

Abdul Ghafoor Vs. Emperor

Abdul Ghafoor Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/478857

Court : Allahabad

Decided On : Sep-03-1920

Reported in : 59Ind.Cas.200

Judge : Gokul Prasad, J.

Appellant : Abdul Ghafoor

Respondent : Emperor

Judgement :

Gokul Prasad, J.

1. The facts which have given rise to this revision are as follows:

2. The accused, Abdul Ghafoor, was declared an insolvent by the District Judge of Allahabad. He wanted to take some contract from the Municipal Board and found that his application would not be considered until he obtained an order to the effect that he was solvent. He thereupon went to the Official Receiver, who told him that he could not give him a certificate of solvency, until he, the accused, proved to his satisfaction that all the outstanding debts against him had been paid up. There was an amount of Rs. 73 12 due from the accused on account of arrears of rent to the Cantonment authorities. This had been written off as bad debt, the Official Receiver having had no funds in hand to pay it. The accused then went away and returned a few days later with a receipt showing that the aforesaid amount had

been paid up. An application was then put in by the accused accompanied by the said receipt and other receipts for the purpose of being declared solvent and annulment of the adjudication order. The suspicions of the District Judge were aroused about the genuineness of this receipt and he directed the prosecution of the accused under Section 476 of the Criminal Procedure Code. The accused has been tried and convicted under Section 465, 471 of the Indian Penal Code for fraudulently using as genuine the receipt aforesaid, knowing it to be forged. He was sentenced to one year's rigorous imprisonment. He appealed and the conviction and sentence have been upheld. He comes in revision to this Court. It is contended on his behalf that it has not been shown that the forged receipt was used dishonestly or fraudulently as defined by the Indian Penal Code. None of the findings of fact of the Court below has been challenged before me. It is admitted that the receipt is a forged one and the whole argument has proceeded on the assumption that it is so. Mr. Saila Nath Mukerji for the applicant has addressed a very long and elaborate argument, but, put in short, it comes to this that the accused only wanted to be declared solvent, there was no injury to the public or any person intended, there was no dishonest intention, the accused was not entering into a contract with the District Judge and there was no intention to commit fraud. A large number of cases have been cited: *Queen Express v. Sheo Dayal* 7 A. 459 : A.W.N. (1885) 85 : 4 Ind. Dec. (N.S.) 720; *Queen-Emress v. Girdhari Lal* 8 A. 653 : A.W.N. (1886) 264 : 5 Ind. Dec. (N.S.) 393; *Queen Emress v. Haradhan* 19 C. 380 : 9 Ind. Dec. (N.S.) 698; *Jan Mahomed v. Queen-Emress* 10 C. 584 : 8 Ind. Jur. 569 : 5 Shome L.R. 158 : 5 Ind. Dec. (N.S.) 391; *Queen-Emress v. Soshi Bhushan* 15 A. 210 : A.W.N. (1893) 96 : 7 Ind. Dec. (N.S.) 853; *Queen Emress v. Muhammad Sated Khan* 21 A. 113 : A.W.N. (1898) 197 : 9 Ind. Dec. (N.S.) 781; *Potamaraju Venkatarayudu v. Emperor* 28 M. 90 (F.B.) : 1 Weir 538 (a); *Ali Hasan v. King-Emperor* 3 A.L.J. 149 : A.W.N. (1906) 48 : 3 Cr L.J. 249; 28 A. 358. I do not think it necessary to discuss every one of these rulings in detail. The case put briefly comes to this, that the accused, by means of a forged receipt, wanted to obtain an order declaring him to be solvent so as to enable him to apply for a contract to the Municipality. He was, because of his insolvency, under a disability and, in order to get it removed, he intended to obtain an order from the Court by practising deceit on the Court, an order which the Court

would never have passed if the real facts had come to its knowledge; or, in other words, he intended to obtain a wrongful gain to himself, i.e., the profits from the contract with the Municipality vide Section 23 of the Indian Penal Code, It is unnecessary for the purposes of the present case to enter into a consideration whether such wrongful gain would have of necessity entailed wrongful loss to another person, although it might be said that the person who would have suffered wrongful loss might have been a rival applicant for the contract who might have failed because of the success of the applicant's petition for the contract. I deem it unnecessary to pursue this matter further, having regard to the express wording of Section 24 of the Indian Penal Code, which runs as follows: 'Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly' Therefore, the case falls under Section 464 of the Indian Penal Code. It was a forgery because the intention which the accused had was to support his claim to be declared a solvent person, vide *Kotamaraju Venkatarayudu v. Emperor* 28 M. 90 (F.B.) : 1 Weir 538 (a). In the case of *Queen Empress v. Muhammad Sased Khan* 21 A. 113 : A.W.N. (1898) 197 : 9 Ind. Dec. (N.S.) 781, referred to above, Banerji, J. says at page 115, 'Where therefore there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud, and if a document is fabricated with such intent, it is a forgery. This was held by this Court in *Queen-Empress v. Soshi Bhushan* 15 A. 210 : A.W.N. (1893) 96 : 7 Ind. Dec. (N.S.) 853. A somewhat wider interpretation has been placed on the word 'fraud' by the Bombay High Court in *Queen-Empress v. Vithal Narayan* 13 B. 515 note which was followed by the Calcutta High Court in *Lolit Mohan Sarkar v. Queen Empress* 22 C. 313 : 11 Ind. Dec. (N.S.) 210. In the case in the Bombay High Court the learned Judges accepted the interpretation of LeBlano, J. in *Haycroft v. Creasy* 2 East 92 at p. 108 : 6 R.R. 380 : 102 E.R. 303 'that by fraud is meant an intention to deceive, whether it be from any expectation of advantage to the party himself or from ill-will towards the other is immaterial' So that in this case, looked at from any point of view, the accused is guilty of the offence of using as genuine a forged document knowing it to be such and has been rightly convicted. A good deal has been said to me about the sentence passed on the accused and it has been brought to my notice that he is the only adult male member of the family who earns the family bread and that

the forgery was such a clumsy one that it could never have deceived any one and that, having regard to the circumstances of the whole case, the sentence passed is unduly severe. The idea of the accused was not to cheat the Cantonment authorities who had already written off the amount of the tax but it was to get the stain removed from his character which unfitted him from taking contracts and thus earning an honest living. Under these circumstances, I think the sentence should be reduced to one of six months' rigorous imprisonment and I so direct. In other respects, the application is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com