

**Shesh Narain Vs. State**

**Shesh Narain Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/476138](http://sooperkanoon.com/476138)

**Court :** Allahabad

**Decided On :** Feb-01-1971

**Reported in :** 1971CriLJ1364

**Judge :** H.C.P. Tripathi, J.

**Appellant :** Shesh Narain

**Respondent :** State

**Judgement :**

ORDER

**H.C.P. Tripathi, J.**

1. One Harihar Dutt Tiwari was charged for having committed forgery in court's records and applicant Shesh Narain and his wife Smt. Rajeshwari Devi were charged for having abetted the commission of the aforesaid forgeries. The learned Sessions Judge acquitted Harihar Dutt Tiwari and Smt. Rajeshwari Devi but convicted the applicant for the offences Under Sections 465 and 466 of the Indian Penal Code both read with Section 109, IPC and sentenced him to one year's rigorous imprisonment and to three years' rigorous imprisonment respectively on those counts. The two sentences were directed to run concurrently.

2. On appeal, the learned Sessions Judge, Jaunpur confirmed the conviction and sentences of the applicant; hence this revision.

### 3. The prosecution case in brief is as follows:

One Sheomurat had obtained a money decree against the applicant. In its execution, certain bhumidhari plots of the applicant were put on sale. Applicant's wife Smt. Rajeshwari Devi purchased them at the auction. On 18-5-1962, an application Ex. Ka 20 was filed on behalf of Smt. Rajeshwari Devi for preparation of sale certificate. On 1-11-1962 another application Ex. Ka-19 was filed on her behalf for the delivery of possession and Dakhalnama. These two applications contained not only the plots which had been purchased by Smt. Rajeshwari Devi at the auction sale but also certain other plots, which had originally belonged to the applicant but had been sold by him long before the date of the auction sale to certain other persons. It was alleged by the prosecution that when the vendees of those plots, as usual, went to cultivate them, applicant and his wife restrained them from ploughing the fields on the assertion that those plots have been purchased by Smt. Rajeshwari Devi at the auction sale. The vendees then went to the Court and got the file of Execution Case No. 19 of 1959 inspected by their counsel and discovered that the plots which they had purchased from Shesh Narain applicant had also been interpolated in the warrant of attachment, warrant of sale and other connected papers. They filed an application in the Court of Civil Judge for deleting the said plots from the aforesaid documents, on which a notice was issued to the applicant and his wife but they neither appeared nor contested the said application. The Civil Judge after holding an inquiry came to a conclusion that the interpolations had been made in the said papers and accordingly sent a report to the police to register a case. Subsequently, a case was registered and investigated and applicant, his wife Smt. Rajeshwari Devi and Harihar Dutt Tiwari, a clerk of a local lawyer were sent for trial.

4. The learned Counsel for the applicant has urged that there is not even an iota of evidence to suggest that the applicant had abetted the commission of forgery in the records of the Court of the Civil Judge. The learned Counsel contends that the conviction of the applicant is based wholly on imaginary grounds without any evidence for the same.

5. Harihar Dutt Tiwari, who was charged with the substantive offence of having committed forgery in the records has been acquitted. Smt. Rajeshwari Devi for whose benefit the alleged forgeries were presumably committed has also been acquitted. There is no direct evidence on record to suggest that the applicant had abetted the commission of forgery. The only circumstance, which has been relied upon by the Courts below against him is that the forgery, if undetected, would have led to the benefit of his wife. From that alone, it cannot be presumed that the applicant had abetted the commission of the offence. It may be that Smt. Rajeshwari Devi herself, who appears to be an educated woman as it is evident from the fact that she has signed her statement recorded Under Section 342, Criminal P.C. in a very clear and legible manner was responsible for getting certain plots interpolated in the sale certificate and in the connected documents. It is also possible that some of her well wisher other than the applicant may be responsible for the aforesaid act. Be that as it may, there is no evidence either direct or circumstantial to connect the applicant with the charge levelled against him. His conviction is wholly unsustainable.

6. Ex. Ka-20 is an application dated 18-5-1962 purporting to have been filed by Smt. Rajeshwari Devi before the Civil Judge praying for the preparation of the sale certificate in respect of a number of plots including those which she had not purchased at the auction sale. Ex. Ka-19 is another application filed on 1-11-1962 purporting to be by Smt. Rajeshwari Devi praying that she be put in possession over the aforesaid plots. The learned Sessions Judge has remarked that the applicant 'had filed the applications dated 18-5-1962 and 1-11-1962 (Exts. Ka-20 and Ka 19) for the preparation of the sale certificate and the delivery of possession in the name of his wife Smt. Rajeshwari Devi, and this he did not deny and could not deny.' There is no factual basis for this observation. Applicant was not asked as to whether he had filed the aforesaid applications on behalf of his wife. He has not admitted in his statement to have filed those applications. As observed earlier, Ex. Ka 19 appears to have been signed by Smt. Rajeshwari Devi herself and Ex. Ka 20 does not bear any one's signature although it purports to have been filed on her behalf. There is, therefore, no evidence at all to suggest that these two applications were either signed or filed by the applicant on behalf of his wife Smt. Rajeshwari Devi and the contrary observation made by the learned Sessions

Judge is not borne out by the evidence on record.

7. It is true that the auction purchaser Smt. Rajeshwari Devi is the wife of the applicant and the forgeries, if not detected, would have resulted in causing her illegal benefit. That circumstance, no doubt, raises a strong suspicion against the applicant but suspicion howsoever strong cannot take the place of proof.

8. In the result this revision is allowed. The conviction and sentences of the applicant are set aside. Applicant is on bail. His bail bonds are discharged. He need not surrender.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**