

Karim-ud-din Vs. Emperor

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Court : Allahabad

Decided On : Apr-11-1918

Reported in : 47Ind.Cas.867

Judge : George Knox, J.

Appellant : Karim-ud-din

Respondent : Emperor

Judgement :

George Knox, J.

1. Karim-ud-din has been convicted of three offenses, each offense under Section 403 of the Indian Penal Code, and sentenced to six months' rigorous imprisonment on each offence, the sentences to run consecutively. It appears from the record and the arguments addressed to me that station masters on the East Indian Railway get some kind of allowance from the Railway in return for goods to be despatched by the Railway to be marked and loaded or otherwise handled. The station master Raghunath Pershad appointed Karim-ud-din and gave him Rs. 10 a month for doing this work. There was no contract of any kind between the East Indian Railway Company and Karim-ud-din. Raghunath Pershad appears to have made or permitted Karim-ud-din to write a number of Railway registers. It is not for a moment asserted that the East Indian Railway Company sanctioned this allotment of work to Karim-ud-din or were in any way cognizant of it. Raghunath

Pershad took leave and was succeeded by one Rikhi Lal. Rikhi Lal appears to have gone a step further than Raghunath Pershad in employing Karim-ud-din in this kind of work and to have given him the cash registers to write up. The result or alleged result of these proceedings was that certain items of money disappeared. The accused was charged with embezzling three separate different items. The nature of these items is somewhat different. The first item is an item of Rs. 5-10-0. The prosecution allege that this was an overcharge upon certain goods consigned through the East Indian Railway to one Sat Narain. Sat Narain appears to have paid the sum under protest, and to have written to the Railway Company on the point. The item was represented in a letter, the writing of which is traced to the accused but the signature on the writing is that of Rikhi Lal's. The money never came into the hands of the East Indian Railway Company. It was described as a demurrage charge, while I understand that the Railway have never put it forward as money due to them either on account of goods consigned or demurrage thereon. The other two items are of the same description, but for the purposes of this revision I need not go into them. The contention raised before me is that with reference to the first item no offence coming within Section 408 of the Indian Penal Code has been proved and the trial of the accused for the three offences under Section 408 of the Indian Penal Code is illegal, a joint trial of the three items not being allowable by law. It is really round this first charge that the argument in revision centres. I accept the plea that even if the facts be considered proved, the first is not an offence which falls within Section 408 of the Indian Penal Code. Karim-ud-din was neither clerk nor servant of the Railway Company, he was not employed as clerk or servant of theirs and not being so, he could not be entrusted in such capacity with this sum of Rs. 5-10 0. It is contended before me that Karim-ud-din having chosen to take upon himself the duties and responsibilities of a clerk of the East Indian Railway Company, must be regarded as a clerk and cannot afterwards say that he is not such a clerk, and my attention was called to the case of Queen-Empress v. Parmeshar Dat 8 A. 201 : A.W.N. (1836) 63 : 4 Ind. Dec. (N.S.) 1159. There is, however, an important difference in the case cited and the present case. Parmeshar Dat was recognised by the authorities as filling the position of a public servant. There was no such recognition in this case, nor can I suppose that there would ever have been such a recognition. The probabilities are

that if the attention of the East Indian Railway Company had been called to the fact that this marksman was posting up registers and receiving moneys, they would have utterly refused to recognise him and would have called Rikhi Lal to account for such an irregularity. Then further my attention was called to what was argued, how far the sum of Rs. 5-10-0 taken under the circumstances stated would come at all under the crime of embezzlement. It was not the property of the East Indian Railway Company, it was repudiated as not being their property and whatever may have been the offence committed in respect of that Rs. 5-10 0, it was not the offence of embezzlement. The joint trial under the circumstances was illegal. I quash it, set aside the convictions and sentences. Karim-ud-din must be released.

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