

Sanmukhsing Vs. the King

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Court : Mumbai

Decided On : Nov-07-1949

Reported in : (1950)52BOMLR465

Judge : Simonds,; John Beaumont and ;Lionel Leach, JJ.

Appellant : Sanmukhsing

Respondent : The King

Disposition : Appeal dismissed

Judgement :

Simonds, J.

1. Their Lordships, having at the conclusion of the hearing intimated that they would humbly advise His Majesty to dismiss this appeal, now give their reasons.

2. This is an appeal by special leave from an order of the Chief Court of Sind, in its appellate criminal jurisdiction, dated July 18, 1945, which summarily dismissed the appeal of the appellants from the conviction and sentences passed on them on March 24, 1945, by a Judge of the said Court, exercising Sessions Court jurisdiction, who, in accordance with the majority verdict of a jury, found

(1) both of them guilty of being parties to a criminal conspiracy to cheat one Rochiram Asoomal Canser (Section 120B read with Section 420 of the Indian

Penal Code) :

(2) the first appellant guilty of having, in pursuance of the said conspiracy, forged two documents (referred to in the record as exs. A and B) purporting to be an agreement in duplicate executed at Lahore by a fictitious person called Dr. S.C. Rao, described therein as 'General Manager, Herbarium Lahore,' and at Karachi by the said Rochiram as 'Chairman, Sunderson Limited,' wherein receipt of Rs. 8,000 as paid by the first appellant to the Herbarium on behalf of Rochiram, was acknowledged (Section 467, Indian Penal Code.):

(8) the second appellant guilty in pursuance of the said conspiracy of having aided and abetted the first appellant in forging the said documents (Section 467 read with Section 109, Indian Penal Code.):

(4) both of the appellants guilty of having, in pursuance of the said conspiracy, fraudulently and dishonestly used the said documents in an attempt to induce Rochiram to pay to them Rs. 3,000 (Section 471, Indian Penal Code.); and sentenced the first appellant to rigorous imprisonment for eighteen months under (1), for five years under

(2) and for five years under (4); and the second appellant to rigorous imprisonment for eighteen months under (1), for two years under

(3) and to two years under (4); and directed the sentences in each case to run concurrently.

3. It will be observed that the appellants were charged with forging or abetting the forgery of certain documents and were convicted of this offence. It is contended on their behalf that the Court had no jurisdiction to try them for this offence because by Section 195(1)(c) of the Code of Criminal Procedure a Court is barred from taking cognisance

of any offence described in Section 408 or punishable under Section 471, Section 475 or Section 476 of the Indian Penal Code when the 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 some other Court to which such Court is subordinate.

It was urged on behalf of the appellants that the documents in respect of which the charge of forgery was laid had been produced or given in evidence in certain proceedings in the Magistrate's Court at Lahore, that the Lahore Magistrate had made no such complaint in writing as Section 195 prescribed, and that accordingly that section barred the jurisdiction of the Chief Court of Sind.

4. It appears however to their Lordships that this challenge, which was no doubt the substantial ground upon which special leave to appeal was given, is based upon a misapprehension of the facts. For upon a further examination of them it is clear that the documents in question were not in fact produced or given in evidence in the Lahore Court, but on the contrary there were produced in that Court documents which purported to be copies (but without the names of the executants) of the documents alleged to be forged. In these circumstances their Lordships think it plain that Section 195(i)(c) cannot operate as a bar. They concur in the opinion expressed by the Chief Court of Oudh in *Girdhari Lal v. Emperor* that the section can only refer to the document alleged to be forged, not to a copy of it. This view which accords with the plain grammatical meaning of the words is supported by the practical common sense of the matter, for, as was observed in that Court, the Court before which a copy of a document is produced is not really in a position to express any opinion upon the genuineness of the original. It was suggested that a forged document might at least be said to be 'given in evidence' if a copy was produced, but it appears to their Lordships that, though by production of a copy secondary evidence of the contents of a document might be said to be given, the forged document itself would not thus be given in evidence.

5. This ground of appeal therefore fails.

6. Numerous other grounds of appeal were urged by learned Counsel for the appellants, all of which their Lordships have carefully examined. The appeals to the Chief Court of Sind having been summarily dismissed, their Lordships have not the advantage of knowing how far the learned Judges of that Court were influenced by Section 537 of the Code of Criminal Procedure, but their Lordships

are satisfied upon a review of the whole case, that, whether that section is invoked or the more stringent test adopted which their Lordships have so frequently prescribed for the determination of criminal appeals, it is abundantly clear that there has been no such failure or miscarriage of justice as would justify an interference with the order of the Chief Court. They do not propose to examine in detail the several matters of complaint which were urged by learned Counsel. It is sufficient to say that any irregularities that a scrutiny of the proceedings may disclose afford no grounds for reversing the decision of the Chief Court.

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