

Ganga Ram Vs. Emperor

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Court : Allahabad

Decided On : Aug-08-1917

Reported in : AIR1918All382; 42Ind.Cas.927

Judge : Piggott, J.

Appellant : Ganga Ram

Respondent : Emperor

Judgement :

1. These are two applications which come before the Court under the following circumstances. There was a litigation going on in the Court of a Munsif of Bisauli, in which one of the parties was seeking to establish the proposition that a certain house had at one time belonged to one Ganga Ram. As a piece of evidence bearing on this question he undertook to prove to the Court that Ganga Ram had granted a ten years' lease of this house in favour of one Tulshi Ram since deceased. It was said that Tulshi Ram had executed on stamp paper an agreement to hold this house as tenant of Ganga Ram at a certain rent. Summons was issued to Ganga Ram calling upon him to produce this document. He appeared in Court in obedience to the summons, tendered in evidence an agreement of the nature suggested, purporting to have been executed in his favour by Tulshi Ram deceased as long ago as the year 1895. He gave evidence on oath supporting the contract of lease in question and the genuineness of the document. A marginal witness to the said document named Nathu Lal was also

called and examined by the Court and he gave evidence in support of the genuineness of the document. The learned Munsif came to the conclusion that the document in question was a forgery, that there never had been any such contract of lease, that it was proved by evidence that Tulshi Ram had never occupied the premises in question, that the appearance of the document was in itself suspicious and that, if the transaction had been a genuine one, the document would have been registered, which it was not. He issued notice to Ganga Ram and Nathu Lai as well as to two other persons, with whose case I am not now concerned, to show cause why their prosecution should not be ordered under the provisions of Section 476 of the Code of Criminal Procedure, and in the result he has ordered the prosecution of Ganga Ram in respect of offences punishable under Sections 193 and 471 of the Indian Penal Code and of Nathu Lai in respect of offences under Sections 193 and 471/109 of the same Code. The applications before me are in revision by Ganga Ram and by Nathu Lai against the said order.

2. The principal point taken is that the provisions of Section 476 of the Code of Criminal Procedure must be regarded, as governed by those of Section 195 of the same Code, in such a manner that an offence, for instance, of using as genuine a forged document, punishable under Section 471 of the Indian Penal Code, would not fall within the purview of Section 476 unless it had been committed by a party to the proceeding pending before the Court at the time when the offence in question was brought under the notice of that Court. There is authority for that proposition in the case of *Jadunandan Singh v. Emperor* 4 Ind. Cas. 710: 37 C. 250: 14 C. W. N. 330: 10 C. L. J. 564: 11 Cr. L. J. 37. I am informed that there has been a decision of the Madras High Court to the same effect and one of the Bombay High Court to a contrary effect. 'With all respect to the learned Judges who have taken a different view, I have little doubt that the provisions of Section 476 of the Criminal Procedure Code are complete as they stand, and that it is sufficient to bring those provisions into operation if the offence in question be one of the kind referred to in Section 195 of the Criminal Procedure Code and if it be either committed before the Court which takes action under Section 476, or brought under the notice of that Court in the course of a judicial proceeding. So far as the cases now before me are concerned, however, this is of purely academical interest. The learned Munsif was of opinion that Ganga Bam and Nuthu Lal had

intentionally given false evidence before him in the course of a judicial proceeding and he was entitled to direct their prosecution for the said offence. He saw reason to suspect that these two men had also committed some further offence punishable under Section 471 of the Indian Penal Code, or had abetted the commission of some such offence, in connection with the document about which they gave evidence. Now as Ganga Ram and Nathu Lal were not parties to the suit pending in the Court of the Munsif when this document was produced in evidence, there is nothing in the provisions of Section 195 of the Code of Criminal Procedure to prevent the Magistrate from taking cognizance of the alleged commission by either of these men of the offences above referred to, if he finds Upon enquiry that the evidence laid before him disclosed the commission of such offence or offences. That portion, therefore, of the order of the learned Munsif which directed the prosecution of these two men in respect of an offence under Section 471 or 471/109 of the Indian Penal Code was really superfluous.

3. I have been asked further to consider the question whether the facts disclosed by the order of the learned Munsif are sufficient to warrant the conclusion that Ganga Bam, when he produced this document in Court in obedience to a summons, was fraudulently or dishonestly using that document within the meaning of Section 471 of the Indian Penal Code. I think it sufficient to say that this is a point which will require careful consideration by the Trying Magistrate, and the decision of which may depend on the nature of the evidence produced by the prosecution. One possible view of the case is that whatever offence punishable under Section 471 of the Indian Penal Code was committed in the present case, was committed by that party to the suit who caused the production of this document by obtaining the issue of process against Ganga Bam, and that the matter to be considered by the Trying Magistrate will be whether there is reason to suppose that Ganga Bam or Nathu Lal, or either of them, abetted the commission of that offence. Further than this it is impossible for me to deal with the point on the facts now before me. I find no reason in law for holding that the orders complained of were outside the jurisdiction of the Court below and, in my opinion, they were well within the discretion of that Court and call for no interference. I dismiss both these applications with costs. The learned Government Advocate who has appeared to oppose the applications will be entitled to charge as costs the fee

actually received by him.

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