these two groups of sections applies here is the question; on that depends whether the court had jurisdiction to take cognizance of the case.

Section 463 of the Penal Code defines the offence of forgery in these words :—

> "463. Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 464 next defines the expression "makes any false document". It is not necessary to quote it here. It is divided into three clauses. The first clause embraces cases of *dishonest* and *fraudulent* making, signing, sealing and executing of a document or a part of document with the intention of causing it to be believed that it is made etc. by another person or by his authority. The second clause deals with cases of *dishonest* or *fraudulent* alteration of a document in a material part after its execution and the third with cases of causing dishonestly or *fraudulently* any person who is insane or drunk to execute or alter a document or by practising deceit on him.

It is not the case of the prosecution here that Dr. Dutt forged the diploma personally in any one of the three ways mentioned in the section but it is the case that the diploma was a forged and false document and he used it as genuine. Section 465 punishes the offence of forgery with imprisonment which may extend to two years or with fine, or with both. Section 471 punishes the using of a forged document as genuine. It provides :

> "471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document".

It is contended that Dr. Dutt fraudulently or dishonestly used the diploma as genuine which he knew or had reason to believe to be a forged document and thus committed an offence under ss. 465/471, Indian Penal Code.

A Before we analyse these sections in relation to Dr. Dutt's conduct we may refer to the other group of sections on which Mr. Chari relies. Chapter XI, where they occur, is headed "Of False Evidence and Offences against Public Justice". Section 191 defines the offence of giving false evidence which is known as perjury in English Law. It consists, speaking generally, of the B making, while on oath, of a statement which is known to be false or believed to be false or not believed to be true. In this sense Dr. Dutt, when he claimed to hold a diploma, if he did not, may be said to have given false evidence. Section 192 then defines compendiously the offence of fabricating false evidence. The portion which Mr. Chari claims applies here may be set out :

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> "Whoever causes any circumstance to exist....or makes any document containing a false statement intending that such circumstance.....or false statement may appear in evidence in a judicial proceeding .....and that such circumstance.....or false
> D statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence."

The offence of intentionally giving false evidence described in
E s. 191 or of fabricating false evidence described in s. 192 is punishable under s. 193 with imprisonment which may extend to seven years and fine, if the evidence is given or fabricated to be used in any stage of judicial proceeding. Section 196 next provides :

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> "196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated shall be punished in the same manner as if he gave or fabricated false evidece."

It is, of course, not necessary to mention again that for the offences under ss. 193 and 196, Indian Penal Code there could
G be no prosecution without a complaint in writing of the court concerned. An attempt was, in fact, made to have Dr. Dutt prosecuted under s. 193 but the court declined to file a complaint.

The broad distinction between offences under the two groups is this. Section 465 deals with the offence of forgery by the making of a false document and s. 471 with the offence of using
H forged document *dishonestly* or *fraudulently*. Section 193 deals with the giving or fabricating of false evidence and section 196 with corruptly using evidence known to be false. The gist of the

offence in the first group is the making of a false document and the gist of the offences in the second group is the procuring of false circumstances or the making of a document containing a false statement so that a judicial officer may form a wrong opinion in a judicial proceeding on the faith of the false evidence. Another important difference is that whereas s. 471 requires a user to be either *fraudulent, dishonest or both*, s. 196 is satisfied if the user is *corrupt*. The Penal Code defines the expressions fraudulently and dishonestly but not the expression corrupt.

We shall now attempt to apply the two groups of offences contained in Chapter XI and Chapter XVIII, to the proved acts of Dr. Dutt. We shall begin with Chapter XI. The definition of the expression "fabricating false evidence" in s. 192 already quoted, quite clearly covers this case. If Dr Dutt fabricated the false diploma, he made a document containing a false statement intending that it may appear in evidence and so appearing in evidence may cause any person who is to form an opinion upon it to entertain an erroneous opinion touching on point material to the result of a judicial proceeding. Dr. Dutt, as alleged, was falsely posing as an expert and was deposing about matters which were material to the result of the trial. He had a document to support his claim should occasion arise. He produced the document, although asked to do so, intending that the presiding Judge may form an erroneous opinion about Dr. Dutt and the relevancy of his evidence. The case was thus covered by s. 192. When Dr. Dutt deposed, let us assume falsely about his training, he committed an offence under s. 193. Again, when Dr. Dutt used the diploma as genuine his conduct was *corrupt*, whether or not it was *dishonest* or *fraudulent*. The word "corrupt" does not necessarily include an element of bribe taking. It is used in a much larger sense as denoting conduct which is morally unsound or debased. The word "corrupt" has been judicially construed in several cases but we refer here to two cases only. In *Emperor* v. *Rona Nana*(1) Chief Justice Macleod considered the word to be of wider import than the words *fraudulently* or *dishonestly* and did not confine it to the taking of bribes or cases of bribery. In *Bibkhranian Gupta* v. *The King*,(2) Mr. Justice Sen dealt at length with this word. He was contrasting s. 196 with s. 471 and observed that the word corruptly was not synonymous with *dishonestly* or *fraudulently* but was much wider. According to him it even included conduct which was neither fraudulent nor dishonest if it was otherwise blameworthy or improper.

(1) I.L.R. 46 Bom. 317.

(2) I.L.R. [1949] 2 Cal. 440.

A It would thus be seen that the action of Dr. Dutt was covered by ss. 192 and 196 of the Penal Code. If Dr. Dutt gave false evidence in court or if he fabricated false evidence the offence under s. 193 was clearly committed. If he used fabricated evidence an offence under s. 196 was committed by him. These offences would have required a complaint in writing of the Ses-
B sions Judge before cognizance could be taken.

We may now consider whether the narrower offence of forgery of the diploma or of the user of the forged diploma as genuine was committed. If these offences were committed then prosecution for them could be launched without a complaint by
C the court concerned. It may be pointed out at once that it was not suggested before us that Dr. Dutt made a false document within the definition of the expression in s. 464 of the Indian Penal Code. In fact, there was no complaint that he committed the forgery himself. He was said to have used a false document as genuine *dishonestly* and *fraudulently*. The word dishonestly is
D defined by s. 24 of Penal Code. A person who does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. Dr. Dutt's conduct involved neither a gain to any person nor loss to another. He was asked to produce the diploma in court and he did. It is a matter of some doubt whether he can
E be said to have *used* the diploma because he did not voluntarily bring the diploma to court. There is authority to show that such a user is not contemplated by s. 471 of the Indian Penal Code [See *Assistant Sessions Judge North Arcot* v. *Ramammal*(1) and *Ma Ain Lon* v. *Ma On Nu*](2). Even if one were to hold that he did use the document as genuine his intention in producing it
F was to support his statement and not to cause a wrongful gain to himself or to cause a wrongful loss to another. This part of the section does not apply. The next question is whether his conduct can be said to be fraudulent. The word "fraudulently" is defined by s. 25 of the Penal Code. A person is said to do a thing
G fraudulently if he does that thing with *intent to defraud* but not otherwise. The last three words "but not otherwise" clearly indicate that the intent must be an "intent to defraud". This expression has given a great deal of trouble as the rulings show. It may be pointed out that in the Larceny Act of 1861 and in the Companies Act of 1862 in England the expression was "with
H intent to deceive or defraud", while in the Forgery Acts the words "with intent to defraud" alone were used. The reason was

(1) I.L.R. 36 Mad. 387. (2) A.I.R.[1925] Rangoon 191.

that documents were divided into two : public documents and private documents. In the case of public documents it was enough if the intention was merely to deceive but in the case of private documents such an intention was not considered sufficient but "an intent to defraud" was required. The distinction between the two expressions was made by Lord Buckley (then Buckley J) in a winding up case as follows :

> ".... To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit : it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action. (*In re London and Globe Finance Corp. Ltd* (1903) 1 *ch.* 728).

There has been much dispute in recent years as to what Lord Buckley meant by the words "deprived by deceit". These are apparently the key words. The rest is mere paraphrasing. Whether these words meant the causing of an economic loss to some person by means of deceit or merely the inducing of a person to act against his own interests has been much debated. The House of Lords in *Welbant* v. *Director of Public Prosecutions*(1) ruled that it is not necessary that there must be an intention to cause an economic loss. The decision of the House of Lords has been criticized by the editors of Kenny's Criminal Law and Russel on Crimes. In Criminal Law Review 1958 and 1960 other writers have not accepted the interpretation of Buckley J's words by the House of Lords, though there is some support in Modern Law Review, May 1960 and the Cambridge Law Journal 1960. We need not go into that question here, but it may be said that a mere acting to one's discomfort or discomfiture would not suffice. For the present it is sufficient to say that the words "with intent to defraud" in the section indicate not a bare intent to deceive but an intent to cause a person to act or omit to act, as a result of deception played upon him, to his disadvantage. This is the most extensive meaning that may be given to the expression "with intent to defraud" in our Penal Code and the words "but not otherwise" clearly show that the words 'intent

(1) [1961] A.C. 103.

A to defraud" are not synonymous with the words "intent to deceive" and require some action resulting in some disadvantage which but for the deception, the person deceived would have avoided.

In the light of the above discussion we shall now see how the conduct of Dr. Dutt fits in with s. 471. The words "dishonestly" B and "fraudulently" are used there. We have shown above that Dr. Dutt did not intend to cause wrongful gain to one person or wrongful loss to another person when he brought the diploma, whether forged or not, into court. He was ordered to do so. He may have intended to deceive the court, even as he intended that others should be deceived, into believing that he was a forensic C expert (which perhaps he was not) and that he held a diploma from a recognised institution. He did not act dishonestly. The next question is whether he acted fraudulently, that is to say, with intent to defraud. His intention was not to cause any one to act to his disadvantage because he did not bring the diploma voluntarily but under orders of the court. He did not, therefore, have D the intent to cause voluntarily, a course of conduct in any person to that person's disadvantage. In other words, though he might have intended a deception he did not intend defrauding. His conduct was perhaps corrupt in the larger sense for he intended that the Sessions Judge should form an erroneous opinion about him and his testimony, as he continued to claim the document E as genuine.

We are, therefore, satisfied that Dr. Dutt's conduct does not come within s. 471. On the other hand, it falls within s. 196 which casts its net wider in the interest of the purity of administration of justice. It may be noted that an offence under s. 196 F of the Penal Code is a far more serious offence than the offence under ss. 465/471. The former is punishable with imprisonment up to seven years and fine while the latter is punishable with imprisonment up to two years or with fine.

In this connection we may again recall the words of this Court G which were put in the forefront by Mr. Chari that it is not permissible for the prosecution to drop a serious charge and select one which does not require the procedure under s. 195 of the Code of Criminal Procedure. If the offence was under s. 196, Indian Penal Code, a complaint in writing by the court concerned was required. Before a complaint is made the court has H to consider whether it is expedient in the interests of justice to order a prosecution. In the lesser offence no such complaint by the court is necessary and it is obvious that the lesser offence was

chosen to bypass the Sessions Judge who had earlier decided that Dr. Dutt should not be prosecuted for perjury. Such a device is not to be commended. In our opinion, the offence in the present case did not fall within ss. 465/471, I.P.C. and the prosecution launched against Dr. Dutt cannot be allowed to go on. A

In the result the appeal succeeds and is allowed. B

Appeal allowed.