

Basha Nand Vs. Emperor

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Court : Allahabad

Decided On : Mar-28-1923

Reported in : 77Ind.Cas.883

Judge : Walsh, J.

Appellant : Basha Nand

Respondent : Emperor

Judgement :

Walsh, J.

1. This proceeding trust be quashed on the ground of fundamental error while declining to withhold my admiral on for the method adopted by the Assistant Collector in speedily disposing of a highly suspicious and complicated case. What the Assistant Collector Mr. J.P. Nicholson did was this: He had a civil dispute before him in which a highly complicated question had arisen between a Purest Official who seems to have been engaged in some transaction between himself and Baswan and Kadar Nath and some other people, and on a very shabby piece of paper with pen and ink these people put their heads together and proceeded to partition among themselves either their own or other people's money to their mutual satisfaction. The point in dispute in the civil suit was whether an entry or memorandum which is to be founded at the top of this shabby piece of paper is true or untrue. It represents a liability or an admission of liability in favour of the

accused of a sum of Rs. 800. It does not purport to be signed by anybody not does any other part of this document aid it can only be regarded not as an admission but as a contemporaneous record of a no doubt heated discussion which took place at the time each trying to arrive at the actual liability between them. The Assistant Collector came to the conclusion that the Rs. 800 testified to by this entry was not really due and that the entry had been made afterwards. He does not appear to have troubled himself as to who made it and whether the accused was to be charged with forgery or with having altered some document which he must have known had been fraudulently altered by somebody. An alteration made subsequently on a rough document of this kind would not be in itself a forgery unless it was done with attempt to defraud, which might raise the question whether the Rs. 800 was really due or not, that is to say, if several people and myself together met and made various memoranda, I might discover something which I knew ought to have been entered but had been omitted in to general confusion and I might honestly, although perhaps misguidedly, make an additional note as a memorandum to put it beyond dispute if any question should arise here after. It would all depend whether I did it honestly or with an attempt to defraud. The Assistant Collector came to the conclusion that it was done dishonestly with intent to create a claim for this specific sum, and I express no opinion whether he was right or wrong about that, although it would obviously be a very (sic) performance if in fact as the Sessions Judge afterwards finds by his judgement, the document was concreted without some additional memorandum and was rendered unintelligible by the additional. Tint being the state of mind of the Assistant Collector on hearing the civil suit he had no doubt had jurisdiction under either Section 476 or 478 to, give effect to his view that criminal proceedings ought to be brought against the persons who had got this false entry made. Unfortunately the proceedings which he had adopted were very summary. Deciding to act under Section 478, he neglected to follow the directions contained in the second subsection, of that section, which requires that if he concludes the enquiry himself his proceedings shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII of the Criminal Procedure Code. The framed no charge and although he made some sort of enquiry it was of a Pennington character and when he came to write his committal order which he did on the 2nd January, he

incorporated as the main grounds for committing for trial the reasons which he had given in his judgment in the civil suit on the 30th December. The 31st December, being a Sunday and the 1st January, being New Year's day which was presumably a holiday Mr. Nicholson must be complimented upon the despatch which he displayed in disposing of the enquiry but the result is that there is nothing in any way resembling a proper record in the Committing Magistrate's Court which, it is obvious that the elaborate provisions of the Criminal Procedure Code provide, shall always exist and which Section 478 carefully protects. Unfortunately the point, although raised in the written statements filed before the Sessions Judge, either at or before the hearing, and there seems some mystery as to its exact date, was not raised in such a way as to cause the experienced Sessions Judge who dealt with the case to notice it at all. I am, therefore, unaware of what he should have thought of at if attention had been drawn to it but even if the matter had been as integral I think I should have been driven to hold that the trial was irregular, there having been no proper proceedings before the Committing Magistrate, but whether that is so or not I have no hesitation following the decision which is clearly in point, *Emperor v. Babu Prasad* 42 Ind. Cas. 1000 : 40 A. 32 : 5 A.L.J. 805 : 19 Cr.L.J. 40. I must allow the appeal and quash the proceedings.

2. The learned Sessions Judge made a very careful and elaborate examination of the documents and gave his reasons for thinking that the entry in question must have been added afterwards. He is of opinion that it was written by Kedarnath but as the document remained in the possession of the accused it must have been done with his complicity and was, therefore, uttered by him in the civil proceedings knowing that the addition had been made. He assumes rather than finds that the addition was made because so far as I understand his judgment he has not decided whether in any view of accounts the Rs. 800 was really due. He does not seem to have a very high opinion of the gentleman on whose oath the truth, or falsity of Rs. 800 liability depends. He remarks that the gentleman's explanation of the figures seems to show that he was interested in forest contracts and lending money or investing money upon them contrary to his duties and he directs that his conduct should be brought to the notice of the Chief Conservator of Forests. I am unable to express an opinion whether the real guilt or innocence of the present accused depends entirely upon the shown testimony of this apparently defaulting

member of the forest staff, but it is a matter which is clearly not irrelevant and expressing no opinion of my own I return the record to the Assistant Collector to enable him to re-consider it in the light of everything which has happened since. If he thinks it still desirable he can take the proper proceedings for holding an enquiry and decide whether the accused ought to be against committed for trial.

3. Meanwhile the appeal is allowed and the accused will be discharged.

4. In considering the matter in all its bearings which after all is a question of the public interest and that further expenditure of money upon this is fruitless, he will no doubt bear in mind that the accused has already suffered punishment and no doubt a great deal of expansion defending himself.

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