

State Vs. Inder Sen and ors.

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Court : Allahabad

Decided On : Mar-31-1960

Reported in : AIR1961All62; 1961CriLJ30

Judge : M.C. Desai, J.

Acts : [Registration Act, 1908](#) - Sections 82 and 83

Appeal No. : Criminal Ref. No. 183 of 1959

Appellant : State

Respondent : inder Sen and ors.

Advocate for Def. : T. Rathore, Adv.

Advocate for Pet/Ap. : H.N. Seth, Adv.

Judgement :

ORDER

M.C. Desai, J.

1. This is a reference by the Sessions Judge with a recommendation that the commitment of the opposite parties for the offences of Section 82(a) and (b) of the Indian Registration Act be quashed.

2. The case for the prosecution is that Index-sen, opposite party No. 1, son of Gopal Das, resident of Mohalla Khannu, Police Station Qila, district Bareilly approached Sham Lal, owner of a house, and wanted it on rent saying that he was Ishwar Singh, son of Sunder Singh, resident of Mohalla Choti Bamanpuri and executed a rent-note in his favour on 23-4-1956. He signed the rent-note as Ishwar Singh and opposite party No. 2, Pradesh Chand, signed it as a witness. On the following day i.e. 24-4-1956 Indersen produced the rent-note before a Sub-Registrar and asked him to register it. The Sub-Registrar took down his statement in which he said that he was Ishwar Singh, son of Sunder Singh, resident of Mohalla Choti Bamanpuri, and Prakash Chand and the other opposite party, Mohd.Khan, identified Indersen as Ishwar Singh before the Sub-Registrar. The house was searched by a Sub-Inspector of police and contraband opium was recovered from it. In the course of the investigation, he found that it was taken on rent by Indersen personating as Ishwar Singh. So he wrote to the Sub-Registrar stating that Indersen impersonating as Ishwar Singh, son of Sunder Singh, resident of Mohalla Choti Bamanpuri got the rent-note registered in his favour on 24-4-1956 and asking for sanction for his prosecution under Section 82(c) of the Registration Act. He wrote another letter to the Sub-Registrar stating that Indersen by impersonating as Ishwar Singh got the rent-note registered in his favour, that Mohd. Khan and Prakash Chand abetted the offence and requested his permission for their prosecution under Section 82(d) of the Registration Act. On both the letters, the Sub-Registrar wrote 'permitted'. Thereupon the Sub-Inspector prosecuted the opposite parties,

3. The Magistrate framed a charge against Indersen for the offence of Section 82(a) and a charge against the opposite parties 2 and 3 for the offence of Section 82(d) and committed them for trial to the sessions court.

4. The offence of Section 82(a) is committed by a person who intentionally makes any false statement in any proceeding or enquiry under the Act, the offence of Section 82(c) is committed when a person falsely personates another, and in such assumed character, presents any document, or makes any admission or statement or does any other act in any proceeding or enquiry under the Act and the offence under Section 82(d) is committed by any person who abets anything

made punishable by the Act. All these offences are punishable with imprisonment for a term which may extend to seven years, or with, fine, or with both. Section 83 lays down that:

'(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.'

5. The first objection taken by the learned Sessions Judge to the commitment is that the trial of the opposite parties for the offences of Section 82(a) and (d) is without sanction required under Section 83. There is no force in the contention that the Sub-Registrar permitted the prosecution of the opposite parties without knowing the facts; he has endorsed his permission on the letters written by the Sub-Inspector himself and the letters mentioned the necessary facts, e.g. what criminal acts had been done by the opposite parties. Obviously the Sub-Registrar has permitted the prosecution of the opposite parties for the acts said in the letters to have been done by them.

It is true that the Sub-Registrar permitted the opposite parties to be prosecuted for the offences of Section 82(c) and its abetment, whereas the Opposite parties are now being prosecuted for the offence of Section 82(a) and its abetment. The learned Sessions Judge thinks that' no offence of Section 82(c) is committed because Ishwar Singh, son of Sunder Singh, resident of village Chhoti Bamanpuri, is a fictitious person, there existing no person of this name, parentage and residence,

He has relied upon Emperor v. Rangammal : AIR1935 Mad913 , which simply follows Kadar Ravuttan v. Ayangana Ravuttan, 4 Mad HCR 18. In the case of Rangammal : AIR1935 Mad913 , it was observed that it is essential to prove that the assumed name was used as a means of falsely representing another individual and that one who falsely assumes a fictitious name cannot be said to be falsely personating another. Rangammal assumed the name of Valli Ammal when there existed no person of that name and was held not to be guilty of the offence

under Section 82(c).

The decision in the case of Kadar Ravuttan, 4 Mad HCR 18, does not fully support the proposition that there can be no personation if the personality assumed by the accused is of a fictitious or non-existing person. What happened in the case of Kadar Ravuttan, 4 Mad HCR 18, is that he, for some reason of his own, made a statement under an assumed name and it was held that it was a case of merely assuming another name and not that of assuming the personality of another person or personating any other person. There was no explanation for his assuming that name.

It was not shown that by assuming that name he could make the statement which he would not have been in a position to make in his own name. When there existed no person of the name assumed by him and when it was not shown that he had any reason whatsoever to assume the personality of another, person, it was held by the High Court that it was not shown to be a case of personating any other person and not that of merely assuming another name.

It was said that the use of an assumed name without more is not a criminal offence and that the gist of the offence of false personation under Section 205, I. P. C. is the feigning to be another, known person. The Court conceded that 'personation' does not necessarily involve assumption of the personality of a genuine or existing person and that assuming the personality of a fictitious or imaginary person also is comprised within the meaning of 'personation'. It was pointed out by the Court that 'personation' within the meaning of Sections 140, 170, 171 and 415 includes assuming the personality of a fictitious or imaginary person.

Therefore, the decision in the case of Kadar Ravuttan, 4 Mad HCR 18, is not an authority in support of the proposition that there can be no personation if the personality assumed is that of a fictitious person. In that case, the accused was proved not to have been guilty of personation because nothing else was proved than mere assumption of another name. The facts in the present case are different. Here Indersen did two acts; one of getting a rent-note executed in the name of Ishwar Singh and the other of posing to be Ishwar Singh and producing

the rent-note before the Sub-Registrar. There might have been no personation by him when he did the former act.

It may be said that when he did it, he simply assumed another name. But when he did the other act, namely, that of producing the rent-note for registration before the Sub-Registrar, he certainly committed personation by assuming the personality of Ishwar Singh, the executant of the rent-note. He could not get the rent-note registered in his own name; he had to pose as Ishwar Singh, the executant of the rent-note in order to be entitled to have it registered. He himself created a person of the name of Ishwar Singh by executing the rent-note and when he produced it before the Sub-Registrar, he certainly personated as that Ishwar Singh who had executed the rent-note.

Even, though there really existed no person of the name of Ishwar Singh, son of Sunder Singh, he certainly personated as Ishwar Singh within the meaning of Section 82(c) when he pretended to be the particular Ishwar Singh, the executant of the rent-note. By the act of executing the rent-note, he must be deemed to have brought into existence a person by the name of Ishwar Singh and now he cannot be heard to say that there never existed a person of the name of Ishwar Singh when he produced the rent-note for registration. I, therefore, cannot agree that no offence under Section 82(c) was committed.

6. Really it is not necessary to decide whether the offence of Section 82(c) was committed or not because the applicants are being tried for the offence of Section 82(a) and its abetment. The learned Sessions Judge has conceded that the offences of Section 82(a) and (d) are made out against the opposite parties but he recommends the quashing of their commitment for these offences on the ground that their prosecution for them has not been sanctioned by the Sub-Registrar. He is in error in thinking that the Sub-Registrar has permitted their prosecution only for the offence of Section 82(c) and its abetment,

The permission is for their prosecution for certain acts said to constitute the offence of Section 82(c) and its abetment. The acts alleged to have been done by them in law amount to an offence punishable under Section 82(a) and its abetment. If the acts alleged alone are considered the permission is for the

prosecution for the offences of Section 82(a) and (d). If the sections mentioned in the permission are considered, it is for the prosecution of the offences of Section 82(c) and (d). The permission could not have contemplated the prosecution for both these sets of offences and the Magistrate, when deciding whether to take cognizance of the offences or not had to consider whether the Sub-Registrar intended to permit the prosecution for the offence of Section 82(a) and (d) or for the offences of Section 82(c) and (d).

The principle that he should follow is that he must consider the acts alleged to have been done and to hold that the permission is for the prosecution of whatever offences are constituted by those acts. 'Offence' is defined to mean acts which are made punishable; the prosecution is for doing those acts and if while mentioning under what section those acts are punishable some wrong section is mentioned, the mistake is of no consequence and should be ignored. It is for the Magistrate to apply the law and not for the authority permitting the prosecution or the complainant launching the prosecution. The maxim false demonstration on onset applies.

The mention of wrong sections is to be ignored as only wrong description. The Sub-Registrar must, therefore, be taken to have sanctioned the prosecution of the opposite parties for whatever offences were constituted by the acts mentioned in the Sub-Inspector's letters to have been done by them i.e. for the offences of Section 82(a) and (d) and the Magistrate rightly took cognizance of the offences and ordered commitment of the opposite parties to stand trial for them. In this view, I am fully supported by the decision of my brother, Mulla, in *Laurie E. Jacobs v. Union of India* : AIR1958 All481 .

There is, therefore, no illegality in the commitment. As regards opposite parties 2 and 3, there cannot possibly be any illegality because the permission is for their prosecution for the offence of Section 82(d) and they have been committed to stand trial also for the same offence. *Dharam Sarup v. The State* : AIR1953 All37 , was relied upon by Sri Rathore. The offence of Section 5 (1) of the Prevention of Corruption Act is a graver offence than that of Section 161, I. P. C. and it was held in that case that if sanction is given for prosecution for the offence of Section 161,

I. P. C., the Magistrate cannot try the accused for the former offence.

It may be that sanction given for the prosecution of a minor offence may not justify trial and conviction for the graver offence but here the opposite parties are being tried for offences which are of the same gravity as the offence for which the sanction was given by the Sub-Registrar. In the present case, it cannot be said that the opposite parties are being tried for a graver offence than that for which the sanction was given by the Sub-Registrar.

7. No case is made out for quashing the commitment and the reference is rejected.

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