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Ram Nath Vs. King-emperor

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Court : Allahabad

Decided On : Nov-05-1925

Reported in : AIR1926All231; 94Ind.Cas.897

Appellant : Ram Nath

Respondent : King-emperor

Judgement :

Sulaiman, J.

1. This is a revision from a conviction of the applicant under Section 171-F of the Indian Penal Code. The applicant was candidate at a Municipal election held at Muttra in March 1923. A person named Hari Shanker, was a voter on the electoral roll but he was not living at Muttra. Some person, who has not been traced by the police, came forward at the time of the election and professed to be Hari Shanker and put his thumb mark on the voting slip. The voting slip was attested by the applicant Ram Nath, the candidate himself. After Ram Nath was elected his election was contested before the Commissioner who set aside the election and directed the prosecution of Ram Nath under Sections 419 and 465, read with Section 109 of the I.P. C, that is to say cheating and abetment of forgery. Ram Nath was convicted by a First Class Magistrate and sentenced to two years' rigorous, imprisonment, On appeal the Sessions Judge acquitted him of the offence under Section 419, but maintained his conviction under S, 465 read with

Section 109. Ram Nath came up in revision to this Court and Mukerji, J., set aside his conviction under Section 465 read with Section 109 also. His judgment is reported in Ram Nath v. Emperor : AIR1925 All230 . Mukerji, J., came to the conclusion that the Legislature had specifically provided for such an offence under Section 171-P of the I.P.C. and that even if the offence could fall under Section 465-109 of the I.P.C. it was not open to the criminal Court to try the offender under either of the two sections. In his opinion where there are two provisions, one specific and the other general, the specific provision ought to be applied in preference to the general one. He accordingly held that the conviction of the applicant under Section 465 read with Section 109 could not stand. He then proceeded to examine the evidence and came to the conclusion that inasmuch as Ram Nath was not aware that Hari Shankar was personated he had no guilty knowledge and could not be said to have abetted the forgery. At p. 1111 of 22 A.L.J. the learned Judge quoted from the statements of the polling officer and his assistant, passages showing that the candidate without knowing the illiterate voters, used to ascertain from his men about the voters and then put his signatures on the voting slips. He accordingly held that even on the facts no charge of abetment of the offence under Section 405 had been established.

2. It seems to me that it would have been more proper if no further prosecution of the accused had been started. No doubt Mukerji, J., held that for want of a proper sanction the conviction could not stand inasmuch as no sanction of the Local Government for prosecution under Section 171-F had been obtained. Nevertheless he also went into the facts and expressed the view that when Ram Nath was not aware of the false personation no offence had been committed.

3. The Local Government subsequently granted sanction to prosecute Ram Nath under Section 171-F of having intentionally abetted the false personation at the election. The trying Magistrate has convicted him and that conviction has been upheld by the Sessions Judge.

4. The first question to consider is whether a second trial is legal. The applicant was first tried on the same facts under Section 465 read with Section 109 and has been acquitted. He is now being tried on the same facts under another section

viz., Section 171-F, on the ground that the Local Government has sanctioned the prosecution.

5. Section 403(4) provides that a person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was tried was not competent to try the offence with which he is subsequently charged. The question to consider therefore is whether it can be said that the Court which tried the accused first was not competent to try the offence with which he is now charged. The answer to this question depends on whether it can be said that the Court is not competent to try an accused for an offence in which sanction is necessary and no sanction has been obtained. It is not necessary for me to go to other High Courts which have taken a different view on this matter. In at least two cases arising under the old Act two learned Judges of this Court expressed the view that where a previous prosecution bad failed on the ground that sanction had not been obtained a subsequent prosecution was not illegal. I may refer to the case of Emperor v. Jiwan AIR 1915 All 114, and Mohan Lal v. King-Emperor AIR 1921 All 205. It is to be noted that both those cases were cases where sanction under Section 195 had not been obtained, and in spite of the fact that under Section 537(b) of the old Code an absence of sanction was a mere irregularity which could be cured, the learned Judges held that a second prosecution was not illegal. It is however not necessary for me in this case to go to that length. The sanction in the present case was required by Section 196 of the Code and that section was not specifically mentioned even in Section 537 of the old Code and is not mentioned in Section 537 of the new Code. I am therefore not prepared to hold that an absence of a sanction from the Local Government makes the trial merely irregular and not illegal. That being so, it must be held that the first Court was not competent to try the accused for an offence under Section 171-P inasmuch as no section of the Local Government had been obtained by that date.

6. Coming now to the merits of the case: the first objection raised on behalf of the applicant is that even if the second prosecution is not illegal the view expressed by Mukerji, J., should be accepted as a ruling. It is however to be pointed out that in

this new prosecution the witnesses have been examined afresh and therefore any finding on that evidence cannot now be accepted as final. The evidence however is much the same. The polling officer, Rabu Keshab Deo, in his statement has distinctly stated that before attesting the voting slip, Babu Ram Nath used to enquire from the voter and his own workers who the man was and after having ascertained the fact he used to attest the slip. Rule 433 of the Municipal Election Rules requires that where a voter is illiterate he shall affix his mark or thumb-impression thereto and any mark so made shall be attested by any candidate or his agent who may be able to recognize the voter or by the returning officer or one of his assistants. It is obvious that the intention is that the person who attests the sheet should be one who recognizes the voter as being the right person. If the polling officer had not been aware of the fact that Ram Nath was identifying voters not on his personal knowledge then it might have been urged with force that it was the duty of Ram Nath to disclose the fact that he did not recognize the voters to the polling officer and that if in fact he concealed his ignorance from the polling officer and professed to identify the voters before him, he did, by wilful misrepresentation or by wilful concealment of a material fact which he was bound to disclose voluntarily, cause, or procure or attempt to cause or procure a thing to be done. Provision is made for such cases in Expl. 1 to Section 107 which was not stated before the learned Judge in the case on the previous occasion. In this particular case, however, the polling officer was fully aware of the circumstances under which Ram Nath was putting his signatures on the voting slips. The polling officer saw that when voters came to vote Ram Nath did not know them and he used to enquire about their names and parentage from the voters themselves and from his own workers and agents and it was on the assurance given to him by his workers and agents that he used to attest the voting slips. This obviously was an irregularity and a breach, of the Municipal Election Rules; but for this breach to be committed the polling officer himself was partly responsible. When, however, the officer himself was fully aware that the attestation by the accused was not necessarily based on his personal recognition of the voters, can it be said that he abetted a false personation? The officer certainly was in no way deceived by the attestation nor did the accused intend to deceive him intentionally. The learned Assistant Government Advocate has argued before me that Section 171-D which

contains the definition of the offence makes a mere abetment of the offence by any person in the way mentioned an offence, and that it is not necessary that the person abetting should have an actual knowledge of the fact that the voter was voting in the name of another person. But the expression 'abets the voting by any person in any such way' must mean the abetment of the voting at an election in the name of another person living at that date, or in a fictitious name, or a second time. Abetment is defined in Section 107, I.P.C. Admittedly the first and the second portions of the section are not applicable. The third can only be applicable if the aiding was intentional. 'When, therefore, Ram Nath was not aware of the fact that the person who professed to be Hari Shankar was not Hari Shankar, and that he was falsely personating him and that when he did not profess to attest his voting slip on his personal knowledge and when the polling officer also was aware of the fact that Ram Nath was not attesting on personal knowledge, it is very difficult to hold that Ram Nath was guilty of intentionally aiding the commission of an offence as defined in Section 171-D. The conduct of Ram Nath was highly reprehensible and improper. His action was contrary to the Municipal Rules and might have vitiated the election on that ground also. I have, however, not to consider the case from this point of view. In my opinion on the admitted facts no offence of abetment, that is intentional aiding of the falsa personation, was committed by the accused. I accordingly allow this application and, setting aside the conviction and the sentence, order that the accused be acquitted. The fine, if paid, should be refunded.

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