

In Re: Sreenath Kur. and Vs. Sreenath Kur.

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Court : Kolkata

Decided On : Feb-07-1882

Reported in : (1882)ILR8Cal450

Judge : Morris and ;O'Kinealy, JJ.

Appellant : In Re: Sreenath Kur. and ;The Empress

Respondent : Sreenath Kur.

Judgement :

O'Kinealy, J.

1. We have had some trouble in dealing with this case, owing to the manner in which it has been tried by the lower Court. On the preliminary inquiry before the Deputy Magistrate, the proceedings were allowed to cover a very large number of transactions. The prisoner was committed for trial on fifty-five charges, and with other parsons who were accused of having more or less assisted him in obtaining money from the Government treasury. These irregularities were perceived by the Sessions Judge; but instead of exercising the powers conferred on him by Sections 445 and 446 of the Code of Criminal Procedure, and then proceeding to hold separate trials, he adopted the somewhat unusual course of informing the prisoner that he would acquit him of all the charges except those already mentioned, and that to these the trial would be confined. Having come to that determination, he failed, unfortunately, to act up to his own convictions; and, under

the excuse of giving Government an opportunity of appealing, if necessary, against the acquittals on the other charges, he allowed evidence in regard to them to be adduced by the prosecution. On the other hand, it must be admitted that the Judge recorded the evidence bearing on the selected charges in a compact and succinct form, and it was in respect of them, and of them only, that the prisoner was examined and called upon to give any explanation. The selection, too, of these particular charges seems to have been the best that could have been made in favour of the prisoner. Both the cheques referred to transactions of the same date; so that this circumstance greatly facilitated the defence of the prisoner, where so much--indeed, we may say, his innocence or guilt--turned upon the state of his accounts. Moreover, the charges were confined to acts arising out of two, and only two, transactions of a similar kind, in which the prisoner succeeded in dishonestly and fraudulently obtaining Government money by means of false documents, and had he been tried at one trial, as he should have been, for obtaining the money, then all the evidence in connection with the present charges would have been properly admitted against him.

2. In this Court it has been contended on behalf of the prisoner, that he should have been tried separately for offences under Sections 167 and 466 of the Penal Code, and that he was prejudiced by the irregular manner in which the trial was held in the lower Court. In reply, the Advocate-General asserted that the charges under Sections 167 and 466 were of the same kind, and even if this were not so, still the prisoner had not shown how, or in what manner, he had been prejudiced by the irregularities which had occurred at the trial.

3. We are of opinion that offences under Sections 167 and 466 are not of the same kind as defined in Section 453 of the Code of Criminal Procedure. There are several points in which they differ. They are not even in the same chapter of the Code. Section 167 requires that the accused should be a public servant, but not that he should be actuated by any dishonest or fraudulent intention; while Section 466 requires the latter, but not the former. The offences seem to us, therefore, to be different, and not of the same kind, although the same individual may possibly commit both in the same transaction. But we are also of opinion that nothing has been brought to our notice which would support the contention that the prisoner

has been prejudiced in his defence by the proceedings in the lower Court. As we have already stated, the selection of the charges to be tried was made in the interest of the prisoner, and the transactions out of which they arose are of the same state and kind and only two in number. Moreover, no objection of this kind was pressed on the lower Court. We, therefore, confirm the convictions of the prisoner, except as to that for using a forged document, which we set aside. The sentences will stand, but instead of the third sentence being entered upon the two convictions,--viz., under Sections 466 and 471 of the Penal Code,--it will be entered upon Section 466 of the Penal Code only.

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