

Jagdeo Parshad Vs. Emperor

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Court : Allahabad

Decided On : Mar-18-1920

Reported in : AIR1920All72; 56Ind.Cas.58

Judge : George Knox, J.

Appellant : Jagdeo Parshad

Respondent : Emperor

Judgement :

George Knox, J.

1. Jagdeo Prasad was committed by Mr. Sathe for having, on the 1st day of December 1918 at Rajapur, forged a money order (Exhibit B) for Rs. 375 and tried to obtain payment of the amount relating to the same--an offence punishable under Section 467 of the Indian Penal Code. He was also charged by the same Magistrate for having, on the 6th day of December 1918 at Rajapur, forged a money order (Exhibit M) and obtained payment of Rs. 299 12 on the basis of that money order, an offence punishable under Section 467, Indian Penal Code. He was also charged by the same Magistrate for having, on the 2nd day of December 1918 at Rajapur, forged a money order (Exhibit N) and obtained payment of Rs. 575, an offence punishable under Section 467, Indian Penal Code. He was committed to the Court of Session on these charges. I refer to these charges in order to show that in the course of his trial the attention of the accused was called

to these charges which were made against him. On these charges he was tried and convicted. That conviction was quashed by this Court on the ground that the trial had been upon three separate charges of three separate offences. In the order by which the conviction was set aside an order was passed that the accused be committed for trial to the Court of the Sessions Judge of Jhansi. The Sessions Judge of Jhansi took up the case and apparently did not amend the charges. From the record that has been placed before me it is absolutely impossible to say with certainty what was the charge that was read over to the accused under Section 271 of the Code of Criminal Procedure. For years past I have been pointing out this error and apparently without any hope of its being rectified. When a record is prepared for appeal in this Court, the trial clerk should see whether there is on the record a charge which has been read over and explained to the accused. If he cannot find it, he should call the attention of the Registrar to its absence and ascertain to what cause that absence is due. The mere fact that Section 537 covers an error, omission or irregularity of this kind is not a sufficient answer. The Committing Magistrate, as I have shown above, did commit the accused upon three separate charges. Under Section 226 of the Code the Court was empowered either to frame a charge or to add to or otherwise alter the charge, but every alteration or addition has to be read and explained to the accused. In the three charges to which I have already alluded certain alterations were made, but it is impossible to say who made those alterations. The word 'section' in the first two charges was altered to 'sections,' the figures 471 and 42C/511 were added to figures 467 and in the body of the three charge sheets matter was cut out and fresh matter inserted. Against these alterations there are initials which appear to be the initials of the Court of Session, but those initials are in opposition to the sentence contained in the judgment that charges framed by the Magistrate were not amended by the Sessions Court. What the learned Judge should have done is to have framed separate charge sheets containing the matter that was read over to the accused, and not to have resorted to what appears to be very slovenly procedure on an important matter. But for the provisions of Section 225 of the Code of Criminal Procedure I should probably have been compelled to quash this trial also, and whatever truth may exist regarding the actual words of the charge sheets which were read over to the accused, this much is clear that he was

charged with offences under Section 467, Indian Penal Code. In a trial by a Court of Session the actual charge sheet to which the accused is sailed upon to plead is a very important document. It should be drawn up and considered with extreme care and caution, so that the accused may have no doubt whatever as to the offences to which he is sailed upon to answer and the Judge of the Appellate Court may have no doubt also upon the matter. The accused was defended in the Court of Session and he does not appear either himself or through his Pleader to have entered any objection to the charge sheet that was read over to him.

2. What are the facts which have been proved against the accused? It has been proved by the evidence put forward by the prosecution that in September 1918 permission was given to the accused to learn work in the post office of Rajapur, that he remained there until December of the same year, that he assisted generally in office work, that he wrote the mail list, parcel list, register list and daily accounts, that no money orders were sent after the 26th of October, that no money orders were despatched on the 1st of December 1918, and that the signature on Exhibit B. the money order which is the subject of the first charge, purporting to be that of the issuing postmaster, was not the postmaster's signature. All the above is proved by the evidence of Umanand, who was in charge of the Rajapur post office in December 1918. Khairat Husain, who had been in charge of the Manikpur post office for two years before he made his statement, namely, the 15th of September 1919, proves that he saw the accused on the 12th of December at Manikpur post office, that the accused told him that he was expecting a money order and asked the postmaster to keep it until his return, that he gave his name as Jageshar Prasad living at Rajapur in the Cawnpur. District, that the accused told him that the money order would be for Rs. 375, that the accused on the 16th of December asked if the order had come and asked for the money, that the accused was told to come the next day as the office had not enough money, that the witness identified Exhibit B as being the money order in Question, that on the 17th the accused returned at about 7 or 8 in the morning, wanted the money and was told to come in the evening and to bring two persons to identify him, and that the witness noted that the date of issue was November the 1st, which was a Sunday a day on which the money orders are not issued. This and other matters caused him to suspect the order. He ascertained by wire from Rajapur post office

that no money order of this kind had been issued and on the pretence of giving the money which was deposited at the Thana, he took the accused to the Thana, told the Police and handed the accused over to them. Upon the accused being asked under Section 364 to explain certain matters which had been disclosed by the evidence against him, he replied that he did not attempt to get payment of this money order at Manikpur, and that he never went inside the post office at Rajapur, knows nothing about the money order, has nothing to say about it and cannot Bay why all the witnesses gave evidence against him. These were perfectly legitimate questions to put Under Section 342 of the Code of Criminal Procedure and the answers given by the accused according to that section can be taken into consideration in the trial. None of this evidence has been rebutted by any evidence for the defense and it is amply sufficient to establish an offence under Section 471, Indian Penal Code. It is contended by the learned Counsel who appears for the appellant here that it cannot be considered whether an offence under Section 471 was committed by the accused. The answer to this is contained in Section 237 of the Code of Criminal Procedure. The accused was charged with an offence under Section 467, Indian Penal Code. It appears in evidence that he committed an offence under Section 471 for which he might have been charged under Section 236 and that although he was 'not charged with it he may be convicted of that offence, namely, the offence under Section 471. I cannot understand why the Court of Session did not at once frame a charge under Section 471 upon reading over the record and try the accused on that section. It was a simple, straightforward case but has been complicated apparently by discussions which took place between the Court and the Government Pleader. I might pursue the evidence further but I see no need for it. It was a very serious offence committed by a young man who had obtained entrance into a post office and had abused the concession granted to him by deliberately making use of a valuable security which he had reason to believe was forged. I have, however, to consider that he has been in custody for over a year and has already had to stand one trial for this very same offence. For these reasons and these only I reduce the sentence to a sentence of three years' rigorous imprisonment with effect from this date.