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Court : Allahabad

Decided On : Sep-01-1924

Reported in : AIR1925All230; 83Ind.Cas.654; 84Ind.Cas.714

Appellant : Ram Nath

Respondent : Emperor

Judgement :

Mukerji, J.

1. The applicant, Babu Ram Nath, who is a practising Mukhtar at Agra was convicted by a First Class Magistrate of Agra of the offences under Sections 419 and 465 of the Indian Penal Code, read with Section 114 of the same Code. He was sentenced to undergo rigorous imprisonment for two years. He appealed. The learned Sessions Judge found that the case of abetment of cheating under Section 419 of the Indian Penal Code had not been established. But he was of opinion that the applicant was guilty of abetment of an offence under Section 465 of the Indian Penal Code and sentenced him to undergo simple imprisonment for one year.

2. In this Court several points have been taken. But before the points urged are mentioned, it would be necessary to know exactly what the case is.

3. It appears that a keenly contested election to the Municipal Board of Agra was going on. The applicant was one of the candidates for election. There were two vacancies in Board and there were five candidates. Dr. Ram Sarup Sarain was one of the other four candidates and the applicant and Dr. Ram Sarup being friends worked together. Indeed it was Dr. Bam Sarup and his agents who tried for the successful election of both. The 24th of March, 1923, was the date of election. Election was going on at the premises of the Municipal Office. A certain person, whose identity has not been established, came forward and claimed to be one of the voters, viz., Hari Shanker. According to the rules, this man, professing to be an illiterate person put his thumb-mark on the document Exhibit I, called 'signature-sheet' and the applicant, Ram Nath, put his signature on the document as a witness who knew the voter. It has been established that the man who represented Hari Shanker was not the real Hari Shanker and that the applicant attested the signature sheet without knowing that the person who put his thumb-mark to the sheet was not the real voter.

4. Several points have been urged against the validity of the conviction and these are:

(1) That there could be no prosecution without a sanction of the Local Government under Section 96 of the Criminal Procedure Code, as the offence committed was really one under Section 176(P) of the Indian Penal Code.

(2) That the attestation was made innocently and without any intention to abet a forgery.

(3) That attestation was wholly unnecessary and, therefore, no offence has been committed.

5. Point No. 1. - By Act 39 of 1920, a new chapter described as 'Chapter 9(A), of offences relating to election' was added to the Indian Penal Code in 1920. One of these offences as described in Section 171(D) is as follows:

Whoever, at an election, applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted

once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way commits the offence of personation at the election.

6. By Section 171(F) the offence of personation at election was declared to be punishable with imprisonment of either description for a term which may extend to one year or with fine or with both.

7. The description of the charge brought against the applicant clearly shows that it is alleged that the applicant committed the offence of personation at election. It is true that according to the rulings of the Allahabad High Court and some other Courts whoever prepares a false document for the purpose of establishing a claim, which need not necessarily be claim to property, must be deemed to be guilty of forgery, and whoever aids or instigates the commission of such an offence must be taken to have aided or abetted such forgery. It must, therefore, be conceded that, under certain circumstances, the false preparation of a signature-sheet may amount to forgery within the meaning of Section 463 of the Indian Penal Code. It is also to be remembered that there are rulings of certain High Courts establishing a contrary proposition, i.e., where it has been held that to commit forgery it is necessary to lay a claim to property, If may be due to this conflict of opinion or if may be due to some other motive, but it is a fact that the Legislature has thought it fit to define as a separate offence, apart from the offence of forgery, the false preparation of a document like a signature-sheet. The question, therefore, is whether, in the circumstances, the offence committed is one under Section 171(F) of the Indian Penal Code or one under Section 465 of the same Code.

8. It appears to me that where the offence in question has been specifically described and designated by the Legislature, it is not open to any Court to say that, although the offence may be specifically one under Section 171(F) of the Indian Penal Code it falls equally under Section 465 of the same Code and that, therefore, it is open to the Court to try the offender under either of the two sections. Where there are two provisions, one specific and the other general) the specific provision ought to be applied in preference to the general one. If this view be correct, the offence committed must be treated as one under Section 171(F) of

the Indian Penal Code in preference to Section 465.

9. I am fortified in this view by two circumstances. One is that the offence of personation at election has been made punishable by Section 171(F) with imprisonment extending to one year only, while the offence under Section 465 is punishable with imprisonment which may extend to two years. Evidently the Legislature did not want that a case like this should be treated as an ordinary case of forgery. The second circumstance is this that the Legislature has deliberately said that no prosecution under Chapter 9(A) of the Indian Penal Code shall be undertaken without a sanction of the Local Government. Where the law clearly says that it is a condition precedent to the prosecution that a sanction shall be obtained from the Local Government I do not think it is open to any subordinate authority to override the provision of the law by saying that the offence falls under another section of the Indian Penal Code and as no sanction is necessary for the prosecution under that section the offender may be prosecuted without any sanction.

10. The result is that, in my opinion, the prosecution cannot stand.

11. It has been urged by the learned Assistant Government Advocate that the question now before me has really been definitely answered by a Bench of two Judges of this High Court and that, therefore, I am bound to hold that a prosecution of the appellant under Section 465 of the Indian Penal Code is valid. It appears that the case was started in this way. When the applicant was elected to a seat on the Municipal Council, a rival candidate, Seth Bhik Chand, put in an election petition to have the election of the applicant set aside. The matter went before the Commissioner of the Agra Division and that learned officer, after an enquiry, found that there was a false personation by somebody of the voter, Hari Shankar, and that the applicant had been guilty of attesting the signature-sheet. The Commissioner, therefore, ordered the prosecution of the applicant. The applicant, thereupon, came before this Court with a petition to revise the order of the Commissioner. The learned Judges who heard the petition came to the conclusion that they had no jurisdiction to revise the order of the Commissioner. But it appears that several points were taken before the Bench and the judgment

of this Court does contain some remarks as to those contentions. In view of the fact that the case was decided on the ground of want of jurisdiction in the High Court the remarks of the Hon'ble Judges are no better than obiter dicta. These remarks, however, would be entitled to utmost respect from me. I have carefully examined the judgment in the aforesaid revision case and I find that the learned Judges never definitely decided any of the contentions now before me. I find that they used the expression *prima facie* when considering whether an offence which would fall under Chapter 9(A) of the Indian Penal Code may be also treated as falling under Section 465 of the same Code. Then, I find their Lordships remarking that the matter raised before them was really a matter for the consideration of the criminal Courts. Their Lordships were sitting on the civil side of the High Court. Then, the judgment further shows that the suggestion had been thrown out, evidently on behalf of the prosecution, that offences of a minor kind alone fell within the Chapter 9(A) of the Indian Penal Code and serious offences like forgery were punishable under other provisions of the Code. I find myself, therefore, unable to accept the case of *Ram Nath v. Emperor* A.I.R. 1924 All. 684, as an authority for the point now argued before me.

12. The result is that the application should succeed on the first point alone.

13. Second and third points may be taken together. I am unable to agree with the contention of the learned Counsel for the applicant that where a voter puts his thumb-mark on the signature sheet, it is not necessary for anybody to identify the voter's thumb-mark on the document. In fact, the column 3 of the signature sheet, as recorded in the Devanagiri character, itself shows that it is contemplated that somebody should attest the thumb mark of an illiterate voter. The contention of the learned Counsel was based on the language of Rule 43 of the Municipal Manual, part II. The language used is loose and it cannot be said definitely that the attestation is not necessary in the case of a thumb-impression. The question, however, is not whether the attestation of the thumb mark was required by law or not. But the question is whether the attestation was made with a view to abet forgery. The question for consideration, in other words, is whether the applicant abetted the commission of forgery by attesting the thumb-mark of the person who personated Hari Shanker. Coming to the evidence, the whole of which has been

read out to me, it appears that the applicant never knew Hari Shanker. Hari Shanker, although he has been misdescribed in the electoral roll as a shop-keeper, is really an assistant in one of the Government of India Offices and is now on deputation to a certain Indian State. He swore that he never knew the applicant. There is no evidence that the applicant knew the man who personated Hari Shanker. The witnesses Jageshar Prasad, who is an assistant to the polling officer, and Mr. Keshab Deo, the polling officer, tell us in what manner the election was proceeding. It appears from their evidence that the practice was this. There were present at the election either the candidates themselves and their agents or the agents alone. In the case of the applicant, as I have said above, Dr, Ram Sarup's agent was working for him. Whenever a voter appeared, somebody would announce (this somebody would generally be the agent of a candidate) that such and such voter was proceeding. The voter would be asked his name, his parent's names, etc. On his replies tallying with the electoral roll, he would be given a signature sheet with the serial number and the name of the voter written down on it. The man then would mark it either with a pen or would put his thumb-mark on it. Then, the party who expected the voter to vote for him, would attest the signature sheet. In the present case, the applicant who did not know all his voters, adopted the procedure prescribed above. In the language of the assistant to the polling officer, Jageshar Prasad : 'On that day, if the agent of the candidate did not know the illiterate voter, he would ascertain from his men about the voter and then put his signature on the signature-sheet.' Jageshar Prasad clearly says that when the man who personated Hari Shanker appeared before him, nobody stated that the man was not Hari Shankar himself. Mr. Keshab Deo says : 'Babu Ram Nath accused was near the clerk who was writing the slip and witnessing the slip of the voters....Before witnessing Babu Ram Nath used to ask others about the voters as to their identity. He also made similar enquiries from his workers.' It will, therefore, be seen that the polling officer corroborates Mr. Jageshar Prasad. The applicant's case is that what he did was this. The voter appeared having been announced by somebody. He did not know the man. He asked him his name, his father's name and then asked his electioneering agent if the man was really Hari Shanker. Having been satisfied that such was the case, he put his initials to the signature-slip. There can be no doubt that this is exactly what has happened. As I read the

judgment of the learned Sessions Judge, he also thinks that this is exactly what has happened. He does not charge Jageshar Prasad with having had knowledge of the fact that Hari Shanker had been personated and with having known that the man who put his thumb-mark on the signature sheet was not Hari Shanker himself. The learned Judge, however, thought that the applicant was reckless and however honest his motive was, he led the authorities to believe that the impostor was Hari Shanker and thereby facilitated the obtaining by the impostor of a voting paper.

14. There is an essential difference between a reckless act, for which a man may be held civilly liable, and a criminal act, for which he may be punished by imprisonment or fine. In my opinion, the applicant acted in perfect good faith, although undoubtedly recklessly. He ought to have known that it was his attestation which really mattered and he had no right to say on the authority of his agents that he knew that the man who marked the signature-sheet was the right man. I am, however, clear that the applicant did not intentionally aid the commission of the offence of forgery. He did aid it, no doubt, but he did it unintentionally.

15. To the facts of the present case, Clauses I and II of Section 107 of the Indian Penal Code do not apply. It is only in the third clause that the case may be said to fall. The third clause is this:

'A person abets the doing of a thing who intentionally aids by any act or illegal omission the doing of that thing.' The intention should be to aid the commission of a crime. A mere giving of an aid will not make the act an abetment of an offence, if the person who gave the aid did not know that an offence was being committed or contemplated. The intention should be to aid an offence or to facilitate the commission of an offence. But if the person who lends his support does not know or has no reason to believe that the act which he was aiding or supporting was by itself a criminal act, it cannot be said that he intentionally aids or facilitates the doing of the offence. I will give an example. A, B and C are friends. A and B have fallen out, so much so that A is determined to shoot B. A goes to the house of C, and on some pretext or other induces C, to call B to his house. C has not the least,

idea that A would shoot B on his arrival. B arrives and is murdered by A. A committed murder. Can it be said that C is guilty of abetment, because he 'intentionally aided' A? C did give his aid in calling B to his place. But he never knew why A wanted him to send for B. Whatever C did, he did intentionally, for his intention certainly was that B should come. But it was not C's intention that a crime should be committed. C cannot be held guilty of abetment of murder.

16. I am clear, therefore, that on the facts-no charge of abetment of the offence under Section 465 has been established.

17. The application succeeds. I set aside the conviction and sentence and order that the applicant be restored to liberty.

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