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In Re Packianathan

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Court : Chennai

Decided On : Dec-17-1919

Reported in : 56Ind.Cas.510

Judge : Abdur Rahim, Offg. C.J. and ;Spencer, J.

Appellant : In Re Packianathan

Judgement :
ORDER

1. The accused was prosecuted in this case for an offence under Section 419 read with Section 511 of the Indian Penal Code. He was going to Ceylon, and he used a permit which stood in the name of one Knmaraswami while the accused's own name is J. Packianathan. On seeing the permit the Health Officer at Mantapam, who is an employee of the Ceylon Government, issued a health certificate, but, according to the case of the prosecution, P, W. No. 2, the Health Officer's clerk, recognised the accused as he had seen him before and seeing that he had given a false name reported the matter to the Health Officer. He questioned the accused and the accused at first, according to the Health Officer's evidence, gave his name as Kumaraswami but afterwards gave the correct name. A bond was taken from him and there the correct name was entered.

2. The trying Magistrate after examining two witnesses, i.e., the Health Officer and his clerk, discharged the accused, holding that no offence of attempt at cheating had been made out. He says that the Health Officer could not be Paid to have

suffered in any way either in reputation or property and that the accused did not intend to cause any sort of barm to him and that, therefore, Section 419 would not apply. An application was made to the District Magistrate for revision of this order with the result that the District Magistrate set aside the order, holding that the first part of Section 415 would apply even if the second part did not, that is to say, on the facts established by these two witnesses, the accused, by deceiving the Health Officer, fraudulently induced him to deliver a health certificate which is property within the meaning of the law. That a health certificate is property within the meaning of this section cannot be doubted. Reference may be made to the case in Ramaswami Aiyar v. Vaithilinga Mudali 1 Weir 28 and the case of Queen-Empress v. Soshi Bhushan 15 A.P 210 : A.W.N. (1893) 96 : 7 Ind. Dec. (N.S.) 853. But that in itself is not sufficient; it has to be proved that the accused, by deceiving the Health Officer, fraudulently or dishonestly induced him to deliver the health certificate. It is pointed out by Mr. Osborne that all the witnesses which the prosecution had to adduce on this point have not been examined, An application was put in on the 4th November, but apparently the trying Magistrate thought that he was at liberty to dispose of the case without taking any further evidence. We do not think that he was justified in refusing to hear further evidence which the prosecution had to adduce, and on that ground the order of discharge was wrong and liable to be set aside. It is unnecessary for us to pronounce any opinion on the question of law as to what would amount, in circumstances like those of the present case, to fraudulent or dishonest inducement within the meaning of Section 415, as we thick that the question will have to be decided after all the evidence has been recorded and the enquiry has been completed by the Magistrate. After hearing all the evidence which the prosecution may have to adduce, the Magistrate will decide whether an offence has been made out by the facts proved against the accused. This revision petition is, therefore, dismissed.

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