

In Re: Kamatchinatha Pillai

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Court : Chennai

Decided On : Jan-07-1919

Reported in : 50Ind.Cas.175; (1919)36MLJ201

Appellant : In Re: Kamatchinatha Pillai

Judgement :

1. This is an appeal by a process-server of the court of the District Munsif of Dindigul who was convicted of forgery for the purpose of cheating and using as genuine a forged document and sentenced to six months' rigorous imprisonment under Sections 468 and 471 of the Indian Penal Code.

2. The document in question is the attakshi Ex. H purporting to have been signed by the two karnams, Sivagurunatha Pillai (Prosecution 5th witness) and Athinarayana Mudali (Prosecution 6th witness) certifying that the appellant was ill of fever and cholera in prosecution 5th witness's village and between 23rd and 30th November 1917 and that the two karnams had him treated with medicines. The body of the attakshi is in the appellant's writing. The evidence including the depositions of prosecution 5th and 6th witnesses clearly establishes that prosecution 5th and 6th witnesses did not sign the attakshi Ex. H, that the peon was not in prosecution 5th witness' village between the 23rd and 30th November 1917 and that he was not treated with medicines by prosecution 5th and 6th witnesses in that village. Seeing that the appellant has not adduced any evidence (except the worthless testimony of defence 2nd witness a 'resigned' head constable who says appellant told him one day ten months before the witness

gave evidence that appellant was suffering from fever) to establish that he suffered from cholera and fever between 23rd and 30th November 1917, it is a very fair inference that the whole story of his illness for just the one week's time that he overstayed the period allowed to him to return his process is all a myth. There can be no question that the attakshi Ex. H was prepared by the appellant with the false signatures of prosecution 5th and 6th witnesses in order to defraud the District Munsif into excusing his delay in returning processes and the absence of the appellant from duty between the 24th and 30th November 1917. The decisions in *Empress of India v. Jiwanund* I.L.R. (1882) A. 221 and *Queen Empress v. Girdhari Lal* I.L.R. (1886) A. 653 and other similar cases where false entries made to screen the accused from punishment for an offence already committed were held not to be offences are distinguishable and the soundness of those decisions is also doubtful, there being other decisions tending to support a contrary conclusion. See *Queen Empress v. Sabapati* I.L.R. (1888) M. 411 and *Emperor v. Bash Behari Das* I.L.R. (1908) C. 450.

3. The question whether the false signatures were placed in Ex. H also 'dishonestly' need not be considered as they were clearly placed in Ex. H 'fraudulently' according to the rule laid down by the majority of the Full Bench of this Court in *Kotamraju Venkatarayadu v. Emperor* I.L.R. (1905) M. 90 and hence Ex. H was a forgery intended to cheat the District Munsif and was used by the appellant as a genuine document.

4. We affirm the conviction and sentence and dismiss the appeal.

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