

The State Vs. Nazar Mohamed

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Court : Rajasthan

Decided On : Jul-20-1950

Reported in : AIR1951Raj122

Judge : Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 215; Indian Penal Code (IPC) - Sections 466

Appeal No. : Criminal Ref. No. 203 of 1950

Appellant : The State

Respondent : Nazar Mohamed

Advocate for Pet/Ap. : Sumerdan, Asst. Govt. Adv.

Judgement :

ORDER

Gupta, J.

1. This is a reference by the Ses. J. recommending that the order of commitment of the accused Nazar Mohamed by the 1st Class. Mag. of Mandalgarh, be quashed. The accused was committed to the Sessions for taking his trial for an offence under Section 466 for having added some language to the entries in the Polices Roznamaha-am of the 10th & the 12th May 1947.

2. I have heard the learned Asst. Govt. Advocate at length & perused the records of the case including the entries in question in the police diary in respect of which the offence under Section 466, Penal Code, is said to have been committed by the accused who was a S. I. Police in charge of the Police Station, of Parsoli & had investigated into the report of an offence in which one Khutaj was alleged to have severely beaten his brother Raghunath. The alleged forgery which consists of subsequent additions of certain language in the said entries in the said diary does not appear to have been committed dishonestly &, as stated by the learned Ses. J., there is no evidence to show that the forgery was made with any dishonest intention. To me it appears that the addition of the language complained against has been made with a view to strengthen the conclusion at which the accused had already arrived & which had already been entered in the diary. In the absence of any evidence whatsoever as to the accused having made the addition of the language with a dishonest motive there is no possibility of any conviction even if the facts stated in the order of the commitment be accepted as proved because dishonesty or fraud in the making of a document is an essential ingredient of the offence of forgery. The absence of evidence necessary for an order of commitment is a point of law pure & simple, vide *Sheo Bux Ram v. Emperor*, 2 Cr. L. J. 534 : (9 C. W. N. 829) & *Mani Ram, v. Emperor*, 34 Gr. L. J. 14 : (A.I.R. (19) 1932 Sind 157), & the commitment in question which is based upon evidence from which evidence of a necessary ingredient of dishonesty or fraud is missing deserves to be quashed.

3. I am fortified in this conclusion by a decision of the Lahore H. C. in *Bhagat Bam, v. James*, A. I. R. (32) 1945 Lah. I at p. 2 : (46 Cr.L.J. 648) in which the following view has been expressed;

' the absence of evidence sufficient to justify an order of the commitment may be regarded as a legal ground, though It may sometimes be difficult to draw a line between a ground of this kind & a mere weakness of evidence. The criterion may possibly be, as my learned brother suggests, that a number of ingredients are generally required to make up an offence & if it appears from the evidence that one of these ingredients is entirely lacking from the prosecution case, this would be a good legal ground for quashing the

commitment.'

4. I entirely agree with this view, accept the reference made by the learned Ses. J., Bhilwara, & quaeh the commitment of the accused Nazar Mohammad.

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