

Surendra Nath Vs. Emperor

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Court : Allahabad

Decided On : Mar-29-1933

Reported in : AIR1934All385

Appellant : Surendra Nath

Respondent : Emperor

Judgement :

ORDER

Mukerji, J.

1. These are two Civil Revisions arising out of the same civil proceedings, viz., suit No. 52 of 1930 in the Court of the Subordinate Judge at Cawnpore. The history of the case is given in the judgment of Mr. Ram Ugrah Lal Srivastava and they are mentioned there very clearly. The learned Judge came to the conclusion that certain persons, viz., Surendra Nath applicant, in Civil Revision No. 652 of 193, Mohan Lal, respondent, in Civil Revision No. 689 of 1932 and some other persons had taken part in an attempt to defraud the Punjab National Bank, Limited. He also found that for this purpose a false personation was committed and a man who did not bear the name of Karan assumed that name and executed a sale-deed in favour of Mohan Lal, that Surendra Nath was an active party in this conspiracy because it was his property which was to be saved by the false sale-deed, and so on. The learned Judge directed that four separate complaints should be filed under

Sections 207, 465/109, 416/109 and 193, Penal Code. Surendra Nath and Mohan Lal filed appeals against this order before the District Judge and the learned Additional District Judge directed that no complaint should be filed against Mohan Lal while he rejected the appeal of Surendra Nath. Surendra Nath's revision is directed to obtain an order that the complaint proposed to be filed should not be filed and the Punjab National Banks' revision is directed to obtain an order that Mohan Lal should be prosecuted and a complaint should be filed against him also. It appears to me that the learned Judges in the Court below have proceeded on wrong lines. The learned Subordinate Judge Mr. Srivastava has not read Section 195, Criminal P.C., carefully. If he had read it carefully he would have found that he was not authorized to direct prosecution under Sections 465/109 and 416/109. Sections 465 and 416 are not to be found among the several sections of the Penal Code mentioned in Section 195, Criminal P.C. A complaint under Section 463 or its cognate sections can be filed only when a forgery has been committed by a party to a proceeding after he has become a party and in respect of a document produced or given in the evidence. He might read carefully the Full Bench Decision in the case of Emperor v. Kushal Pal Singh : AIR1931 All443 .

2. As regards the offence under Section 193, the learned Judge has not stated what is the particular statement which was made by Surendra Nath or any of the opposite parties and which was regarded by the learned Judge as being false to the knowledge of the deponent. The sentence or sentences should be quoted and the opposite parties should be given a chance to show cause against the proposed prosecution. Similarly with reference to the charge under Section 207 it should be specifically stated how the offence has been committed. Section 476 is meant to provide safeguards against reckless prosecutions and therefore a certain amount of care should be taken before a prosecution is ordered.

3. In the case of Mohan Lal the learned District Judge set aside the order of prosecution because in his opinion there was no reasonable hope of Mohan Lal being convicted by a criminal Court. The learned Judge has really put himself in the position of a Sessions Judge who was trying an appeal against the conviction of Mohan Lal for the offences in respect; of which the Court of first instance wanted to file a complaint. That is not the right attitude to take up. I do not know

from where the learned Judge got the doctrine that there should be a reasonable hope of conviction in the criminal Court. Standing by itself the dictum is not open to much objection. The object of Section 476 is, as I have already said, to secure against reckless prosecution. Probably the learned Judge got the dictum from some decision of this Court, but it has to be read in connexion with the facts of the case in which the dictum was used. All that Section 476 requires is a finding that 'it is expedient in the interest of justice that an inquiry should be made into an offence' referred to in Section 195. In my opinion the learned Judge has not approached the case from this point of view. He has accordingly acted with material irregularity. It is not a case that he has merely committed an error of law. His angle of vision is wrong. In the result I set aside the orders of the Court of first instance and the appellate Court and send back the case to the Court of first instance with the direction that it shall proceed in accordance with the law. If any complaints have already been filed they will be withdrawn and the opposite parties would be reheard after the Court has definitely stated what are the charges proposed to be brought against them. The case will be inquired into not only against Surendra Nath and Mohan Lal, but also the other persons against whom the learned Judge wanted to proceed under Section 476, Criminal P.C.

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