

Malkhan Singh Vs. Emperor

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Court : Allahabad

Decided On : Aug-18-1924

Reported in : AIR1925All226; 84Ind.Cas.711

Appellant : Malkhan Singh

Respondent : Emperor

Judgement :

Mukerji, J.

1. I think in this case the conviction must be set aside. The applicant Malkhan Singh was convicted by a learned Magistrate of the offence under Section 171(f) of the Indian Penal Code. On appeal the learned Sessions Judge changed the conviction into one under Section 171(f) read with Section 511 of the same Code.

2. In this Court the contention is that the facts found did not amount to an attempt to commit the principal offence.

3. I think this contention is right. I proceed on the facts as have been found in the judgments of the Courts below. It appears that the procedure for voting is something like this : The voter goes to an officer, who issues what are known as 'signature slips.' He has to state, or in some other way indicate to that officer, who he is. On ascertaining that the applicant is a real voter the officer, in whose charge the signature slips are, issues one to the applicant. The applicant then signs the

signature slip, and on the strength of that signature slip obtains a voting paper.

4. It is the application for a voting paper by a wrong person that has been made punishable under Section 171(f) of the Indian Penal Code. In this particular case what happened was this. The applicant went to the officer who had the custody of signature slips. He did not give out his name but produced a certain piece of paper which bore a certain number. The officer looked at that number and then looked at the electoral roll and discovered that against that number the name of one Lochoo appeared. On being asked by that officer if he was Lochoo the applicant said he was. A patwari of the village was there and he said that the applicant was not Lochoo but was one Malkhan Singh. There was a dispute and ultimately the applicant admitted that he was Malkhan Singh and not Lochoo. The question then is whether what the applicant did amounted to an attempt to commit the offence of fraudulently applying for a voting paper, and thereby personating at election.

5. It appears to me that an act, to amount to an attempt, must be such that if not prevented it would complete the offence. In this case the obtaining of the 'signature slip' was an act which by itself would not have amounted to an application for a voting paper. The applicant was frustrated, in the act of obtaining a signature slip. If he had not been frustrated, all that he would have committed was the obtaining of a signature slip on false pretences. The completion of this act would not have amounted to a completion of the act of applying for a voting paper. I hold that the offence has not been brought home and the conviction should be set aside. I set aside the conviction and sentence and order the release of the applicant. The fine, if paid, will be refunded.