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In Re: Muthiah Chetty

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Court : Chennai

Decided On : Dec-05-1911

Reported in : (1913)ILR36Mad392; 13Ind.Cas.286

Judge : Sundara Aiyar and ;Spencer, JJ.

Appellant : In Re: Muthiah Chetty

Judgement :

1. In this case the accused has been convicted under Section 471 of the Indian Penal Code of fraudulently or dishonestly using as genuine a document which he knew or had reason to believe to be a forged document.

2. The facts are that the accused was summoned to produce the document in question (Exhibit J) Original Suit No. 39 of 1910 on the file of the Subordinate Judge's Court of Madura (West). He was not a party to that suit. In answer to the Court summons he produced the document. He was afterwards examined as witness in that case, and he gave the deposition marked as Exhibit K. He then stated on oath that the prosecution first witness in that case gave the document to him. The learned Sessions Judge has found that the document was not genuine and that the prosecution first witness did not give it to the accused. We decide the case on the assumption that these findings are correct. So far as the production of the document was concerned, the accused was bound to obey the summons of the Court. Section 162 of the Indian Evidence Act lays down that every witness summoned to produce a document shall do so, and Section 175 of the Indian

Penal Code makes the non-production of it an offence punishable under that section. We adhere to the opinion we expressed in Assistant Sessions Judge North Arcot v. Ramammal 10 M.L.T. 563 : (1912) M.W.N. 3 : 13 Ind. Cas. 275 that the production by a party of a document, which he is bound by law to produce, cannot by itself constitute a user of that document by him. He cannot be put to the risk of having to consider whether a document answering the description contained in. the summons is in fact genuine, and whether there is any reason to believe it to be not genuine The mere production of a document in answer to command of Court can in no case be regarded as fraudulent in law. The learned Public Prosecutor argues that the accused did more than produce the document in this case because he aware, when he was examined as a witness, that the document was handed to him by the prosecution first witness, and he urges that assuming, as we are prepared to do for the purpose of deciding the question of law, that the accused had the dishonest intention when he gave his evidence of inducing the Court to give judgment in favour of the plaintiff in that suit, his giving evidence would make the act a dishonest user of the document by him. We must put entirely out of account the fact that he produced the document as that act was perfectly innocent. All that is then left is that he gave false evidence with the fraudulent intention of causing loss to one of the parties in the suit. We are clearly of opinion that the giving of false testimony by itself with a fraudulent intention cannot amount to a fraudulent user of a document with reference to which that evidence is given. Otherwise every attesting witness who gives evidence with a similar dishonest intention might also be held guilty of dishonestly using the document. It is not contended that there is any evidence in this case of user beyond the fact that he gave evidence. There is no evidence of any previous conspiracy, in pursuance of which he gave the evidence. We mush, therefore, hold that the accused did not commit an offence under Section 471 of the Indian Penal Code. If the evidence he gave was false he would, of course, be guilty of perjury. But he is not charged with that offence in this case.

3. In Asimuddi Sheik v. King-Emperor 11 C.W.N. 838 : 5 Cri. L.J. 351 : 5 C.L.J. 454 Rampini and Gupta, JJ., held that a party who had produced a document, before a Munsif for obtaining compulsory registration of it could not be held guilty of an offence under Section 471 of the Indian Penal Code by merely declaring it to

be genuine before a Deputy Magistrate to whom the document was sent over by the Munsif for an inquiry being held as to whether he was guilty of forging the document.

4. The statement before the Deputy Magistrate was not made by the accused on oath and he could not, therefore, be convicted of perjury. It was sought to be argued that he was guilty of using the document as genuine by declaring it to be true. The learned Judges say: 'He may have used the document before the Munsif when he brought a suit to enforce registration, but he is not, charged in this case with using the document before the Munsif. He is charged with using it before the Deputy Magistrate and we do not think he can be said to have committed any offence on the 21st January 1902 punishable under Section 471 of the Indian Penal Code.' There is, of course, a difference between that case and this. In that the statement made by the accused as a witness in this case was made on oath while in the Calcutta case the statement was made by him before the Deputy Magistrate as an accused person and not on oath. But that does not affect the general proposition that a mere statement that a document is genuine does not amount to using it as genuine. We, therefore, set aside the conviction of the accused. We do not consider it necessary to pass any further order having regard to the state of the evidence on record. The bail-bonds executed will be discharged.

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