

Jagat Narayan Vs. State

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Court : Allahabad

Decided On : Sep-09-1964

Reported in : AIR1967All123; 1967CriLJ302

Judge : H.C.P. Tripathi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 419 and 467

Appeal No. : Criminal Revn. No. 1427 of 1963

Appellant : Jagat Narayan

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.S. Tewari, Adv.

Disposition : Application allowed

Judgement :

ORDER

H.C.P. Tripathi, J.

1. These two revisions Nos. 1335 and 1427 of 1963 are directed against an order dated 31-7-63 passed by the learned Sessions Judge, Etawah, in Criminal Appeal No. 246 of 1963 setting aside the conviction and sentence passed against the

applicants by a Magistrate First Class and remanding back the case to the Magistrate for holding an enquiry against the applicants for committing them for trial before the Court of Session.

2. The prosecution story in short is as follows :-

A money order for Rs. 67.50 np. in favour of Bal Makund real elder brother of applicant Satish Chandra had arrived at Post Office Ajitmal. On 4-7-1962 Satish Chandra came to the Post Office, enquired about the money order and personating himself as Bal Makund demanded its payment. On the money order form he signed as Bal Makund. Applicant Jagat Narain also put his signature as a witness. On further enquiry, before the payment was made, Satish Chandra disclosed that he was not Bal Makund. Accordingly the payment of the money was withheld and a report was lodged with the police by the post master Ajitmal on which investigation followed. On completion of investigation both the applicants were sent up for trial under Sections 419 and 419 read with Section 109 I. P. C. respectively.

3. Sri B.L. Sachdeva, learned Magistrate 1st Class of Etawah, on assessment of evidence led by the parties held the applicant Satish Chandra guilty under Section 419 I. P. C. but gave him the benefit of Section 3 of the U. P. First Offenders Probation Act and released him after due admonition. He, however, convicted the applicant Jagat Narain under Section 419 read with Section 109 I. P. C. and sentenced him to fine of Rs. 55 and in default of payment of fine to undergo rigorous imprisonment for two months.

4. On an appeal filed by the applicants, the learned Sessions Judge went a step further and observed that

'the learned Magistrate had committed an error of law in treating the case as a case of simple cheating by impersonation. In fact he has completely misconceived the case. The forgery part of the prosecution allegation was completely ignored. He had, in deciding this case, usurped a jurisdiction which he did not possess,' and therefore, quashed the convictions, and sent back the case to the Magistrate with a direction that he should hold an enquiry for commitment proceedings.

5. Learned counsel for the applicants has argued that the order passed by the learned Sessions Judge directing the Magistrate to hold committal proceedings is wholly unsustainable in law, because, in the circumstances of the case, it was obvious that the applicants had committed no offence. Learned counsel contends that there was neither any wrongful gain to any party nor wrongful loss caused to some one else and there being no dishonest intention on the part of the applicants they could not be held responsible either for the offence alleged to have been proved against them by the learned Magistrate or for the offences under Section 464 or 487 I. P. C. I find force in these contentions.

6. Satish Chandra is admittedly a boy of about 14 years and is real brother of Bal Makund in whose favour the money order had arrived at the Post Office. Bal Makund has stated that he had authorised his brother to receive the money order and registered communications which might come in his favour and that they were personally known to the Post Office staff.

7. Satish Chandra in his statement before the Magistrate has asserted that he had gone to the Post Office for taking a post card and he was informed by the Post Master that a money order had come in favour of his brother Bal Makund. Thereupon he asked for its payment and wrote on the form the name of his brother Bal Mukund and wanted to add further that he was Satish Chandra his brother, but meanwhile the form was snatched away by the Post Master.

8. Applicant Jagat Narain stated that he only signed his name on the form as a witness identifying Satish Chandra but he did not identify him as Bal Makund.

9. In order to constitute an offence under Section 415 or under Section 419 I. P. C., there must be a fraudulent or dishonest deception practised by the accused resulting in the delivery of any property causing wrongful gain to the accused and wrongful loss to some other person.

10. When a person does anything with the intention of causing wrongful gain to one person or wrongful loss to another person he is said to do that thing dishonestly. A person is said to do a thing fraudulently if he does that thing with intent to defraud. In the instant case even if the allegations of the prosecution are

held to be true it is obvious that the element of dishonesty or fraud on the part of the applicants is totally absent. Satish Chandra was claiming money which admittedly belonged to his real elder brother with whom he lives jointly. The brother says that he had authorised him to receive the payment. In the circumstances it cannot be held that Satish Chandra had any dishonest intention, when he asked for the payment of the money. There could be no question of his trying to defraud the Post Office as he was claiming the money which belonged to his brother. It was not possible for the brother to have claimed that amount again with any chance of success from the Post Office if the payment had been made to his younger brother against an endorsement in his pen.

It may be that the boy in his childish pranks did not understand the significance of writing by his pen the name of his elder brother instead of himself but it is impossible to hold that he had any dishonest intention in doing so. I am, therefore, clearly of opinion that there could be no question of any offence under Section 415 or 419 of the Indian Penal Code in his case. The other applicant Jagat Narain had only put down his signature on the money order as a witness. He says that he was only a witness of the fact that the money was being paid to Satish Chandra and not that Satish Chandra was Bal Makund. There is nothing as such in his endorsement from which it could be inferred that he was identifying Satish Chandra as Bal Makund. As I have held that no offence was committed under Section 419 by Satish Chandra the question of Jagat Narain abetting the commission of an offence under Section 419 does not arise.

11. Section 463 of the Code runs as follows :--

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

Section 464 reads :--

'A person is said to make a false document: First who dishonestly or fraudulently makes, or executes a document.....'

It is, therefore, clear that dishonesty or fraud are essential elements for constituting an offence of forgery. As I have already held that there was neither dishonesty nor fraud on the part of Satish Chandra to have claimed payment of the money belonging to his brother and to have put down the name of his brother in his pen on the money order form, the question of the applicants having committed any offence under Section 467 of the Indian Penal Code does not arise and the impugned order of the learned Sessions Judge directing an enquiry being he for their commitment to the court of Sessions is not sustainable in law.

12. In the result the revisions are allowed and the order dated 31-7-1963 passed by the learned Sessions Judge in Criminal Appeal No. 246 of 1983 In so far as it has directed the Magistrate to hold commitment proceedings against the applicants is quashed.

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