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Before Fazal Karim, Sh. Riaz Ahmad,
and Sh. Muhammad Zubair,, JJ

MUHAMMAD SHAFI --- Petitioner

versus

DEPUTY SUPERINTENDENT OF POLICE (Malik GUL NAWAZ),
NAROWAL and 5 others --- Respondents

Writ Petition No. 1727 of 1989, heard on 23rd October, 1991

(a) Interpretation of statutes-

----"Literal approach" and "purposive approach'---Requirements --- Trend of modern Jurists and the Courts towards puzp(nive approach.

Under the literal rule, words of a statute are sufficient to determine every question that arises under it, no matter how absurd and unjust the consequences. Thus, under that rule, "the law relating to statutory interpretation was bedevilled by the notion that it was wrong for a Court to look beyond the words with which it was immediately concerned if their meaning was clear when they were considered in isolation".

On the other hand, the essence of the purposive approach is for the Judge to answer a series of questions: VAbat is the subject-matter of the Act (or part of the Act) being interpreted? **What** object in relation to that subject matter Parliament intended to achieve by the Act? And lastly, what part in the achievement of that object the section **under construction was** intended to play? The particular section will then be interpreted according to the object which the Court deems the legislation is intended to serve. The requirements of this approach are that the Judge must impute "to Parliament an intention not to impose a prohibition inconsistent with the objects which the statute was designed to achieve, though the draftsman has omitted to incorporate in express words any reference to that intention".

Construction so often depends on weighing one consideration against another. Much may depend on one's approach. If more attention is paid to meticulous examination of the language used in the statute the result may be different from that reached by paying more attention to the apparent object of the statute so as to adopt that meaning of the words under consideration which best accord with it.

In recent years, the modern Jurists and the Courts, are outgrowing "the superstitious awe of the printed word and its magic l5otency* and the literal approach has been gradually eroded and replaced by the purposive' approach to statutory interpretation.

If one looks back to decisions on questions of statutory construction over the past thirty years, one cannot fail to be struck by the evidence of a trend away from purely literal towards the purposive construction of statutory provisions.

Statutory Construction by Sir Rupert Cross 1976, Edn., p.45; Kammins Ballrooms Co. Ltd. v. Zenith Investments (1971) AC 850, 881; Reg. v. National Insurance Commissioner (1972) AC 944, 966; Carter v. Bradbeer (1975) 3 AER 158,161 and Anderson v. Ryan (1985) 81 Cr.App. R.166,172 rer.

(b) **Interpretation of statutes-**

---- Meaning of a statute consists in the system of social consequences to which it leads or of the solution to all possible social questions that can arise under it --- Meaning of a statute is, then, a juridical creation in the light of social demands.

The meaning of a statute consists in the system of social consequences to which it leads or of the solution to all possible social questions that can arise under it. These solutions and systems of social consequences cannot be determined solely from the words used, but require a knowledge of the social conditions to which the law is to be applied as well as the circumstances which led to its enactment. Legal rules relate to human life, and grammer and formal logic alone will not enable us to reduce their juridical consequences. The meaning of a statute is, then, a juridical creation in the light of social demands.

Morris R. Conin on Law and Social Order (1933) ref.

(c) Interpretation of statutes-

--- Legislative will --- Duty of Court --- Statute being an authentic expression of the legislative wilt function of the Court is to interpret that document according to the intent of those who made it --- Duty of the Court is to find out the intention of the law-maker; the whole purpose of the interpretation of a statute is to ascertain the intention of the law-maker and to make it effective.

Province of West Pakistan v. Mahboob Ali PLD 1976 SC 463 ref.

(d) Interpretation of statutes-

---- Intent of statute carries a concept of purpose and signifies the general aim or policy which pervades a statute.

60 Harv. L Rev. 370-375 **ref,**

(e) Interpreta.tion of statutes-

---- Purpose of statute---"Purpose"---Meaning --- Not only is "purpose" a legitimate aid to the interpretation of a statutory provision, contemporary canons of construction give primacy, if not total supremacy, to the purposive approach.

'"Purpose" ordinarily means the reason why the particular enactment was passed. Perhaps the reason was to remedy some existing evil or correct some difficulty in existing law or to create a new right or a new remedy.

Therefore, not only is "purpose" a legitimate aid to the interpretation of a statutory provision, contemporary canons of construction give primacy, if not total supremacy, to the purposive approach.

Crawford on Statutory Construction, p.247 **reE**

(f) Interpretation of statutes--

---- Policy of the law--Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed --- Duty of Court.

The legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be: recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the Courts to say. We see what you are driving at, but you have not said it and therefore we shall go on as before.

Johnson v. United Staies 163 F. 30, 32 ref.

(g) Criminal Procedure Code (V of 1898)--

---- Ss. 195 & 190 --- Purpose of enacting S.195, Cr.P.C.---Provision of S.190, Cr.P.C. lays down the general rule that any person can set the criminal law in motion but S.195, Cr.P.C. is one of the exceptions to that rule --- Provision of S.195, Cr.P.C. provides that, in case of offence under S.195, Cr.P.C. only the public authority concerned and Court concerned has the right to file a complaint and unless there is a complaint by such public authority or Court, as the case may be, no Criminal Court shall take cognizance of these offences-- Every offence mentioned in S.195, Cr.P.C. though affects a private person, yet he stands deprived of his general vested right to have recourse to the criminal law.

The purpose of enacting section 195, Cr.P.C. has long been well identified. It may best be considered in the context of sections 190, 476 and 476-A of the Code. Section 190 lays down the general rule that any person can set the criminal law in motion and section 195 is one of the exceptions to that rule. The latter says that in the category of cases mentioned in its clause (a), only the public authority concerned and in the category of cases mentioned in clauses (b) and (c) only the Court concerned has right to fide a complaint and unless there is a complaint by such public authority or Court, as the case may be, no criminal court shall take cognizance of these offences. Thus, though every offence mentioned in section 195 must necessarily affect a private person, yet he stands deprived of his general vested right to have recourse to the criminal law. One must naturally ask--what is the reason for so depriving him? To deprive a person of his right to redress is a strong thing and there must needs be strong reasons or legislative purpose behind it. These offences have been selected for the Court's control because of their direct impact on the judicial process. It is the judicial process, in other words, the administration of public justice which is the direct and immediate object or victim of those offences and it is only by misleading the Courts and thereby perverting the due course of law and justice that the ultimate object of harming the private par is designed to be realised. 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.

Now can it be said that the offence of the forgery was against the administration of justice in a case in which the offence was committed, say, ten or twenty years before the suit in which the forged document was produced or given in evidence? The answer must obviously be in the negative. The forger must have, before the suit, used the forged document on a number of occasions in deceiving a number of persons. And whim his fraud and forgery came to light and the real owner or the persons defrauded were preparing to take criminal proceedings, he hit upon the clever device of instituting a civil suit and producing the forged document in the civil suit. He would, then, on the view contended for by the petitioner, be able to say: "Well, I have produced the document in the Civil Court; you have to wait till that Court has finally decided the genuineness or otherwise of the document, for unless that is done, that Court will not be in a position to say whether an offence of forgery was committed or not and to lodge a complaint under Section 195 Cr.P.C.".

Unfortunately, civil suits usually take very long to decide and, *in practical terms, it may amount to completely defeating the ends of justice. On this view, therefore, the civil courts will become a place for the protection of criminals. This obviously could not have been the intention of the law. The cause of action for proceeding against the forger arose immediately when the offence of forgery as defined in section 463 of the P.P.C. was committed. The commission of that offence was not only intended to deprive the real owner of his property but had also enabled the forger to deceive others and to deprive them of money. No proceedings were pending in any Court at that time. There was, therefore, no question of the offence, at the date of its commission, being against the Court or the administration of justice; nor did it, then, in any way sully the proceedings of the Court, for none were pending.

(h) Criminal Procedure Code (V of 1898)-

---- S. 195(i)(c) --- Provision of S.195(l)(c), Cr.P.C. to be interpreted with purposive approach---Section 195(l)(c), Cr.P.C. contemplates cases of tampering with the documents on the record of a Court or cases of previously forged documents being used as genuine in certain proceedings and applies to only those offences that have a "close nexus between the offence and the proceedings".

It seems td follow inexorably that clause (c) of section 195(l), Cr.P.C. will fail in its object if the literal construction is adopted. The adoption of that construction will inevitably result in extending the application of clause (c) to cases to which it was not, and could not, be intended to apply. The purposive approach to the interpretation of clause (c) of section 195 (1) on the other hand leads, and leads ineluctably, to the construction that that clause applies to only those offences that have a "close nexus between the offence and the proceedings"; in other words, it "contemplates cases of tampering with the documents on the record of a Court or cases of previously forged documents being used as genuine in certain proceedings."

(i) Criminal Procedure Code (V of 1898)--

---- Ss. 195 & 476 --- When a Court before whom an offence mentioned in S.195, Cr.P.C. is committed wants to take action against the dilinquent, it can only procee, d under S.476, Cr.P.C.

j) Interpretation of statutes-

---- Contexts of statutes --- Kinds --- Title and general scope of the Act constitute the background of the context-.--When a Court comes to the Act itself, bearing in mind any relevant extraneous matters, there is, one compelling rule : The whole or any part of the Act may be referred to and relied on.

There are two kinds of contexts: one, provided by the statute and the other outside the statute. As regards the context provided by the statute, the immediate and limited context is the section or subsection under interpretation and the general and the wider context is the Act itself. "It is incorrect to proceed as if the Court looked first at the provision in dispute without knowing whether it was contained in a Finance Act or a Public Health Act. The title and general scope of the Act constitute the background of the context When a Court comes to the Act itself, bearing in mind any relevant extraneous matters, there is one compelling rule. The whole or any part of the Act may be referred to and relied on. ~

Hanoyer's case (1975) AC **436 ref**

(k) Criminal Procedure Code (V of 1898)..

---- Ss. 195, 476 & 476-A --- Sections 195, Cr.P.C. and 476, Cr.P.C. being intended to be complementary to each other must be read together --- Provision of S.476, Cr.P.C. is legislative interpretation of S.195(l)(c), Cr.P.C.---Both in the case of cl. (b) and cl. (c) of S.195(l), Cr.P.C. the offences must have been committed in or in relation to the proceedings in Court.

Sections 195 and 476, Cr. P.C. were intended to be complementary to each other and must, therefore, be read together. The expression "in, or in relation to" occurs in clause (b) of section 195 (1), but does not occur in clause (c) thereof. But in section 476, subsection (1), the expression 'in or in relation to' has been used in relation to all the offences mentioned in both the clauses. Section 476, subsection (1), is, therefore, what is called the legislative interpretation of clause (c) of section 195 (1). It makes it transparently clear that both in the case of clause (b) and clause (c) the offences must have been committed in or in relation to the proceedings in Court. Section 476-A of the Code of Criminal Procedure, which, in its present f6rm, was enacted in 1972, puts the matter beyond doubt.

The express use of the words 'before it" in section 476-A, Cr.P.C. seems to be a clear and unmistakable evidence of the Legislature itself in this behalf. [p. 196]O

Emperor v. Kushal Pal Singh **AIR 1931 All. 443** and Patel Laljibhai Somabhai v. The State of Gujrat AIR 1971 SC 1935 fol.

(1) Criminal Procedure Code (V of 1898)-

---- S. 195(l)(c)---Word "party" in the expression "when such offences alleged to have been committed by a party to any proceeding in any Court" in S.195(l)(c), Cr.P.C. means a party, who was a party to the proceedings before the Court at the time when the offence of forgery was committed.

The word "party" in the expression "when such offences alleged to have been committed by a party to any proceeding in any Court" in clause (c) of subsection (1) of section 195, must derive its colour and content from its context, and the word "party" must mean a party, who was a party to the proceedings before the Court at the time when the offence of forgery was committed.

. Emperor v. Kushal Pal Singh AIR 1931 All. 443 and Patel LaIjibhai Somabhai v. The State of Gujrat AIR 1971 SC 1935 ref.

(m) Criminal Procedure Code (V of 1898)-

S. 195 --- Section 195, Cr.P.C. is an exception to the general rule that any person may set the criminal law in motion, its consequence being to take away the right of redress of persons --- Section 195 read with S.176, Cr.P.C empowers Courts other than the Criminal Courts also to try the guilt or innocence of persons---Provisions of S.195, Cr.P.C. must therefore be construed strictly.

The provisions of section 195 of the Cr.P.C. must be construed strictly. First, the proper place for the determination of a person's guilt or nimocence is a Criminal and not a Civil Court or Revenue Court. But section 195 read with section 476 of the Cr.P.C. empowers the Courts, other than the Criminal Courts also to try the guilt or innocence of persons. This is, therefore, a provision, which deprives the ordinary Criminal Courts of their ordinary jurisdiction, and should be construed strictly. Secondly, S. 195 is an exception to the general rule that any person may set the criminal law in motion, its consequence being to take away the right of redress of persons.

Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 AC 147 and Maxwell on Interpetation of Statutes, p.251 ref.

(n) Interpretation of statutes-

---- Statutes which encroach on the rights of subjects whether as regards person or property, are subject to a strict construction in the same way as penal Acts --- Construction of such statutes in case of ambiguity should be in favour of the freedom of the subject.

Statutes which encroach on the rights of subjects whether -as regards person or property, are subject to a strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the freedom of the individual should be adopted.

Maxwell on Interpetation of Statutes, p.251 **ref**

(o) Criminal Procedure Code (V of 1898)-

---- S. 195(l)(c) --- Provision of S.195(i)(c), Cr.P.C. does not apply to cases in which the forgery was committed before the institution of a suit or other proceeding in which the forged document was produced or given in evidence.

As the two interpretations of clause (c) of subsection (1) of section 195 of the Cr.P.C. are so evenly balanced, the one that does not deprive the ,ordinary Criminal Courts of their ordinary jurisdiction and persons of the right of redress must be adopted. On that view of the matter also, the view that clause (c) of subsection (1) of section 195 of the Cr.P.C. does not apply to cases in which the forgery was committed before the institution of a suit or other proceeding in which the forged document is produced or given in evidence should be preferred.

(p) Interpretation of statutes--

---- Two evenly balanced interpretations of provision of Criminal Procedure Statute possible --- One that does not deprive the ordinary Criminal Courts of their jurisdiction and persons of the right of redress must be adopted.

(q) Criminal Procedure Code (V of 1898)-

S. 195(l)(c) --- Offences mentioned in S.195(l)(c), Cr.P.C. being non cognizable offences' police had, before it could embark upon their investigation, to obtain the permission of Magistrate which was 'a suffcient: protection against illegal harassment.

(r) Criminal Procedure Code (V of 1898) .-

---- S. 195(l)(c) --- Provisions of S.195(l)(c), Cr.P.C. as regards offences described in S.463, P.P.C. or offence sunishable under S.475, P.P.C. or S.476, P.P.C. apply to a document which is produced or given in evidence in a suit or in any other proceeding in a Court but not to those documents which had been forged before the institution of the suit or proceeding.

Emperor v. Kushal Pal Singh AIR 1931 All. 443 and Patel Laljibhai Somabhai v. The State of Gujrat AIR 1971 SC 1935 fol.

Patel LaIjibhai Somabbhai v. The State of Gujrat AIR 1971 SC 1935; Superintendent and Remembrancer of Legal Affairs v. Biswambhar Brahmin and another AIR 1916 Mad.72; Indrachand Bachray v. Emperor AIR 1929 Cal. 633; Emperor v. Nabi Bakhsh Khair Muhammad Kolachi AIR 1932 Bom. 185; Emperor v. Rachappa Yellappa AIR 1936 Bom. 221; Hariram Onkar and others v. Mst. Radha AIR 1943 Sindh 209; Hrishikesh Dutta v. The State AIR 1942 Nag. 327; Hrishikesh Dutta v. The State 1969 PCrJLJ 241; **Ameer and** others v. Station House Officer, Police Station, Jhang and others 1988 PCr.IJ 2032; Mst. Zahida Khan v. Station House Officer PLD 1982 Lah. 601; State v. S. Ali Hussain and another PLD 1974 Kar. 403; Kammins Ballrooms Co. Ltd. v. Zeenat Investments Torquay Ltd. 1971 AC 850, 879, Statutory Construction by Sir Rupert Cross 1976 Edn. p.45; Reg. v. National Insurance Commissioner 1972 AC 944, 966 Carter v. Bradbeer (1975) 1 AER 158, 161 Anderson v. Ryan (1985) 81 CrApp. R.166, 172; Morris R. Conin on Law and Social Order (1933); Maxwell on Interpretation of Statutes 12th Edn, p. 1; Province of West Pakistan v. Mahboob Ali PLD 1976 SC 463; 60 Harv. L. Rev. 3,70-375; Crawford on Statutory Construction, p.247; Johnson v. United States 163 F. 30, Hanover's case (1975) AC 436, 47~; Anisminic Ltd. v-Foreign Compensation Commission (1969) 2 AC 147; Maxwell on Interpretation of Statutes, p.251 and Criminal Miscellaneous No.2129-B of 1990 ref.

Kh. Haris Ahmad for Petitioner

Irfan Qadir Addl. A.-G. and Mian Naiamuz-Zaman, A.A.-G. for Respondents Nos.1 to 4 and 6.

Azmat Saeed and Muhammad Ghani for Respondent No.5

Dates of hearing: 12th, 13th, 14th, 19th and 23rd **October, 1991**

JUDGMENT

FAZAL KARIM, J.---The questions, which have been referred to this Bench, are vexed questions of law relating to the interpretation of section 195, subsection (1), clause (c), of the Code of Criminal Procedure, 1898. They are:

(i) Whether the provisions of section 195, subsection (1), clause (c) of the Cr.P.C. as regards offences described in section 463 or offences punishable under section, 475 or section 476 of the P.P.C. apply to a document which is produced or given in evidence in a. suit or in any other- *th* oceeding in a Court but which had been forged before the institution of the suit or proceeding ? and

(ii) If the facts of a case~ attract the. provisions of section 195, but no complaint has been made by the Court concerned, is the police competent to register a case and investigate it?

2. To put the matter in proper perspective, the provisions of the Code of Criminal Procedure, which it is necessary to notice, are sections 190, 195, subsection (1), clauses (b) and (c), 476 and 476-A. Section 190 enacts that "any District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence:--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer; and

(c) upon information received from any person other than police officer, or upon his own knowledge or suspicion, that such offence has been committed".

Section 195, in so far as relevant, provides

"No Court shall take cognizance

(a)

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to' 'any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c) 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, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate."

Section 476, subsection (1), provides:

"When any offence referred to in section 195, subsection (1), clause (b) or clause (c), has been committed in or in relation to, a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XIL"

Section 476-A reads:

"(1) If the Court in any case considers that the person accused of any of the offences referred to in section 476, subsection (1), and committed in, or in relation'to, any proceeding before it, should not be tried under that section, -such Court may, after recording the facts constituting the offence and the statement of the accused person, as hereinbefore provided, forward the case to a Court having jurisdiction to try the. case, and may require security to be given for the appearance of such accused person before such Court, or, if sufficient security is not given, shall forward such person in custody to such Court. , I !

,2) The Court to which a case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided."

. 3. **On the rust question,** there has been a conflict of judicial authority. We were presented with an anthology of cases representing the two opposing views taken on the'subject by the different High Courts in pre-partition India, which, so far as India is concerned, concluded with Patel Laljibhai Somabhai v. The State of Gujrat (AIR 1971 S.C. 1935). These decided cases show that at one end of the spectrum is the view advanced by learned counsel for the petitioner, namely, that once a forged

document is brought into question it Court, then a private complaint or for that matter the registration of a case by the police is barred by section 195, subsection (1), clause (c) of the Cr.P.C. irrespective of the fact that the document was allegedly forged before the institution of the suit. This view is supported among others by Superintendent and Remembrancer of Legal Affairs v. Biswambhar Brahmin and another AIR -1916 Mad.72, Indrachand Bachray v. Emperor AIR 1929 Cal. 633, Emperor v. Nabi Bakhsh Khair Muhammad Kolachi AIR 1932 Bom. 185, Emperor v. Rachappa Yellappa AIR 1936 Bom. 221, Hariram Onkar and others v. Mst. Radha AIR 1943 Sind 209, Hrishikesh Dutta v. The State AIR 1942 Nag. 327 and Hrishikesh Dutta v. The State 1969 PCr.LJ 241. Reference was, in this behalf, also made to Ameer and others v. Station House Officer, Police Station, Jhang and others 1988 PCr.LJ 2032 and Mst. Zahida Khan v. Station House Officer PLD 1982 Lahore 601. The last mentioned case is, however, not in point; there the person accused, Faqir Muhammad, was alleged to have forged the signatures of the Deputy Settlement Commissioner on a written statement filed before the L.D.A. Tribunal. It was held:

"Apparently, it was the Tribunal who should have lodged the complaint and not the Deputy Settlement Commissioner."

4. At the other end of the spectrum is the view taken in Emperor v. Kushal Pal Singh (AIR 1931 Allahabad 443; 32 Cr.L.J. 1931 at p. 1105) which view was adopted and approved by the Supreme Court of India in Patel La1jibhai Somabhai v. The State of GuJrat AIR 1971 SC 1935. In Kushal Pal Singh's case, the matter was at first heard by a Bench of two Judges, Mr. Justice Boys and Mr. Justice Niamatullah. They differed on the interpretation of clause (c) of subsection (1) of section 195, and if I may say so with respect, both put their viewpoints powerfully. The question was then referred to a Fun Bench comprising Mr. Justice MokerjL Mr. Justice Young and Mr. Justice King. They agreed with Mr. Justice Niamatullah 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 in respect of a document *whixh* has been produced or given in evidence in such proceeding".

5. The reasoning supporting the view contended for by the petitioner's counsel may best be stated in the words of Beaumont, Chief Justice in Emperor v. Rachaapa Yellappa (AIR 1936 Bom. 221). He, said:

"Now reading that sedtion apart from authority, I **think the** relevant date which has to be considered is the date at which a Court is invited to take cognizance of the complaint. At that moment the Court has to ask itself whether it is debarred from taking cognizance by reason of the provisions of section 195, and in cases falling under section 463 or section 471, Penal Code, the Court has to see whether the offence in respect of which it is asked to take cognizance is alleged to have been committed by a party to any proceeding in any Court and in respect of a document produced or given in evidence in such proceeding. Now in this case the offence had been committed by a person who, at the date of the complaint, was a party to a proceeding in a Court and the document had been produced or given in evidence in such proceeding, and therefore, the words of the section would seem to apply."

6. In State v. S. Ali Hussain and another (PLD 1974 Karachi 403), it was held: ,

"The upshot of the argument then is that the question of application of section 195 (1) (c), Cr.P.C. has to be considered not in relation to the time of preparation of the forged document but to the time of its use. In case the document is used in a Court for any purpose the avenues for private prosecution get forbidden and only the Court before which the document was produced and used or sought to be used can prosecute the maker of such forged document or the person using such document. Although the words 'in or in relation to proceedings' as appearing in section 195 (1) (b), Cr.P.C. do not find a place in section 195 (1) (c), Cr.P.C. the omission is almost inconsequential. In any case section 476, Cr.P.C. clearly states that in cases where offences enumerated in clauses (b) and (c) of section 195 (1), Cr.P.C. appear to have been committed 'in or in relation to' a proceeding a complaint would be maintainable at the instance of the Court concerned. On a. conjoint reading of sections 195 (1) (c) and 476, Cr.P.C. the conclusion is inescapable that when documents are forged for use in a judicial proceeding a complaint at the instance of a private party would be barred in case the documents are used."

7. If I may say, and I do so with great respect, the above reasoning in Ali Hussain's case was, as will be presently seen, rather used by the learned Judges who took the opposite view and was repelled by the learned Judges who took the view that in such a case, clause (c) applies. Thus, dealing with the reasoning of the learned Judges in Kushal Pal Singh's case, namely, that sections 195 and 476 should be read together and are co-extensive, Beaumont, C.J. said in Rachaapa Yellappa case:

..... but with all respect to the learned Judges, the construction which they place upon section 195 (1) (c) does not make the sections co extensive."

And in Kushal Pal Singh case, Boys, J. in reaching the conclusion that that clause did apply to such a case, relied heavily upon the absence of the expression "committed in, or in relation to, any proceeding" from clause (c) and held:

"The words, therefore, cannot be said to have been omitted from section 195 (1)(c) by inadvertence. They must have been deliberately omitted."

8. The 1earned Judges, who took the contrary view, would read sections 195, subsection (1), clause (c) and 476 together because "section 195 imposes a bar to a complaint, and section 476 provides the method of removing the bar by specifying how complaints to be made by a Court in cases which fall under section 195 are to be dealt with". In the case of clause (b) the offences described therein by the several sections of the Penal Code are of various kinds and it is only with respect to a1imited kind of offences that clause (b) applies. "It was to limit the cases, that it became necessary to use the words 'in or in relation to' in clause (b)". In the case of clause (c), the use of the words .committed by a party to a proceeding" brought the offences on the same line with the offences as described in clause (b) or with offences as described in section 476 of the Code. It was, therefore, not necessary to introduce the words 'in or in relation to' in clause (c)". (Mukerji, J. in Kushal Pal Singh's case). To quote Niamatullah, J. in the same case, "the words 'in or in relation to a proceeding' were left out in section 195 (c) because they are already implied in the language of section 195 (c) and the offences therein mentioned are necesarily committed in relation to a proceeding in 'Court', an expression which is wide enough to include every case in which an offence of the kind mentioned in section 195(c) is committed by a party with the intention of benefiting therefrom in a legal proceeding". According to Dua, J. in LaIjibhai Somabhai's case "all these provisions, forming part as they do of the statutory scheme dealing with the subject of prosecution for offences against, administration of justice, require to be read together and when so read would help us considerably in having a more vivid picture of the legislative intendment in prescribing the prohibition in the two clauses of S.195(1) and the procedure for initiating prosecutions for offences mentioned therein". Section 476 quite clearly postulates formation of judicial opinion that it is expedient to hold an inquiry into an offence referred to in cl. (b) or in cl. (c) of section 195(l) which appears to the Court to have been committed either in or in relation to a proceeding in that Court. Offences mentioned in cl. (b), it may be recalled, would be covered by that clause even if they are alleged to have been committed in relation to a proceeding in a Court in respect of a document produced or given in evidence in that proceeding. Section 476,. it is also noteworthy, empowers the Court even suo motu to take up the question of expediency of making a complaint. As a general rule, the Courts consider it expedient in the interest of justice to start prosecutions as contemplated by section 476 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 cl. (b) because of the close nexus between the offences and the proceeding. In case of offences specified in cl. (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 offence covered by section 471, I.P.C. from its very nature must be committed in the proceeding itself by a party thereto. With respect to such an offence also expression of opinion by the Court as to the expediency of prosecution would serve a useful purpose". Dua, J. then referred to' the "underlying purpose of enacting section 195 (1) and (c) and section 476" and reached the conclusion:

"The offences about which the Court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that Court, the commission of which has a reasonably close nexus with the proceedings in that Court so that it can, without embarking upon a completely independent and fresh inquiry, satisfaqtoril~ consider by reference principally to its records the expediency / of prosecuting the delinquent party. It, therefore, appears t s 0 be more appropriate to adopt the strict
us construction of confining the prohibition contained in section 195 (1) (c) only to those cases i which the offences specified therein were committed by a party to e proceeding in the character as such party."

It was, so observed the learned Judge, "no doubt true that quite often- - if not almost invariably --- the documents are forged for being used or produced in evidence in Court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents fo before the commencement of a proceeding in which they may appen to be actually used or produced in
L r party would also be subject to sections 195
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Court in such- a case may not be in a position to satisfactorily determine the
question of expediency of making a complaint".

9. The above-noted conflict o judicial opinion as to the interpretation of section 195, clause (c) illustrat the trite saying that "on questions of
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construction, different minds ma come to different conclusions". It, in fact, y c reflects the two competing appyo hes to the task of statutory construction. As Lord Hailsham L.C. observed du ing the second reading of the Interpretation of Legislation Bill "the history of nglish Law and the interpretation of Statutes consisted of a battle **between two rival** schools of thoughts". One school looked at what the Act had said; this is called the literal approach. The other school looked at what the Act was intended to do; this is what in recent years has come to be known as the purposive approach. (See Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd. 1971 A.C. 850, 879).

10. Under the literal rule~e rds of a statute are sufficient to determine
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every question that ari; es r it, no matter how absurd and unjust the I A
r consequences. Thus, under t t rule, "the law relating to statutory
t interpretation was bedevilled by he notion that it was wrong for a Court to

(Fazal Karim, J)

look beyond 'the words with which it w4 immediately concerned if their meaning was clear when they were considered in isolation". (Statutory A

Construction by Sir Rupert Cross (1976 Ed. ~at p.45).

11. On the other hand, the essence of the purposive approach *is **for the** Judge to answer a series of questions: What is the subject-matter of the Act (or part of the Act) being interpieted? What object in relation to that su ect matter Parliament intended to achieve by ithe Act? And lastly, what part the achievement of that object the section under construction was intended to. play? The particular section **will** then **be interpreted** according to the objeci which the Court deems the legislation is intended to serve. (Lord Diplock in Kammins Ballrooms Co. Ltd. v. **Zenith Inftstments** (1971) A.C. 850,881). The requirements of this approach, according ~o Lord Diplock, are that the Judge must impute "to Parliament an intend 6n not to impose a prohibition inconsistent with the objects which the stattlie was designed to achieve, though the draftsman has omitted to incorporate ip express words any reference to that intention".

12. It has been said, and if I may say great respect, rightly said, that .construction so often depends on weighing one consideration against another. Much may depend on one's approach. If more attention is paid to meticulous examination of the language used in the t t te the result may be different ' alul from that reached by paying more attent!)n to the apparent object of the statute so as to adopt that meaning of the words under consideration which best accord with it". (Lord Reid in Reg v. ~Ivational Insurance Commissioner (1972) A.C. 944, 966). And it should be manitest from the reasoning employed by the propounders of the two views of section 195 (c) that the interpretation placed on that section by Beaumont, C.J.. *in* Rachappa Ycllappa's case and other learned Judges was reacbed by the **route** of the literal approach and that the interpretation placed by Niamatullah and Mukerji, JJ. in Kushal Pal Singh case and by the Supreme Court of India in Patel LaIjibliai's case was reached by the route of purposive approach.

13. In recent years, the modern Jurisi and the Courts, and as has been seen, even the English Courts, are outgro ing "the superstitious awe of the printed word and its magic potency" and the literai approach has e sta ~ tc 0 gradually eroded and replaced by the purposivv approach to atu interpretation. As Lord Diplock said in Carter v. Bradbcer (1975). 3 A111 England Reporter 158, 161), "if one looks back to decisions on questions of statutory construction ovei the past thirty y-.ars, unc, cartaut faii tu 6c struck by the evidence of a trend away from purely literai towards the purposive construction of statutory pluvisions" **(Also** sue Andc,;,ViA v. Ryan (1985) 81 CrApp. R. 166,17Z per Lord Roskill).

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14. 'the utuarringof a statute consists in thcsybicut ut social consequen es] to which it keaos or of the solutrun to all possible social questions that can arise F under it. These solutions and systems of~ social consequences a

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determined solely from the words used, but require a knowledge of the social conditions to which the law is to be applied as well as the circumstances which led to its enactment. Legal rules relate to human life, and grammer and formal F logic alone will not enable us to reduce their juridical consequences. The meaning of a statute is, then, a juridical creation in the light of social demands. (Morris R. Conin, Law and Social Order (1933)).

15. A statute being an authentic expression of the legislative will, "the function of a Court is to interpret that document according to the intent of them that made it". (Maxwell on the Interpretation of Statutes (12th Edn.. at page 1). The duty of the Court.is to find out the intention of the law-maker; the whole purpose, of the interpretation of a statute is to ascertain the intention o the law-maker and to make it effective. (Province of West Pakistan v. Mahboob Ali PLD 1976 SC 463).

16. Like any other legal term, "intent" has various connotations. I e sense, it carries a concept of purpose and signifies the general aim or ;~IicY H which pervades a statute (60 Harv. L. Rev. 370-375). This was recognized by the Law Commission of England in its Paper on the Interpretation of Statutes (See Law Commission No.21):

"The apparent difficulties Which arise in the concept of legislative intent may perhaps be clarified if a distinction is drawn between a particular legislative intent in the sense of the meaning in which-the legislature intended particular words to be understood and a general legislative intent in the sense of the purpose which legislature intended to achieve!

17. "Purpose" ordinarily means the reason why the particular enactment was passed. Perhaps the reason was to remedy some existing evil or r correct some difficulty in existing law or to create a new right or a new remedy. (Crawford on Statutory Construction at page 247).

18. Therefore, not only is 'purpose' a legitimate aid to the interpretation of a statutory provision, contemporary canons of construction give primacy, i not total supremacy, to the purposive approach. This approach has, in my opinion, the great merit of preventing the Court, in this case, from failing in its primary task, namely, to interpret section 195, subsection (1), clause (c), 'according to the intent of them that made it', that is, "in the sense of the purpose which the legislature intended to achieve".

19. 1 would conclude this part of the discussion with the often quoted opinion of justice Holmes in Johnson v. United States (163 F. 30, 32):

"The legislature has the power to decide what the policy of the law I shall be, and if it has intimated its will, however indirectly, that will K should be recognized and obeyed. The major premises of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the Courts to sa3r We see what you are driving at, but you have not said it and therefore we shall go on as before."

20. The purpose of enacting section 195 has long been well-identified. It may best be considered in the context of sections 190, 476 and 476-A of the Code. Section 190 lays down the general rule that any person can set the criminal law in motion and section 195 is one of the exceptions to that rule. The latter says that in the category of cases mentioned in its clause (a), only the public authority concerned and in the category of cases mentioned in clauses (b) and (c) only the Court concerned has right to file a complaint and' unless there is a complaint by such public authority or Court, as the case may be, no Criminal Court shall take cognizance of these offences. Thus, though every offence mentioned in section 195 must necessarily affect a private person, yet he stands deprived of his general vested right to have

recourse to the criminal law. One must naturally ask--what is the reason for so depriving him? To deprive a person of his right to redress is a strong thing and there must needs be strong reasons or legislative purpose behind it. As was noticed in Laijibhai Somabhai's case, "these offences have been selected for the Court's control because of their direct impact on the judicial process. It is the judicial process, in other words, the administration of public justice which is the direct and immediate object or victim of those offences and it is only by misleading the Courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. 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.

21. Now can it be said that the offence of forgery was against the administration of justice in a case in which the offence was committed, say, ten or twenty years before the suit in which the forged document was produced or given in evidence? The answer must obviously be in the negative. The forger must have, before the suit, used the forged document on a number of occasions in deceiving a number of persons. And when his fraud and forgery came to light and the real owner or the persons defrauded were preparing to take criminal proceedings, he hit upon the clever device of instituting a civil suit and producing the forged document in the civil suit. He would, then, on the view contended for by the petitioner, be able to say: 'Well, I have produced the document in the Civil Court; you have to wait till that Court has finally decided the genuineness or otherwise -of the document, for unless that is done, that Court will not be in a position to say whether an offence of forgery was committed or not and to lodge a complaint under Section 195'. Unfortunately, civil suits usually take very long to decide and, in practical terms, it may amount to completely defeating the ends of justice. On this view, therefore, the Civil Courts will become a place for the protection of criminals. This obviously could not have, been the intention of the law. The cause of action for proceeding against the forger arose immediately when the offence of forgery as defined in section 463 of the P.P.C. was committed. The commission of that offence was not only intended to deprive the real owner of his property but had also enabled the forger to deceive others and to deprive them of money. No' proceedings were pending in any Court at that time. There was, therefore, no question of the offence, at the date of its commission, being against the Court or the administration of justice; nor did it, then, in any way sully the proceedings of the Court, for none were pending.

22. The facts of Kushal Pal Singh's case provide an apt illustration of the bizarre result flowing from the petitioner's contention. There documents had been forged by the first defendant to the suit to support his claim that he was the adopted son of one L. It was the plaintiff who produced those documents with a view to exposing the first defendant. In fact, the first defendant had protested against their production or any use being made of them. Yet, it was said that only the Civil Court could file a criminal complaint against the first defendant.

23. It seems to follow inexorably that clause (c) of section 195 (1) will fail in its object if the literal construction contended for by the petitioners' Counsel is adopted. The adoption of that construction will inevitably result in ext ending the application of clause (c) to cases to which it was not, and could not, be intended to apply. The purposive approach to the interpretation of clause (c) of section 195 (1) on the other hand leads, and leads ineluctably, to the construction that that clause applies to only those offences that have a "close nexus between the, offence and the proceeding"; in other words, it "contemplates.cases of tampering with the documents on the record of a Court' or cases of previously forged documents being used as genuine in certain proceedings". This view is reinforced by the following observation of the Select Committee who drafted this clause in 1923:

"In short, section 195 now deals with limitations that exist to the cognizance of offences by a Court. While if a Court before whom (the underlining is mine) an offence mentioned in section 195 is committed wants to take action against the delinquent, it.can only proceed under section 476."

24. The reading of section 195 in its context should also, in myjudgment, yiefd the same result. There are two kinds of contexts: one, provided by the statute and the other outside the statute. As regards

the context provided by the statute, the immediate and limited context is the section or subsection under interpretation and the general and the wider context is the Act itself. "It is incorrect to proceed as if the Court looked first at the provision in dispute without knowing whether it was contained in a Finance Act or a Public Health Act. The title and general scope of the Act constitute the background of the context When a Court comes to the Act itself, bearing in mind any relevant extraneous matters, there is, in my opinion, one compelling rule. The whole or any part of the Act may be referred to and relied on". (Lord Somervell in the Hanover's case (1975) A.C. 436, 473)).

25. Section 195, subsection (1), clause (c) and section 476, in their present form, were enacted in 1923. As was said in the report of the Select Committee. which drafted the bill:

"In our view section 195 should bar the cognizance by any Court of offences of this nature except upon such complaint, while the procedure to be followed when the Court desires to prosecute should be prescribed by section 476."

The two sections were, therefore, intended to be complementary to each other and must, therefore, be read together. As we have seen, the expression "in, or in relation to" occurs in clause (b) of section 195 (1), but does not occur in clause (c) thereof. But in section 476, subsection (1), the expression 'in or in relation to' has been used in relation to all the offences mentioned in both the clauses. Section 476, subsection (1), is, therefore, what is called ' the legislative interpretation of clause (c) of section 195 (1). It makes it transparently clear that both in the case of clause (b) and clause (c) the offences must have been committed in or in relation to the proceedings in Court. Section 476-A of the Code of Criminal Procedure, which, in its present form, was enacted in 1972, puts the matter beyond doubt by providing:

"if the Court in any case considers that the person accused of any of the offences referred to in section 476, subsection (1), and committed in, or in relation to, any proceeding before it, should not be tried under that section, such Court may forward the case to a Court having jurisdiction". (The underlining is mine).

The express use of the words "before it" in this section seems to me to l be a clear and unmistakable evidence of the legislature itself having idopted IQ and approved the view which had committed itself to the learned Judges -Kushal Pal Singh's and La1jibhai Somabhai's cases and which I have respectfully adopted.

26. 1 am, therefore, of the view that the word "party" in the expression "when such offences alleged to have been committed by a party to any proceeding in any Court" in clause (c) of subsection (1) of section 195, must derive its colour and content from its context, and am in respectful agreement with the learned Judges who take the view that the word "party" must mean a party, who was a party to the proceedings before the Court at the time when the offence of forgery was committed.

27. On two well-established principles, the provisions of section 195 of the Cr.P.C. must be construed strictly. First, the proper place for the determination of a person's guilt or innocence is a criminal and not a Civil Court or Revenue Court. But section 195 read with section 476 of the Cr.P.C. empowers the Courts, other than the Criminal Courts also to try the guilt or innocence of persons. This is, therefore, a provision, which deprives the ordinary Criminal Courts of their ordinary jurisdiction, and should be on the principle illustrated by Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 A.C. 147 construed strictly. Secondly section 195 is an exception to the general rule that any person may set the criminal law in motion, its consequence being to take away the right of redress of persons. The rule that governs such provision is well-stated in Maxwell at page 251:

"Statutes which encroach on the rights of subjects whether as regards person or property, are subject to a strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if IT possible, so as to respect such rights, and if there is any ambiguity the.1
construction which is in favour of the freedom of the individual should be adopted."

As the two interpretations of clause (c) of subsection (1) of section 195 of the Cr.P.C. are so evenly balanced, the one that does not deprive the ordinary Criminal Courts of their ordinary jurisdiction and persons of the right of redress must be adopted. On that view of the matter also, the view that clause (c) of subsection (1) of section 195 of the Cr.P.C. does not apply to cases in which the forgery was committed before the institution of a suit or other proceedings in which the forged document is produced or given in evidence should, in my opinion, be preferred.

28. Justice would be a simple matter, says Plato, if men were simple. One does not have to strain one's imagination to conjure up extreme cases to demonstrate that **men are not** simple **and that on the** view contended for by the petitioners, the provisions of clause (c) of section 195, subsection (1), are liable to be grossly abused by unscrupulous persons. One of the cases before us, Cr.Misc.2129/B/90, itself provides a striking illustration. The complainant, Muhammad Safdar, had let his shop to Ghulam Sabir. The latter made default in the payment of rent and Muhammad Safdar instituted an eviction petition under the Punjab Urban Rent Restriction Ordinance, 1959, before Rent Controller, Lahore. The Rent Controller made an eviction order. The tenant?s appeal before the District Court failed on 2-7-1989 and the tenant was directed. to hand over vacant possession of the shop to Muhammad Safdar by 2-9-1990. Against the District Court's ord,,r, the tenant riled a writ petition; that too was dismissed and the tenant was allowed time to vacate the shop till 30-3-1990. There was then a petition before the Supreme Court, which was dismissed on 29-11-1989. After having suffered all that ordeal and having obtained the eviction order at such great expense, Muhammad Safdar must have thought that his troubles were at an end. But that was not to be, for in so thinking, he had not taken into account the ingenuity of men. He riled an execution petition
and **when the Bailiff went to the** spot to **deliver possession, he was shown** a stay order by the Civil Court. Muhammad Safdar then learnt, and must indeed have learnt to his great shock and surprise, that on the basis of an agreement of sale dated 23-8-1989, Ishfaq Ahmad, petitioner, in Cr.Misc. No.2129/B/90, claimed to have purchased the shop from him, Muhammad Safdar, for Rs.1,00,000; that he had paid Rs.30,000 also to the tenant and that the tenant had placed him in possession of the shop. Muhammad Safdar learnt also that Ishfaq Ahmad had instituted a suit for the specific performance of the agreement of sale dated 23-8-1989 and that it was in that suit that the execution of the eviction order had been stayed. As, according to him, the agreement of sale dated 23-8-1989 was a forged document and it had been forged to deprive him of his hard earned eviction order, which had been upheld up to the Supreme Court, and the suit for specific performance was a clever device to deprive him of the fruit of the eviction order, he rightly felt aggrieved and lodged an F.I.R. under sections 420, 468, 471 etc. of the P.P.C. It is obvious that the principal ground urged by Ishfaq Ahmad for the grant of pre-arrest bail was that as the agreement of sale dated 23-8-1989 had been produced in his suit for specific performance, clause (c) of section 195, subsection (1), applied and the police had jurisdiction neither to register the case nor to investigate it. The facts speak for themselves. It is plain that if the agreement of sale dated 23-8-1989 is in fact, a forged document, then to hold the provisions of section -195 of the Cr.P.C. applicable would be to encourage fraud and forgery and to allow the Civil Courts to be used as a place for the protection of criminals.

29. It was said that this view of clause (c) of section 195, subsection (1), will be harsh to innocent persons, and will provide dishonest private complainants with a weapon of oppression to harass them. The simple answer is that the offences mentioned in this clause are non-cognizable offences and the police has, before it can embark upon their investigation, to obtain the permission of a Magistrate. This, in my opinion, is sufficient protection against' illegal harassment.

30 For these reasons, my answer to the first question is in the negative.

31. As the second question does not arise out of the facts of the cases before us ' we did not call upon learned counsel to address arguments. We do not, therefore, think it necessary to answer that question.

32. This, and other similar petitions will now be listed before a learned Single Judge in the month of February, 1992, for disposal.

M.B.A./M-243/1

Order accordingly

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