A IQBAL SINGH MARWAH

v

MEENAKSHI ETC.

MARCH 11, 2005

B [R.C. LAHOTI, CJ., B.N. AGRAWAL, H.K. SEMA, G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

Code of Criminal Procedure, 1973—Section 195(1)(b)(ii) : Cognizance of certain offences on complaint of Court—Bar contained in Section
C *195(1)(b)(ii)—Applicability and scope of—Held : The said Section would be applicable only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis—Offence committed should be of such type which directly*
D *affects the administration of justice—However, Court is not bound to make a complaint in this regard—Such a course will be adopted only if the interest of justice requires and not in every case.*

Interpretation of statutes—Headings **vis-a-vis** *Marginal Notes—Held : Language employed in a heading cannot be used to give a different effect to*
E *clear words of the Section where there cannot be any doubt as to their ordinary meaning—They are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments—They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them.*

F *Words and phrases—Expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court"—Connotation of—In the context of Section 195(1)(b)(ii) of Code of Criminal Procedure, 1973.*

G **In a probate proceedings, the appellant no. 1 filed a will allegedly executed by his deceased brother. Respondent contested the proceedings on the ground that the will was forged and moved criminal court for prosecution of appellants and their mother for forgery. The complaint was dismissed on the ground that Section 195(1)(b)(i) and (ii) CrPC**

H

operated as a bar for taking cognizance of the offences alleged. Respondent then filed revision before sessions judge who relying upon *Sachida Nand Singh* case* held that the bar contained in Section 195 (1)(b)(ii) Cr.P.C. would not apply where forgery of a document was committed before the said document was produced in Court. The revision petition was accordingly allowed and the matter was remanded back. The appellants unsuccessfully moved High Court for quashing of the order. Hence the present appeals.

Appellant contended that the purpose of Section 195 is to bar private prosecution where the cause of justice is sought to be perverted leaving it to the Court itself to uphold its dignity and prestige; that if a very restricted interpretation is given to Section 195(1)(b)(ii) Cr.P.C., as held in *Sachida Nand Singh* case*, the protection afforded by the provision will be virtually reduced to a vanishing point, defeating the very object of the enactment; that the provision does not completely bar the prosecution of a person who has committed an offence of the type described thereunder, but introduces a safeguard in the sense that he can be so prosecuted only on the complaint of the Court where the document has been produced or given in evidence or of some other Court to which that Court is subordinate.

Dismissing the appeals, the Court

HELD : *Sachida Nand Singh* case* has been correctly decided and the view taken therein is correct. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in *custodia legis.* [731-B-C]

Sachida Nand Singh v. *State of Bihar,* [1998] 2 SCC 493, affirmed.

Surjit Singh v. *Balbir Singh,* [1996] 3 SCC 533, referred to.

2. Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii). Clause (a) deals with offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences which relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public

A servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice. This being the scheme of two provisions or clauses of Section 195, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should B normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and C (b)(i) and consequently with the scheme of Section 195 Cr.P.C.

[718-H, 719-A, B, C-E]

3. Section 195(1) mandates a complaint in writing of the Court for taking cognizance of the offences enumerated in clauses (b) (i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. which occur in Chapter XXVI give D the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is—'Provisions As To Offences Affecting The Administration of Justice'. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the Section where there cannot be any doubt as to their E ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which F follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, G viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice. [719-F-H, 720-A-C]

H *Craies on Statute Law,* 7th Ed. Pages 207, 209, referred to.

4.1. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated by Section 195(1) Cr.P.C. is given in Section 340 Cr.P.C. and sub-section (1) and (2). [720-B-D]

4.2. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded. [726-D-H]

4.3. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. After preparing a forged document or committing an act of forgery, a person may manage to get a proceeding

A instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person B may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of society at large. [727-E-G]

Sachida Nand Singh v. *State of Bihar,* [1998] 2 SCC 493, affirmed.

4.4. Judicial notice can be taken of the fact that the Courts are C normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint D is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. [727-G-H; 728-A-B]

5. The section 195(1)(b)(ii) is not a penal provision but is part of a procedural law, namely, Code of Criminal Procedure which elaborately E gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for F the offence. [729-G-H; 730-A]

6. In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar G created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference. [731-D-E]

H *Emperor* v. *Kushal Pal Singh,* AIR (1931) All 443; *Patel Lalji Bhai*

Somabhai v. *The State of Gujarat,* [1971] 2 SCC 376; *Raghunath* v. *State of U.P.,* [1973] 1 SCC 564; *Mohan Lal* v. *State of Rajasthan* [1974] 3 SCC 628; *Legal Remembrancer, Govt. of West Bengal* v. *Haridas Mundra,* [1976] 1 SCC 555; *Mahadev Bapuji Mahajan* v. *State of Maharashtra,* [1994] 3 Supp SCC 748; *Gopalkrishna Menon* v *D. Raja Reddy,* [1983] 4 SCC 240; *Sanmukh Singh* v. *The King,* AIR (1950) Privy Council 31; *Sushil Kumar* v. *State of Haryana,* AIR (1988) SC 419; *Murlidhar Meghraj Loya* v. *State of Maharasthra,* AIR (1976) SC 1929; *Kisan Trimbak Kothula* v. *State of Maharashtra,* AIR (1977) SC 435; *Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal* v. *Abani Maity,* AIR (1979) SC 1029; *State of Maharashtra* v. *Natwarlal Damodardas Soni,* AIR (1980) SC 593; *Tolaram Relumal* v. *State of Bombay,* [1955] 1 SCR 158; *Lalita Jalan* v. *Bombay Gas Co.,* [2003] 6 SCC 107 and *M.S. Sheriff* v. *State of Madras,* AIR (1954) SC 397, referred to.

Sheffield City Council v. *Yorkshire Water Services Ltd.,* (1991) 1 WLR 58 and *S.J. Grange Ltd.* v. *Customs and Excise Commissioners,* [1979] 2 All ER 91, referred to.

Statutory Interpretation by Francis Bennion (Third ed.), referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 402 of 2005.

From the Judgment and Order dated 15.9.2000 of the Delhi High Court at Crl.M. No. 13 of 1999.

WITH

Crl.A. Nos. 904 and 1069-1070 of 1998.

Dr. A.M. Singhvi, T.L.V. Iyer, Y.P. Narula, Joy Basu, Vinod Kumar, Rahul Tyagi, Madhurendra Kumar, B.K. Satija, V. Krishnamurthy, P.R. Kovilan, V. Balachandaran, Gopalakrishnan, Abhay Kumar, Subramonium Prasad, Abhijeet Chatterjee, Subodh Pathak, Ms. Seema Bengani, Chanchal Kr. Ganguly, Raghuvendra, S. Srivastava, V. Senthil Kumar, V.J. Francis, P.I. Jose, Jenis V. Francis, Anupam Mishra, E.M.S. Anam, Shantha Kr. V. Mahale and Rajesh Mahale for the appearing parties.

The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. Leave granted in Special Leave Petition (Crl)

No. 4111 of 2000.

2. In view of conflict of opinion between two decisions of this Court each rendered by a bench of three learned Judges in *Surjit Singh* v. *Balbir Singh,* [1996] 3 SCC 533 and *Sachida Nand Singh* v. *State of Bihar,* [1998] 2 SCC 493, regarding interpretation of Section 195(1)(b)(ii) of Code of Criminal Procedure 1973 (for short 'Cr.P.C.'), this appeal has been placed before the present Bench.

3. The facts of the case may be noticed in brief. The appellant nos. 1 and 2 are real brothers of Mukhtar Singh Marwah, while respondent nos. 1 and 2 are his widow and son respectively. Mukhtar Singh Marwah died on 3.6.1993. The appellant no. 1 filed Probate Case No. 363 of 1993 in the Court of District Judge, Delhi, for being granted probate of the will allegedly executed by Mukhtar Singh Marwah on 20.1.1993. The petition was contested by the respondents on the ground that the will was forged. On their application the appellant no. 1 filed the original will in the Court of District Judge on 10.2.1994. Thereafter, the respondents moved an application under Section 340 Cr.P.C. requesting the Court to file a criminal complaint against appellant no. 1 as the will set up by him was forged. A reply to the said application was filed on 27.7.1994 but the application has not been disposed of so far. Thereafter, the respondents filed a criminal complaint in May 1996 in the Court of Chief Metropolitan Magistrate, New Delhi, for prosecution of the appellants and their mother Smt. Trilochan Kaur Marwah under Sections 192, 193, 463, 464, 465, 467, 469, 471, 499 and 500 IPC on the ground that the will of Mukhtar Singh Marwah set up by the appellants is a forged and fictitious document. It is stated in the complaint that though Mukhtar Singh Marwah was an educated person, but the will bears his thumb impression. He had accounts in Bank of Tokyo and Standard Chartered Bank which he used to operate by putting his signature. Under the will he had completely divested the respondents, who were his widow and son respectively and also a daughter who was spastic and had bequeathed his entire property to his mother and after her death to his brothers and sisters. The appellant no. 1 Iqbal Singh Marwah was appointed as the sole executor and trustee of the will. Before the learned Metropolitan Magistrate, the complainant examined six witnesses including two persons from the banks who brought the relevant records and deposed that Mukhtar Singh Marwah used to operate the accounts by putting his signature. The learned Metropolitan Magistrate held that as the question whether the will was a genuine document or a forged one, was an issue before the District Judge in the probate proceedings where the will had been

filed, Sections 195 (1)(b)(i) and (ii) Cr.P.C. operated as a bar for taking cognizance of the offences under Sections 192, 193, 463, 464, 471, 475 and 476 IPC. The complaint was accordingly dismissed by the order dated 2.5.1998. The respondents thereafter filed a criminal revision against the order of the learned Metropolitan Magistrate, before the Sessions Judge, who, relying upon *Sachida Nand Singh* v. *State of Bihar,* [1998] 2 SCC 493, held that the bar contained in Section 195 (1)(b)(ii) Cr.P.C. would not apply where forgery of a document was committed before the said document was produced in Court. The revision petition was accordingly allowed and the matter was remanded to the Court of Metropolitan Magistrate for proceeding in accordance with law. The appellants challenged the order passed by the learned Additional Sessions Judge by filing a petition under Section 482 Cr.P.C. before Delhi High Court, but the same was dismissed on 15.9.2000 following the law laid down in *Sachida Nand Singh.* Feeling aggrieved, the appellants have preferred the present appeal in this Court.

4. Sub-section (1) of Section 195 Cr.P.C., which according to the appellants, creates a bar in taking cognizance on the complaint filed by the respondents, reads as under :

> 195. *Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.* - (1) No Court shall take cognizance -
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> (a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
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> (ii) of any abetment of, or attempt to commit, such offence, or
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> (iii) of any criminal conspiracy to commit such offence,
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> except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate ;
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> (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

5. The principal controversy revolves round the interpretation of the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court" occurring in clause (b)(ii) of sub-section (1) of Section 195 Cr.P.C. The appellants place reliance on the following observations made in para 10 of the report in *Surjit Singh* v. *Balbir Singh* :

> "It would thus be clear that for taking cognizance of an offence, the document, the foundation of forgery, if produced before the court or given in evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal court is prohibited from taking cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the Court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offence covered thereunder."

to contend that once the document is produced or given in evidence in Court, the taking of cognizance on the basis of private complaint is completely barred.

In *Sachida Nand Singh* after analysis of the relevant provisions and noticing a number of earlier decisions (but not Surjit Singh), the Court recorded its conclusions in paragraphs 11, 12 and 23 which are being reproduced below :

"11. The scope of the preliminary enquiry envisaged in Section 340(1)

of the Code is to ascertain whether any offence affecting administration of justice has 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.

12. 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 one affecting administration of justice merely because that document later reached the court records.

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court."

6. On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.

7. Dr. A.M. Singhvi, learned senior counsel for the appellants, submitted that the purpose of Section 195 is to bar private prosecution where the cause of justice is sought to be perverted leaving it to the Court itself to uphold its dignity and prestige. If a very restricted interpretation is given to Section 195(1)(b)(ii) Cr.P.C., as held in *Sachida Nand Singh*, the protection afforded by the provision will be virtually reduced to a vanishing point, defeating the very object of the enactment. The provision, it is urged, does not completely bar the prosecution of a person who has committed an offence of the type

A described thereunder, but introduces a safeguard in the sense that he can be so prosecuted only on the complaint of the Court where the document has been produced or given in evidence or of some other Court to which that Court is subordinate. Learned counsel has also submitted that being a penal provision, giving a restricted meaning as held in *Sachida Nand Singh*, would not be proper as a person accused of having committed an offence would be B deprived of the protection given to him by the legislature. He has also submitted that on the aforesaid view there is a possibility of conflicting findings being recorded by the civil or revenue Court where the document has been produced or given in evidence and that recorded by the criminal Court on the basis of private complaint and therefore an effort should be C made to interpret the Section in the manner which avoids such a possibility.

8. Shri Y.P. Narula, learned counsel for the respondents has submitted that the language of the Section is clear and there being no ambiguity therein, the only possible manner in which it can be interpreted is that the complaint by a Court would be necessary when the offences enumerated in the Section D are committed at a time when the document has already been produced or given in evidence in Court i.e. when it is in the proceedings of the Court. The provision has to be strictly construed as it creates a bar on the power of the Court to take cognizance of an offence and any provision which ousts the jurisdiction of the Court, which it otherwise possesses, must be strictly E construed and cannot be given an enlarged meaning. Since the provision deprives a person who is a victim and is aggrieved by the offences described under Section 463 or punishable under Sections 471, 475 or 476 IPC to initiate a criminal prosecution by filing a complaint, his interest cannot be overlooked and therefore the provision should not be given an enlarged meaning, but only a restricted meaning should be given. Learned counsel has F also submitted that in certain situations where the forgery has been committed at any time prior to the production or giving in evidence of the document in Court, it may not at all be possible for such Court to effectively form an opinion as to whether it is expedient to file a complaint and that may facilitate the escape of a guilty person. Shri Narula has also submitted that in *Sachida Nand Singh*, the Court has reiterated and has adopted the same view which G has been taken in several earlier decisions of this Court, and only in *Surjit Singh* a discordant note has been struck which is not correct.

9. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which H have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1)

contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X of the IPC and the heading of the Chapter is—'Of Contempts Of The Lawful Authority Of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as - 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

10. Section 195(1) mandates a complaint in writing of the Court for taking cognizance of the offences enumerated in clauses (b) (i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is —'Provisions As To Offences Affecting The Administration Of Justice'. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the Section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as

explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which follow them than might be afforded by a mere preamble.(See Craies on Statute Law, 7th Ed. Pages 207, 209). The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

11. It will be useful to refer to some earlier decisions touching the controversy in dispute which were rendered on Section 195 of Code of Criminal Procedure 1908 (for short 'old Code'). Sub-section (1) (c) of Section 195 of Old Code read as under :

"Section 195

(1) No Court shall take cognizance -

(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"

It may be noticed that language used in Section 195(1)(b)(ii) Cr.P.C. is similar to the above provision except that the words "by a party to any proceeding in any Court" occurring therein have been omitted. We will advert to the effect of this omission later on.

12. A Full Bench of Allahabad High Court in *Emperor* v. *Kushal Pal Singh,* AIR [1931] All 443 considered the scope of the aforesaid provision and held, that clause (c) of Section 195 applies only to cases where an offence is committed by a party, as such, to a proceeding to any Court in respect of a document which has been produced or given in evidence in such proceeding. It was held that an offence which has already been committed by

a person who does not become a party till, say, 30 years after the commission of the offence, cannot be said to have been committed by a party within the meaning of clause (c). A three Judge Bench of this Court in *Patel Lalji Bhai Somabhai* v. *The State of Gujarat,* [1971] 2 SCC 376 after examination of the controversy in considerable detail observed that as a general rule the Courts consider it expedient in the interest of justice to start prosecutions as contemplated by Section 476 (of the old Code which now corresponds to Section 340 Cr.P.C.) 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 clause (b) [of the old Code corresponding to clause (b)(i) Cr.P.C.] because of the close nexus between the offence and the proceeding. In case of offences specified in clause (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 Court approved the view taken by Allahabad High Court in Emperor v. Kushal Pal Singh (supra) and held as under in para 7 of the report :

> "(i) The underlying purpose of enacting Section 195(1)(b) and (c) Section 476 seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous vexations or unsufficient 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 or the administration of public justice which is the direct and immediate object or the victim of these offences. 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 who might ultimately suffer can persuade the Civil Court to file complaint.
>
> (ii) the offences about which the court alone 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 proceeding 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

A party. It, therefore, appears to be more appropriate to adopt the strict construction of confirming the prohibition contained in Section 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in character as such party. 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 becoming such party.''.

The court clearly rejected any construction being placed on the provision by which a document forged before the commencement of the proceeding in which it may happen to be used in evidence later on, to come within the purview of Section 195, as that would unreasonably restrict the right to initiate prosecution possessed by a person and recognized by Section 190 Cr.P.C.

13. The aforesaid decision was considered in *Raghunath* v. *State of U.P.*, [1973] 1 SCC 564. Here, the accused had obtained sale deed of the property of a widow by setting up of an imposter and thereafter filed a mutation application before the Tehsildar The widow contested the mutation application on the ground that she had never executed the sale deed and thereafter filed a criminal complaint under Sections 465, 468 and 471 IPC in which the accused were convicted. In appeal, it was contended that the private complaint was barred by virtue of Section 195(1)(c) Cr.P.C. and the revenue court alone could have filed the complaint. The court repelled the aforesaid contention after relying upon the ratio of Patel Lalji Bhai v. State of Gujarat and the private complaint was held to be maintainable. In Mohan Lal v. State of Rajasthan 1974(3) SCC 628, the above noted two decisions were relied upon for holding that provisions of Section 195(1)(c) (old Code) would not be applicable where mutation proceedings were commenced after a will had been forged. In *Legal Remembrancer, Govt. of West Bengal* v. *Haridas Mundra,* [1976] 1 SCC 555 Bhagwati, J. (as His Lordship then was), speaking for a three Judge Bench observed that earlier there was divergence of opinion in various High Courts, but the same was set at rest by this Court in Patel Lalji Bhai Somabhai (supra) and approved the view taken therein that the words of Section 195(1)(c) clearly meant the offence alleged to have been committed by a party to the proceeding in his character as such party, i.e. after having become a party to the proceeding, and Sections 195(1)(c), 476 and 476-A (of the old Code) read together indicated beyond doubt that the legislature could not have intended to extend the prohibition contained in

Section 195(1)(c) to the offences mentioned in the said Section when committed by a party to a proceeding prior to his becoming such party. Similar view has been taken in *Mahadev Bapuji Mahajan* v. *State of Maharashtra,* [1994] 3 Supp. SCC 748 where the contention that the absence of a complaint by the revenue court was a bar to taking cognizance by the criminal court in respect of offences under Sections 446, 468, 471 read with Section 120-B IPC which were committed even before the start of the proceedings before the revenue court, was not accepted.

14. Dr. Singhvi, learned senior counsel for the appellants, in support of his contention has placed strong reliance on *Gopalkrishna Menon* v. *D. Raja Reddy,* [1983] 4 SCC 240 which is a decision rendered by a Bench of two learned Judges. In this case, the appellants filed a civil suit for refund of Rs. 20,000 which they claimed to have deposited with the first respondent and for recovery of certain amount. Along with the plaint the appellants produced a receipt for Rs. 20,000 in support of their claim. Thereafter the first respondent filed a criminal complaint against the appellants alleging forgery of his signature on the money receipt and thereby commission of offences punishable under Sections 467 and 471 IPC. The appellants moved the High Court for quashing of the proceedings on the ground that in absence of a complaint by the court, the prosecution was barred under Section 195(1)(b)(ii) Cr.P.C. The High Court dismissed the petition holding that Section 463 cannot be construed to include Section 467 IPC as well and, therefore, the Magistrate was competent to take cognizance on the complaint. This Court reversed the view taken by the High Court observing that as Section 463 defines the offence of forgery and Section 467 punishes forgery of a particular category, Section 195(1)(b)(ii) Cr.P.C. would be attracted and in the absence of a complaint by the Court the prosecution would not be maintainable. After briefly referring to Patel Lalji Bhai (supra), the Court observed that "not the conclusion but the ratio" of the said case supported the view taken by it. The judgment does not show that applicability of Section 195(1)(b)(ii) was examined with regard to the question as to whether the alleged forged receipt was prepared before or after commencement of the civil suit, nor any such principle has been laid down that the bar would operate even if the forgery was committed prior to commencement of the proceeding in the civil court.

15. The other case which is the sheet-anchor of the argument of learned counsel for the appellants is *Surjit Singh* v. *Balbir Singh,* [1996] 3 SCC 533. The facts as stated in paras 1 & 11 of the report show that a criminal complaint was filed by the respondent under Sections 420, 467, 468, 471 read with 120-

A B IPC alleging that the appellants had conspired and fabricated an agreement dated 26.7.1978 and had forged the signature of Smt. Dalip Kaur and on the basis thereof, they had made a claim to remain in possession of a house. The Magistrate took cognizance of the offence on 27.9.1983. The appellants thereafter filed a civil suit on 9.2.1984 wherein they produced the agreement. It may be noticed that the cognizance by the criminal Court had been taken B much before filing of the Civil Suit wherein the agreement had been filed. During the course of discussion, the court not only noticed *Gopalkrishna Menon* (supra), but also quoted extensively from *Patel Lalji Bhai* (supra). Reference was then made to *Sanmukh Singh* v. *The King,* AIR (1950) Privy Council 31 and *Sushil Kumar* v. *State of Haryana,* AIR (1988) SC 419 C wherein it has been held that the bar of Section 195 would not apply if the original document had not been produced or given in evidence in Court. Then comes the passage in the judgment (para 10 of the reports) which we have reproduced in the earlier part of our judgment. The observations therein should not be understood as laying down anything contrary to what has been held in Patel Lalji Bhai, but was made in the context that bar contained in D Section 195 (1)(b)(ii) would not be attracted unless the original document was filed. It is for this reason that in the very next paragraph, after observing that the cognizance had been taken prior to filing of the civil suit and the original agreement in Court, the view taken by the High Court that the Magistrate could proceed with the trial of the criminal case was upheld and E the appeal was dismissed.

16. As mentioned earlier, the words "by a party to any proceeding in any Court" occurring in Section 195 (1)(c) of the old Code have been omitted in Section 195(1)(b)(ii) Cr.P.C. Why these words were deleted in the corresponding provision of Code of Criminal Procedure, 1973 will be apparent F from the 41st report of the Law Commission which said as under in para 15.39 :

> "15.39 The purpose of the section is to bar 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 G 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 H be in conformity with the broad principle which forms the basis of

Section 195."

Since the object of deletion of the words "by a party to any proceeding in any Court" occurring in Section 195(1)(c) of the old Code is to afford protection to witnesses also, the interpretation placed on the said provision in the earlier decisions would still hold good.

17. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated by Section 195(1) Cr.P.C. is given in Section 340 Cr.P.C. and sub-section (1) and (2) thereof are being reproduced below :

340. *Procedure in cases mentioned in Section 195* - (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a

A complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

Section 341 Cr.P.C. provides for an appeal to the Court to which such B former Court is subordinate within the meaning of sub-section (4) of Section 195, against the order refusing to make a complaint or against an order directing filing of a complaint and in such appeal the superior Court may direct withdrawal of the complaint or making of the complaint. Sub-section (2) of Section 343 lays down that when it is brought to the notice of a C Magistrate to whom a complaint has been made under Section 340 or 341 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.

18. In view of the language used in Section 340 Cr.P.C. the Court is D not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests E of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that F such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, G the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

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19. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

20. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in *Sachida Nand Singh,* after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would he highly detrimental to the interest of society at large.

21. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads

A to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (Third ed.) para 313, the principle B has been stated in the following manner :

> "The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes however, there are overriding C reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong."

The learned author has referred to *Sheffield City Council* v. *Yorkshire Water Services Ltd.*, (1991) 1 WLR 58 at 71, where it was held as under :

> D "Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. '..... the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with E practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society."

In *S.J. Grange Ltd.* v. *Customs and Excise Commissioners,* [1979] 2 All ER 91, while interpreting a provision in the Finance Act , 1972, Lord F Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable. Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause G (b)(ii).

22. Dr. Singhvi has also urged that since we are dealing with a penal provision it should be strictly construed and in support of his proposition he has placed reliance upon a Constitution Bench decision in *Tolaram Relumal* v. *State of Bombay*, [1955] 1 SCR 158, wherein it was held that it is well H settled rule of construction of penal statutes that if two possible and reasonable

constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty and it is not competent for the Court to stretch out the meaning of expression used by the legislature in order to carry out the intention of the legislature. The contention is that since Section 195(1)(b)(ii) affords protection from private prosecution, it should not be given a restrictive interpretation to curtail its scope. We are unable to accept such broad proposition as has been sought to be urged. In Craies on Statute Law (1971 ed. - Chapter 21), the principle regarding penal provisions has been stated as under :

> "But penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptations would comprehend..... But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

In *Lalita Jalan* v. *Bombay Gas Co.*, [2003] 6 SCC 107 this question was examined in considerable detail and it was held that the principle that a statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case. The Court after referring to *Murlidhar Meghraj Loya* v. *State of Maharasthra,* AIR (1976) SC 1929, *Kisan Trimbak Kothula* v. *State of Maharashtra,* AIR (1977) SC 435, *Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal* v. *Abani Maity,* AIR (1979) SC 1029 and *State of Maharashtra* v. *Natwarlal Damodardas Soni,* AIR (1980) SC 593 held that the penal provisions should be construed in a manner which will suppress the mischief and advance the object which the legislature had in view.

23. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court. A penal statute is one upon which an action for penalties can be brought by a public officer

A or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here.

B 24. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution C and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations D made by a Constitution Bench in *M.S. Sheriff* v. *State of Madras,* AIR (1954) SC 397 give a complete answer to the problem posed :

> "(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on E this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain F limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.
>
> (16) Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. G The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

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This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

25. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in *custodia legis*.

26.In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.

27.The appeal is, accordingly, dismissed.

Criminal Appeal No. 904/1998

28. This appeal has been preferred by the complainant against the judgment and order dated 6.2.1998 of the Madras High Court by which the criminal revision petition preferred by the second respondent Ramaraj was allowed and he was acquitted of the charges under Section 467 and 471 IPC on the ground that in view of the bar created by Section 195(1)(b)(ii) Cr.P.C., the learned Magistrate could not have taken cognizance on the police report. According to the case of the prosecution, the sale deed had been forged earlier and thereafter the same was filed in the Civil Court. For the reasons already discussed, the appeal is allowed and the judgment of the High Court is set aside. The criminal revision petition filed by the second respondent

A shall be heard and decided by the High Court afresh and in accordance with law.

Criminal Appeal Nos. 1069-1070 of 1998

30. The High Court in the impugned order dismissed the petition filed B by the appellant under Section 482 Cr.P.C. relying upon the decision of this Court in Sachida Nand Singh. In view of the reasons already discussed, the appeals lack merit and are hereby dismissed.

D.G. Appeal dismissed.