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

State Vs. Parasram

State Vs. Parasram

SooperKanoon Citation : sooperkanoon.com/750745

Court : Rajasthan

Decided On : Aug-07-1964

Reported in : AIR1965Raj9

Judge : L.N. Chhangani, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 167, 464 and 466

Appeal No. : Criminal Ref. No. 18 of 1963

Appellant : State

Respondent : Parasram

Advocate for Def. : A.L. Mehta, Adv.

Advocate for Pet/Ap. : S.R. Singhi, Adv.

Disposition : Reference accepted

Judgement :
ORDER

L.N. Chhangani, J.

1. This is a reference by the Sessions Judge, Bhilwara recommending that the charge-framed against the accused Parasram under Section 466, Indian Penal Code be quashed. With this recommendation there is an implicit further

recommendation that the commitment of the accused for trial to the Court of session Bhilwara be also quashed. The Sessions Judge also recommends that the other offence under Section 167, Indian Penal Code be directed to be tried by the committing Magistrate.

2. The facts giving rise to the reference are briefly these:

3. The accused Parasram is a Patwari in the service of the Rajasthan State. He was holding charge of the Patwar circle, Meloni, for the period from Samvat years 2014 to 2017. In the village. Meloni there is a well named 'Panch Chhorin'. The complainant Dayaram and his brother Parthu were shown as holder of 1/5th share in the well in the revenue record up to the samvat year 2014. Champa Jat was not shown as a co-sharer with Dayaram and Parthu. On 4th August, 1961 Dayaram filed a complaint in the Court of First Class Magistrate, Gangapur accusing Parasram of offences under Sections 446 and 167, Indian Penal Code. In the complaint after stating that he and his brother Parthu were shown as having 1/5th share in the well in the revenue records and that Champa had no share along with them, the complainant stated that the accused Parasram after obtaining some undue advantage from Champa Jat showed him as a sharer along with the complainant and his brother Parthu in the revenue records for the Samvat years 2016 to 2017. It was stated in the complaint that the accused made alterations in the revenue records on the occasion of his transfer.

It was further stated that he removed the original paper containing the entry and substituted another paper containing the changed entries. The complaint was initially sent to the Tehsildar Gangapur for enquiry under Section 202, Criminal Procedure Code, and after the receipt of the report of the Tehsildar a case was registered under Sections 466 and 167, Indian Penal Code. The Magistrate after holding enquiry under Section 208, Criminal P.C. framed charges against the accused under Sections 167 and 466, Indian Penal Code and committed the accused to the Court of Session, Bhilwara, for trial. Before the Sessions Judge the accused Parasram made a preliminary submission that on the facts alleged in the complaint no case under Section 466, Indian Penal Code was made out. The Sessions Judge accepting the submission of the accused has made the present

reference.

4. In the first instance, the Sessions Judge observed that the entries in the khasra-girdawaries having been made by the accused alone he could not be said to have made false document as defined in Section 464, Indian Penal Code. He emphasised the distinction between 'making an incorrect document' and 'making a false document'.. He then proceeded to say that assuming that the accused having made entry in the khasra girdawari made a false document yet the forgery alleged to have been committed by him does not fall within the language of Section 466, Indian Penal Code. The learned Judge summed up the legal position in the following words:

'Such a forgery in order that it might be punishable under Section 466, I. P. C. should have been committed by a public servant to institute or defend a suit, or to take any proceedings therein or to confess judgment, or a power of attorney. In other words, when a public servant commits forgery in a register kept by him for any one of the four things mentioned above then only the offence falls under the category of Section 466, I. P. C. The charge framed by the committing Court admittedly does not mention that the accused committed forgery for the purpose of any one of the four things mentioned above. On the other hand, it says that the accused committed forgery in order that loss might be caused to Parthu and Dayaram and that Champa might claim title to the land in dispute. In other words, the wordings of Section 463 have only been used, which are common to every kind of forgery. I am therefore, of opinion that in the first place, there is no case made out against the accused for an offence of forgery as at the most the offence committed by him can be said to be one falling under Section 167, I. P. C. only. In the second place, there is no iota of evidence regarding the offence under Section 466, I. P. C. at least and the facts mentioned in the charge framed by the trial Court also does not fulfil the ingredients of offence under Section 466, I. P. C.'

Now, so far as the main reasoning of the Sessions Judge based on the interpretation of Section 466, Indian Penal Code is concerned, it does not appeal to me. It is true that Section 466, Indian Penal Code deals with aggravated cases of forgery but the interpretation of the Sessions Judge that forgery to be

punishable under Section 466, Indian Penal Code should be for one of the four purposes mentioned by him, cannot be accepted on a proper interpretation of Section 466, Indian Penal Code. Section 466 Indian Penal Code reads as follows:

'Whoever forges a document, purporting to be a record or proceeding of or in a Court of justice or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.'

On a proper paraphrasing of the section it is quite obvious that the section Seeks to treat forgery of certain specified kind of document as an aggravated form of offence. In this category the varies documents mentioned are:

1. A document purporting to be a record or proceeding of or in a Court of Justice;

2. a register of birth, baptism, marriage or burial, or a register kept by a public servant as such;

3. or a certificate or document purporting to be made by a public servant in his official capacity,

4. or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment;

5. or a power of attorney.

The expression 'to institute or defend a suit, or to take any proceedings therein, or to confess, judgment' have evidently to be associated with the word 'authority' preceding the expression. The expression cannot be associated with the other documents indicated in the section. The committing Magistrate in his explanation has properly paraphrased the section and has rightly expressed his disagreement with the Sessions Judge. The argument of the Sessions Judge that assuming that the act of the accused amounted to forgery still it did not fall within the language of

Section 466, Indian Penal Code is fallacious and cannot be accepted.

5. The acceptance of the main ground of the Sessions Judge, however, does not conclude the matter. The crucial and the real question which calls for determination is whether the accused can be said to have made a false document within the meaning of Section 464, Indian Penal Code. Unfortunately, the Committing Magistrate as well as the Sessions Judge did not properly apply their mind to this aspect of the case. A reference to the complaint indicates that the complainant initially came forward with an allegation that the initial entries made by the accused were subsequently changed by him on the eve of his transfer. Such an allegation clearly amounts to an alteration of the document so as to attract the applicability of Clause (2) of Section 464, Indian Penal Code. This being so, it could not be expected that on assuming the allegation in the complaint to be correct the accused cannot be said to have made a false document within the meaning of Section 464 Indian Penal Code. The learned counsel for the parties, however, took me through the relevant evidence and from that evidence it is clear that the prosecution case is not one of subsequent alteration of the document but is essentially one of making an initial incorrect and unauthorised entries in the revenue record. The order of commitment also lends support to this conclusion. The case against the accused being one of having initially made incorrect and unauthorised entries, the point for determination is whether the making of such entries can be said to constitute the making of false documents under Section 464, Indian Penal Code.

Mr. Singhi initially brought to my notice Mohamed Sirdar v. Emperor, AIR 1914 Lah 586 to show that a Patwari making wrong entries in the revenue record can be said to make a false document as denned in Section 464, Indian Penal Code. A reading of the judgment shows that the accused in that case was acquitted on a finding that there was no proof that be made the entry with intent to defraud or dishonestly. The learned Single Judge who decided the case discussed the case only with regard to the intention of the accused. The question whether mere making of wrong and unauthorised entries in the revenue record can or cannot constitute making a false document, was not specifically examined in the case. The case, in my opinion, does not provide any useful guidance to the

determination of the controversy agitated before me. Another case, namely, In re, Venkatasuryanarasimha, Rao AIR 1955 Andhra 82 taking a contrary view was very candidly brought to my notice by Mr. Singhi appearing for the State, In that case dealing with Clause (1) of Section 464, Indian Penal Code, the learned Judge said;

'Under Section 464 what is essential is that the accused person must make a document with the intention of making it to be believed that it was signed by or by the authority of some one else, while he knows that it was not so made or authorised by that person.'

The learned Judge found in that case that the accused did not make the bills purporting to be made by or authorised by some person and then observed:

'The intention in issuing the bills may be fraudulent and he may be punishable; for some other offence. But to bring it within the four corners of this section, the false document must be created with a view to make it appear that it was made by some other person who the accused fellows did not make it.'

I entirely agree with the observations extracted above. To bring the case within Clause, 1 of Section 464, Indian Penal Code, it is necessary to establish that the accused intended td induce a belief that a document was made, signed, sealed or executed by the authority of a person who did not make, sign, seal or execute it or that it was made, signed, sealed or executed at a time when it was not so done. Evidently Section 464 cannot be invoked to cases where a Public Officer knowingly makes false entries initially in the public record on his own authority. The case against the present accused clearly is that he initially at the time of making entries in the girdawari record made Wrong and unauthorised entries. There is no controversy that he was not competent to make those entries and in the absence of any material to show that he was responsible for alteration of the entries the entries made by the accused cannot amount to constitute false documents within the meaning of Section 466, Indian Penal Code. In this view of the matter, a charge under Section 466, Indian Penal Code, or for that matter for any offence relating to forgery, is not sustainable. The commitment of the accused for an offence under Section 466 is consequently erroneous in law and deserves

to be quashed.

6. The reference is consequently accepted, although not on the principal ground relied upon by the Sessions Judge, and the commitment of the accused to the Court of Session is quashed. The case is sent back to the committing Magistrate for trial of an offence under Section 167, Indian Penal Code.

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