

Mahtab Singh Vs. Emperor

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Court : Allahabad

Decided On : Jun-06-1941

Reported in : AIR1941All337

Appellant : Mahtab Singh

Respondent : Emperor

Judgement :

ORDER

Bajpai, J.

1. Mahtab Singh has been convicted under Sections 199/193, Penal Code, and sentenced to six months rigorous imprisonment and a fine of Rs. 200. His conviction was affirmed in appeal by the learned Sessions Judge and Mahtab has filed the present application in revision to this Court. The facts are that Mahtab Singh was being prosecuted for an offence under Section 420, Penal Code, and in that connection a compromise was filed between the complainant and the accused Mahtab Singh. The Court refused to accept the compromise because the Prosecuting Inspector pointed out to the Court that the accused had been convicted previously of an offence under Section 420, Penal Code. Mahtab Singh applied for transfer to this Court and the application along with the affidavit was sent down to the learned Magistrate for a report. In his report and explanation the learned Magistrate pointed out that the accused had been convicted on a previous

occasion of an offence under Section 420, Penal Code. When the report and explanation came to this Court Mahtab Singh filed a second affidavit to the effect that the statement of the Magistrate that Mahtab Singh had been previously convicted under Section 420, Penal Code, was wrong. This Court ordered the prosecution of Mahtab Singh for giving a false affidavit because this Court was prima facie of the opinion that the explanation of the Magistrate was right and the affidavit of Mahtab Singh was wrong. When Mahtab Singh was put upon his trial in connection with the false affidavit he threw himself at the mercy of the Court. It had become abundantly clear by that time to everybody concerned that the report of the Magistrate that there was a previous conviction under Section 420, Penal Code, against the accused Mahtab Singh was right. Under these circumstances the applicant before me was convicted under Sections 199/193, Penal Code, and sentenced to six months rigorous imprisonment. As I said before, his conviction and sentence were affirmed in appeal by the learned Sessions Judge.

2. In revision it is argued before me that Mahtab Singh was an accused and consequently he could not swear to an affidavit and there could therefore be no conviction under Section 199 or under Section 193, Penal Code. My attention was drawn to Section 342, Clause (4) Criminal P.C., and to Section 5, Oaths Act, and to the cases reported in the matter of Barkat ('97) 19 ALL 200, Emperor V. Bindeshri Singh ('06) 28 ALL 331 and Emperor V. Mattan ('11) 33 ALL 163. The view taken by this Court in these three cases was not accepted in other Courts. I might mention the case in Gallagher V. Emperor : AIR1927 Cal307 . Sanderson C.J. at p. 56 observed as follows:

In my opinion Sub-section (4) of Section 342 of the Code was intended to relate to the proceedings which are specified in Section 342, and that Section 5, Oaths Act, was intended to apply to an accused person while he is, under trial.

3. The learned Chief Justice quoted with approval the case in Akhoy Kumar Mookerjee V. Emperor ('19) 6 A.I.R. 1919 Cal 1021. It is not necessary to mention other cases. In the year 1923 a new section was added to the Criminal Procedure Code. It is Section 539A which provides:

When any application is made to any Court in the course of any enquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

4. This section applies to an accused. It applies to any person who chooses to make allegations against a public servant and in support of those allegations swears an affidavit. If the accused person chooses to come within the scope of this section and swears an affidavit on false facts he would be liable to punishment which can be inflicted upon persons who swear such false affidavits. This was the view taken by this Court in *Badri Prasad V. Jhamman* : AIR1933 All47 where their Lordships held that in view of the change of law the judgment in *Emperor V. Mattan* ('11) 33 ALL 163, need no longer be followed. There is thus no force in this contention advanced on behalf of the applicant.

5. It was then contended that a supplementary affidavit was not called for inasmuch as in an application for transfer only one affidavit was necessary and that affidavit had already been filed by Mahtab Singh and it was not necessary for him to file a second affidavit. In this connexion my attention was drawn to the cases in *Ganeshi V. Emperor* ('05) 2 A.L.J. 203, *Purendar Jha V. Nanulal Jha* ('27) 14 A.I.R. 1927 Pat 197 and *Juggut Chunder Mozumdar V. Kashi Chunder Mozumdar* ('81) 6 Cal 440. These are clearly distinguishable cases. In these cases a petition which did not require by law to be verified was, as a matter of fact, verified and prosecution was ordered because it was thought that the verification was false. It was held that as the petition was not required by law to be verified the accused could not be convicted of an offence under Section 193, Penal Code. Here the affidavit filed by the accused was required by law to be sworn and the accused cannot take shelter behind the plea that a supplementary affidavit was not required. If the affidavit did not under the law require to be sworn, then the cases cited by learned Counsel might have been applicable. There is no force in this contention as well.

6. Finally, it was argued that the sentence was very severe, more particularly as the accused had thrown himself at the mercy of the Court from the very beginning. I would have acceded to this contention and reduced the sentence substantially, but the accused has so far done only four days in jail and I do not think that that is enough. The learned Sessions Judge points out that the accused had no option but to throw himself at the mercy of the Court, it was not because the accused was repentant but it was because the accused had no choice in the matter. It appears that the accused had been convicted previously about 20 years back of an offence under Section 420, Penal Code, and again was convicted about the same time back of an offence under Section 467, Penal Code. In connexion with this very conviction the appeal of the accused was dismissed some time in September 1940, but the accused did not surrender himself to his bail till the end of February 1941 and then he filed his application in revision on 3rd March 1941. It is not possible for me under these circumstances to say that this accused merits sympathy and that the sentence ought to be reduced to the term already undergone. For the reasons given above, I dismiss this application. The accused, who is on bail, will surrender to his bond and serve out the rest of the sentence.