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In Re: Sivananda Mudali

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Court : Chennai

Decided On : Oct-20-1925

Reported in : AIR1926Mad1072

Appellant : In Re: Sivananda Mudali

Judgement :

Devadoss, J.

1. The petitioner has been convicted under Section 471 read with Section 467 Indian Penal Code and sentenced to two years' rigorous imprisonment by the Assistant Sessions Judge of Madura. His appeal to the Sessions Judge of Madura has been dismissed. The finding is that the petitioner altered the Tamil numerals 27 into 32 in Ex. G a registered deed of partition between him and one Kaliyayi, dated 14th September 1889, and filed it in support of his claim in O.S. No. 165 of 1919 on the file of the District Munsif's Court of Madura taluk. On that finding the appellant has been convicted of using as genuine a forged valuable security knowing it to be forged.

2. The contention of Mr. Vaz for the petitioner is that the petitioner acquired title by prescription to the plot in dispute and that Ex. G was not quite necessary for the support of his title and that he could not have intended to cause wrongful loss to anybody and, therefore, the alteration of the figures in the document does not amount of forgery. I will assume for the purpose of considering this point that the

learned District Judge found that the petitioner had a good title to the disputed plot by adverse possession for over the statutory period. The question is: If a person creates a bona fide claim, does he commit forgery? Under Section 463 Indian Penal Code:

Whoever makes any false document or part of, a document with intent to cause damage or injury to the public or to any person, or to support any claim or title...commits forgery.

Section 464, Clasue (2) is in these terms:

A person is said to make a false document who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person...

3. Any material alteration in a document without lawful authority dishonestly or fraudulently would constitute the making of a false document. The contention is that if a person in order to support a genuine claim, or a bona fide claim, makes a false document he does not do so dishonestly, for according to the definition of ' dishonestly ' there must be the intention to cause wrongful loss or wrongful gain and that a person cannot be said to cause wrongful loss or wrongful gain when he supports a genuine claim. This argument overlooks the fact that a person makes a false document if he fraudulently alters the document or a material part thereof. The word 'fraudulently' has been the subject of discussion in various cases. It is defined in Section 25 as doing a thing with intent to defraud but not otherwise. The intention to defraud is sufficient to bring an alteration within Section 464. Mr. Vaz's argument is that the fraud must be to the detriment of a person. It is not necessary in order to do a thing fraudulently that the person doing it should intend to cause wrongful loss or wrongful gain of property. To induce a person to do a thing which he would not do but for the fraud, or omit to do anything which he would do but for the fraud, is to defraud that person.

4. If a person produces a forged certificate of character and thereby obtains employment does he defraud or not? If the contention of Mr. Vaz is correct, the

person producing the certificate does not commit forgery if the person who employs the applicant is satisfied with his work and the person employed gets paid for his work, it may be that the parson obtaining employment by means of the forged certificate is considered to be an acquisition by the employer liven then the making of a false certificate is a forgery, for but the certificate the employer would not have employed him. It is not the detriment to any person that is the essential ingredient in the intention to defraud. If a person induces another to believe in a certain state of things, which do not exist by the production of a document, which is false in material parts, the intention to defraud is made out. The contention that the petitioner has a claim to the property and, therefore, the 'propping up of a true claim by an unnecessary and superfluous document which is false is not an offence is to overlook the plain terms of Section 463. According to Section 463 whoever makes a false document to support any claim or title commits a forgery. There is no warrant for saying that in order to constitute forgery the document must be intended to support a false claim or a false title. If in order to support a true claim or a genuine title a false document is created, it is a forgery.

5. Suppose a person who has acquired a good title to property either by succession or by adverse possession or by a grant, creates a false Will in order to make out that he devised title under the Will, can it be said that he does not commit forgery? Suppose a parson who has been validly adopted in order to support his adoption makes a false document of authority to his adoptive mother even though the adoption was made not with the authority but with the consent of the nearest sapindas and, therefore, a valid adoption irrespective of the authority, he commits a forgery. It is to prevent false documents being made for the purpose of substantiating a true or genuine claim or title to property that the framers of Section 463 advisedly use the expression 'to support any claim or title. If the argument is pushed to its logical length, it would amount to this; any person may create a false document for the purpose of supporting what he considers to be a genuine claim and if the Court finds in his favour the person making the false document is not guilty of forgery or of using as genuine a forged document. But if the Court finds that the claim is not genuine or the title is not good, then the offence of using a forged document as genuine is committed. If a person in order to resist a false claim for money makes a false receipt, does he or does he not

commit forgery? Even if the Court holds that the claim is false that would not make the false receipt any the less a forgery, Whether a document is a false document or not does not depend upon the adjudication of the Court on the claim or title which is intended to be propped up by the false document.

6. Mr. Vaz relies very strongly upon the judgment of Ayling, J., in Manika Asari v. Emperor [1915] M.W.N. 278. In that casa a material alteration was made in a document. The Sessions Judge found that the material alteration did support the claim of the appellant in that case. The conviebion was set aside by Ayling, J., on the ground that it was impossible to say that any wrongful result was intended or could have arisen. With very great respect to the learned Judge I am unable to follow his reasoning. Before discussing the reasons given by the Judge it is but fair to observe that soma of the cases which bear on the point were not brought to his notice. The learned Judge observes:

I have not in fact been referred to or been able to discover any case in which a man has bean convicted of forgery, where his intention has been merely to secure something to which he was legally entitled or (which comes to the same thing) to which he bona fide believed himself to be entitled.

7. If some of the cases in which it was held that it was not necessary in order to constitute fraud within the meaning of Section 464 that anybody should be damnified had been brought to his notice, he would probably have taken a different view. He relied upon three cases in support of his position: Queen-Empress v. Sheo Dayal [1885] 7 All. 459; Queen v. Kishen Pershad 2 N.W.P. 202; and. Kailas Chandra Das v. Crown 6 C.W.N. 382. In Queen-Empress v. Sheo Dayal [1885] 7 All. 459, Brodhurst, J., sitting as a single Judge observed:

'Dishonestly' and 'fraudulently' are defined in Sections 24 and 25 of the Panal Code respectively, and with reference to those definitions, the accused on the findings of the Judge, as contained in the extracts above given did not commit the offence of which he has been convicted.

8. In that case forged receipts were fabricated in lieu of genuine receipts, which had been lost. The learned Judge did not discuss the meaning of the word

'fraudulently' but assumed that the facts found did not constitute fraud. In Queen v. Kishen Pershad 2 N.W.P. 202 it was held that a prosecutor in order to establish that a title has bean asserted with a fraudulent or dishonest intent must show that the accused had no reasonable ground for asserting the title. The learned Judges observe:

It is also shown that he used the document, but it is not shown that he did so dishonestly or fraudulently in the sense in which those terms are used in the Indian Penal Code; that is to say with a view to cause to his father wrongful gain, or to the Government wrongful loss.

9. This reasoning overlooks the difference between 'dishonestly' and 'fraudulently'. In order to do a thing dishonestly there must be intention to cause wrongful loss or wrongful gain of property, but in order to do a thing fraudulently it is not necessary that there should be the intention to cause wrongful loss or wrongful gain of property. The Legislature advisedly uses the terms 'dishonestly' and fraudulently.' To say that to do a thing fraudulently there must be the intention to cause wrongful loss or wrongful gain would be attributing to the Legislature redundancy. On the other hand, the words 'dishonestly' and 'fraudulently' are used to denote two different things. The case in Kailas Chandra Das v. Crown 6 C.W.N. 382 has been dissented 'from by Benson and Sankaran Nair, JJ' in In re Somasundaram Pillay [1909] 6 M.L.T. 266. Ayling, J., refers to Emperor v. Ali Hasan [1906] 28 All. 358 and Kotamraju Venkatrayudu v. Emperor [1905] 28 Mad. 90 and observes:

It was clearly laid down that an intent to defraud implies something more than mere deceit. The object for which the deceit is practised has to be considered. The advantage intended to be secured, or the harm intended to be caused need not have relation to property or be such as is implied in the term 'dishonestly' but it must be something to which the party perpetrating the deceit is not entitled either legally or equitably.

10. The latter portion of his observation cannot be supported. The intention to defraud need not necessarily be to obtain something which a person is not legally or equitably entitled. It is sufficient if by means of the perpetration of the fraud somebody is defrauded, The observation of the learned Judge that it is necessary

that in order to constitute fraud, the fraud must be intended to support something to which the person is not legally entitled is not the ratio decidendi of Emperor v. Ali Hasan [1906] 28 All. 358 and Kotamraju Venkatrayudu v. Emperor [1905] 28 Mad. 90.

11. In Kotamraju Venkatrayudu v. Emperor [1905] 28 Mad. 90 in order to obtain admission to the Matriculation Examination of the Madras University as a private candidate student produced a certificate of good character in which the signature of a Head Master of a School was forged. A Full Bench of the High Court held that the student was guilty of forgery. Sir Arnold White, the learned Chief Justice quotes the observation of Sir John Edge, C.J., in Queen-Empress v. Soshi Bhushan [1893] 15 All. 210:

We can see no difference in principle between the case of a man making a false certificate in order to obtain employment and the case of a man making a false certificate in order to obtain admission to a Law class. In each case the intention is to deceive another person, and thereby to obtain an advantage, or a privilege, which, without such deception, could not have been obtained.

12. Subramania Ayyar, J., who dissented from the view of the majority of the Bench was evidently considering the effect of holding that such certificates are forgery. He observes (at page 107 of 28 Mad.):

Apart from all this, there is the consideration that to make the words ' fraudulently' or 'With intent to commit fraud' cover acts such as this which have come to be spoken of as 'examination malpractices' would be to subject youths guilty of such acts, while still juveniles in the strict sense of the term, to the contaminating influences of the prison fit only for hardened offenders.

13. This consideration ought not to weigh with a Court which has to interpret the section of the Penal Code as it finds it. In Emperor v. Ali Hasan [1906] 28 All. 358 it was held by Richards, J., that it was forgery to issue orders as if signed by the District Superintendent of Police when they were not so signed. The learned Judge observes at page 28 All. 364

It would certainly be an alarming state of the law it a man could deliberately fabricate a false order for the purpose of having another person arrested under the supported authority of a District Superintendent of Police and be guilty of no offence under the Penal Code.

14. I shall now consider the cases which have taken a different view from In the matter of Dhunum kazee [1883] 9 Cal. 53. A Beneh of the Calcutta High Court held that:

Where a person, in the course of an action brought against him to gain possession of a property, uses a forged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent.

15. Norris, J. observed at page 60 (9 Cal.):

A general intention to defraud without the intention of causing wrongful gain to one person or wrongful loss to another, would, it proved, be sufficient to support a conviction....Let a person's title to property be ever so good, yet, if in the course of an action brought against him to gain possession of the property, he uses by way of supporting his title, though there may be no necessity for the use of it, a forged document, such as this hiba, I am clearly of opinion that he uses it fraudulently.

16. In Queen-Empress v. Ganesh Khande Rao [1889] 13 Bom. 506 a case decided by West and Nanabhai Haridas, JJ., is reported. The questions for consideration in that case were whether the certificate furnished to the accused stated his age as 23 'Which was subsequently altered to 20 and whether the accused was guilty of using a. forged document under Section 471, Indian Penal Code. The finding was that the accused had altered his age from 23 to 20. In answer to the contention that there was no dishonesty within the meaning of Section 464, Indian Penal Code, inasmuch as if he had got the employment at all, he would have got wages for work done, the learned Judges observe:

If, however, the alteration was made fraudulently, that suffices for the purposes of Section 464, as shown by illustration (k), and that illustration shows that the use or

fabrication of a false certificate of character raises the presumption of fraud. It was held by Le Blanc, J., so long as a century ago, that by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial.

17. See Haycraft v. Creasy [1801] 2 East 92.

This case was followed by the Calcutta High Court in Lalit Mohan Sarkar v. Queen-Empress [1895] 22 Cal. 313. In that case the accused altered a challan in order to make it appear that a larger amount had been paid than was the fact. It was argued that the alteration of the document was to cover a misappropriation already committed and, therefore, the alteration of the challan did not amount to forgery. The learned Judges held that the alteration of the challan, though to cover a wrongful loss which was a thing of the past, was forgery and that the intention need not be to cause future wrongful loss or wrongful gain in order to constitute a false document. They cite with approval the case in Queen-Empress v. Sabapati [1888] 11 Mad 411. in which it was held by Muthuswami Ayyar, J., and Wilkinson, J., that the making of a sale receipt by a postmaster in order to cover his misappropriation was forgery. In Queen-Empress v. Muhammad Saeed Khan [1889] 21 All .113 Banerji J., held that it was forgery to alter a service roll by inserting favourable remarks in favour of a person with the intent be favour chances of promotion to that person. He observes at page 115:

Where therefore, there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud, and if a document is fabricated with such intent, it is a forgery.

18. He relies upon Queen-Empress v. Vithal Narayan [1889] 13 Bom. 515 (note) and Lalit Mohan Sarkar v. Queen-Empress [1895] 22 Cal. 313. In Queen-Empress v. Abbas Ali [1898] 25 Cal. 512 it was hold by a Full Bench of the Calcutta High Court that

Deprivation of property, actual or intended is not an essential element in the offence of fraudulently using as genuine a document which the accused knew or had reason to believe to be

19. Maclean, C.J., who delivered the judgment of the Pull Bench observes at page 521:

The word 'fraudulently' is used in Sections 471 and 464 together with the word 'dishonestly and presumably in a sense not covered by the latter word If however, it be held that fraudulently implies deprivation, either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word 'dishonestly' and its use would be mere surplus age. So far as such a consideration carries any weight it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to transactions of which deprivation of property forms apart.

20. Referring to Section 463 he observes:

It is clear (especially if regard be had to the context) that it is not an essential quality of the fraud mentioned in the section that it should result in or aim at the deprivation of property.

21. In In re Somasundram Pillay [1909] 6 M.L.T. 266 Benson Offg C.J., and Sankaran Nair, J., declined to follow Kailas Chandra Das v. Crown 6 C.W.N. 382. It was argued in that case that the property comprised in the forged document belonged to the accused by virtue of certain documents and that the execution of Ex. A, the forged document, was intended only to confirm their title to property which already belonged to them and there was no dishonesty or fraud. The learned Judges observed with regard to that contention:

In our opinion the intention of the 3rd and 4th accused in getting Ex. A executed and registered was to confirm their alleged title to the property and enable them to deal with it, and that would certainly be to the detriment of any person dealing with them in regard to the property. The document was in our opinion, clearly fraudulent and a forgery.

22. The case in Emperor v. Bansi Sheikh : AIR1924 Cal718 lays down the same principle as that in In the matter of Dhunum Kazee [1883] 9 Cal. 53 In the case in Ramasami Iyer v. Emperor [1917] 41 Mad. 589 owing to a difference of opinion

between Sadasiva Ayyar and Phillips, J., a reference was made to Oldfield, J. Phillips, J. observed at page 596:

Even if accused had a bona fide claim to the lands and the moveables, I think the interpolations in the document would be fraudulent for he intended by unfair means to obtain a document containing an admission in his favour by prosecution 2nd witness and this would come within the definition of 'defraud' in Section 25 of the Indian-Penal Code

and this view was concurred in by Oldfield, J. Where a person forges a document to support a genuine title, can it be said that he derives no advantage or benefit by means of the document The production of the document may, enable the Court to find in his favour though not on the strength of the document alone; yet the document may form one of the Series of documents, which support the title of the person who uses it as genuine. It is unnecessary that the forged document should be the basis of the decision of the Court. It is sufficient if the document is for the purpose of supporting a title and the intention to defraud is complete when the document is made with the intention of making it appear that it is a genuine document. If the other conditions necessary to constitute a false document are present, the intention to defraud is a matter of inference. Where the document is false, the inference can be safely drawn that it was intended to defraud the Court or the party against whom it is used. The passage from Sir James Fitz, James Stephens' History of Criminal Law in England, Vol. II, page 121, is not against the view I have taken in this case:

Did the auther of the deceit derive any advantage from it which could not have been had, if the truth had been known ?

23. The advantage which is sought to be derived need not necessarily be the getting of the property which is already the property of the person making the false document;. The advantage which he gains by making the document is additional proof which he tenders for the purpose of substantiating his title to the property. It cannot be said that he does not derive any advantage by putting in a false document ; for the very object of creating the document is to have an additional proof of his title. In this case, though he may have title by adverse possession yet

the alteration of Ex. G would go to show that the petitioner derived title not by means of prescription but by reason of the arrangement entered into so far back as 1899. It is an advantage which begins by creating a title to which he is not entitled ; and the contention 'that he is found to be the owner of the property and, therefore, the alteration of the document of 1899 does not amount to forgery, cannot be upheld.

24. On a consideration of the cases above referred to I have no hesitation in coming to the conclusion that in order to do a thing fraudulently it is not necessary that the person doing it should intend, or the doing of it should have the necessary consequence of causing wrongful loss to any person. It is sufficient if the doing of it is intended to defraud some one without ultimately acquiring unlawful gain or causing wrongful loss.

25. I, therefore, decline to interfere with the conviction, which I consider to be right. The petition is dimissed.

Waller, J.

26. The petitioner has 'been convicted of an offence under Section 471 of the Iadian Penal Code. The charge is that in O.S. No. 165 of 1919 he produced in evidence a deed of partition in which to support his claims he had altered the figure 27 into 32. He was convicted by the Assistant Sessions Judge, Madura, and the conviction was confirmed by the Sessions Judge on appeal. He has come up to this Court on a point of law. It is this: that as the Sessions Judge has found that he had a good title to the disputed land by adverse possession his action in using a forged document to support his title did not amount to an offence under Section 471 of the Indian Penal Code. The argument, put shortly, is that if you have a good title otherwise, no intent to defraud Can be inferred from such conduct It is based on a decision reported as Mani Ka Asari v. Emperor [1915] M.W.N. 278.

27. I am very far from being satisfied that the Sessions Judge either came or could legitimately have come to any conclusion so definite as petitioner alleges. What happened before him was this. It was asserted that in Ex. 3 Mr. Bardswell had found a title by adverse possession and the argument based on the Madras

Weekly Notes decision was then developed. Dealing with this the Sessions Judge, after pointing out that Mr. Bards-well's conclusion was by no means explicit said

there is a considerable amount of evidence that he had been so (in advers possession for 12 years) and, for the purpose of this case (probably he meant argument). 1 think that evidence should be accepted as making out the claim of adverse possession.

28. It seems to me likely that he was assuming the facts in order to destroy the legal arguments founded on them. Looking at all the circumstances of the litigation since 1909, it is, I think, very doubtful whether the Sessions Judge could have meant to decide that petitioner had been in adverse possession for 12 years, by which must, of course, have been intended 12 years before 1900. In that year, petitioner brought a suit on a title derived from a partition in 1889. No deed of partition was produced. On the contrary petitioner swore that there was none in existance. His suit was ultimately dismissed, the result presumably being that he was found to have no title whatever. In the litigation started ten years later, he produced the deed now in question and relied on it for his title. No doubt, the suit against him was dismissed, but, as I understand Mr. Bardswell's judgment (Ex. III), the conclusion arrived at was that the third plaintiff had not proved his ' exclusive ' possession, and that it was quite uncertain which party was in possession. The truth appears to be that petitioner always founded his title on the partition and never put in a plea of adverse possession. NOB did any Court accept that plea till Mr.' Eeilly, J., did so in 1925. I do not think that he can have intended to do anything more than assume the fact for the purpose of the argument. And if he did accept the evidence, I think that he was not justified in doing so, in the face of the cir. cirmstances and of petitioner's conduct. If the finding that petitioner had a title by adverse possession goes, with it goes the basis of his legal argument.

29. On the question of law the Sessions Judges's view is stated thus:

the alteration of Ex, 18, if successful, would have shown that appellant had not only a right to the land in question by ad7erse possession, but that he had a title to it founded on the partition and acknowledged at the partition by the complainant's predecessor. That would, undoubtedly, have been a great advantage to him in his

dispute with the complainant and it would clearly have been an unfair advantage obtained by deceit.

30. I see no reason to dissent from this view. If a party to a suit sets up two different titles and supports one of them with a false document he has, in my opinion, committed an offence under Section 471 of the Indian Penal Code even if it be found that the other title is good. To take another instance, a man claims certain property by adoption and in the alternative relies on a Will. He is successful on the claim by adoption, but the Will is found to be a forgery. Can he escape conviction under Section 471 of the Indian Penal Code on the plea that he has proved his title by adoption? I should say emphatically not. Section 463 of the Indian Penal Code does not say that the claim or title which is being supported must be false. Nor does the word ' fraudulently ' necessarily import an intention 'to cause wrongful loss. If a man intends to gain an unfair advantage by deceitful means and uses a false document for that purpose, his conduct is, I think, fraudulent. My learned brother has referred to all the material decisions on the point. I need say no more than that I agree in his conclusion and that I consider that the correct view has been laid in In the matter of Dunam Kazee [1883] 9 Cal. 53. I would, therefore, dismiss the revision petition.

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