

Janki Prasad Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/464151

Court : Allahabad

Decided On : Jan-27-1926

Reported in : AIR1926All700

Appellant : Janki Prasad

Respondent : Emperor

Judgement :

Daniels, J.

1. In this case the appellant Janki Prasad, a patwari was committed to the Court of Sessions on charges under Sections 218 and 471, I.P.C. The charge was that he knowingly prepared a wrong record, namely a jinsi bahi-khata, showing a tenant named Mendai as paying a grain-rent, whereas in fact he paid a cash rent, and that he produced this paper in Court to support a false defence put in by Mendai in a suit for arrears of rent. The revenue Court held that the defence was false and decreed the suit. Thereafter the plaintiff in that suit filed a complaint against the patwari which has resulted in the order under appeal. The learned Sessions Judge held on the merits that it was fully proved that Mendai had agreed to pay a cash rent and that the patwari knowingly prepared a false record. The patwari was under suspension and had given overcharge at the time when the bahi-khata was to (Sic) in evidence. The learned Sessions Judge held for some reason which is not clear to me that if the record was prepared before the patwari's suspension the

only offence which he could be held to have committed would be an offence under Section 218 and not an offence under Section 471, I.P.C. The same act may be, and often is, an offence under more than one section of the Penal Code, and if the act amounted to forgery it would not cease to be forgery because it also amounted to an offence under Section 218. The learned advocate for the appellant has taken a different point which does not seem to have been raised at the trial. He points out that the offence under Section 471 was committed in relation to a proceeding in a Court and therefore that under the provisions of Section 195, Criminal P.C., no charge in respect of such offence could be entertained except on the complaint of the Court. Before the recent amendment of the Criminal P.C., a sanction and not a complaint would have been required, and the law as it then stood laid down that the absence of a sanction would not invalidate the proceedings. This portion of Section 537 has now been omitted, and it appears to me that since the amendment if a Court entertains a case covered by Section 195, Criminal P.C., without such a complaint as the law requires its proceedings are void. The case would appear to come under Section 530(p). The Court is not empowered to try the offender except upon a complaint made by the proper authority.

2. The learned Sessions Judge came to the conclusion that the record was prepared after the patwari gave over charge and has, therefore, convicted him under Section 471. Section 195(1)(c) deals only with offences by a party, but even assuming that this conviction under Section 471 cannot be upheld, this does not end the matter. It appears to me that the learned Sessions Judge was wrong in thinking that the record was prepared after the patwari gave over charge. The patwari himself declares that he prepared it prior to making over charge, and this is supported by the fact that he entered it in the list of papers to be made over when he gave over charge, but as he did not in fact make over this paper to the qanungo the entry was struck out. The rent suit against Mendai was filed nearly a month before the patwari was suspended. If the offence committed by the patwari was really one under Section 218 it is open to the appellate Court under the provisions of Section 423(1)(b), Criminal P.C., to alter the conviction to one under that section even though the trial Court may have acquitted the accused under that section. This has been decided in several cases both of our own and of other High Courts. Cases of this High Court are *Emperor v. Sardar* (1912) 34 All 115 and

Dutti v. Emperor AIR 1918 All 65. There are Madras and Calcutta rulings to the same effect e.g., Appanna v. Pithani Mahalakshmi (1911) 34 Mad 545 and Queen-Empress v. Jabanulla (1896) 23 Cal 975.

3. On the merits the learned Sessions Judge has shown conclusively that Mendai's statement that he took the land on a grain-rent was false. The plea pressed on behalf of the patwari is that he made this entry in good faith on information supplied by Mendai. There are a number of facts on the record which go to disprove this contention. In his written statement the accused says that he prepared the bahi-khata on information received from Mullu who made the appraisal of the crops, and he has produced Mullu as a witness for his defence. The paper bears the signature of this man Mullu. The learned Judge has given good reasons for holding that Mullu's evidence is totally false and that no appraisal of the crops was ever made. The manner in which this bahi-khata was produced in Court is in itself highly suspicious. The accused was not summoned to produce any paper. He was summoned only to give evidence. Asked how he came to produce this paper he said that the peshkar of the Honorary Assistant Collector told him that it would be wanted. The peshkar was produced as a witness and has denied this statement. His denial is clearly correct. The peshkar was not in a position to know for what purpose Mendai had summoned this witness. Further, the bahi-khata ought not to have been in the patwari's possession at all. His statement that he forgot to bring it when he made over charge and kept it back by accident is most improbable in view of what followed. The qanungo had checked the patwari's papers no less than eight times during the period to which this bahi-khata relates but has sworn that this paper was never produced before him. It is further proved that the patwari had reason for bearing a grudge against Kali Charan Singh, the plaintiff, in the revenue case, as the latter had appeared as a witness against the patwari in a criminal case. There is a further improbability that the patwari should have prepared the paper on the statement of the tenant alone without ever making any inquiry from the landlord or his agent. Taking all these facts together I have no doubt that the patwari knew that he was preparing an incorrect record. I, therefore, alter the conviction to one under Section 218, Indian Penal Code, but maintain the sentence.

