

Emperor Vs. Chandra Kumar De

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Court : Kolkata

Decided On : Aug-05-1926

Reported in : AIR1927Cal78

Appellant : Emperor

Respondent : Chandra Kumar De

Judgement :

Rankin, J.

1. In this case, the accused Chandra Kumar Do who appears to be an old man of 80 years of age was tried before a Judge and jury on several charges. The first charge against him was really abetment of forgery and the second charge was really conspiracy to cheat. On those two charges, the jury acquitted the accused and the learned Judge who makes this reference agreed with the jury and held that their verdict was right. There were, however, two other charges against the accused : a charge under Section 182 Indian Penal Code, and another of cheating under Section 420, Indian Penal Code; and the learned Judge has made this reference because he considers that the accused ought to have been convicted upon those two counts.

2. Now, the facts very shortly are that some person in June 1925 made up his mind to obtain money by forgery from the local Treasury and to do it by forging civil Court deposit payment cheques. He took the names of various local worthies

likely to be known in the Treasury office, he filled up certain blank forms, forged the signatures of the civil Court clerk and of the presiding officer there and presented these payment cheques to the local Treasury in the ordinary course, it appearing that he was a person entitled to draw money out of Court. The forgery was not detected; the documents appeared to be in order and the present accused does not come into the matter until we get to the stage at which the actual payments had to be made by the Poddar in the Treasury.

3. The person whose name had been forged as being the real payee could not, of course, be produced; but it appears that the Poddar was prepared to pay to some person nominated by the payee and to pay on getting proper identification by a person who was known to him. The accused who is a Mokhtear went and identified a particular person as being Jyotish Chunder Banerji the payee named in the cheques. What is now said is that he may or may not be a party to the swindle; but that, assuming that he is no party to the swindle, he still can be convicted and should be convicted under Sections 182 and 420, Indian Penal Code. The only view of this matter that can reasonably be attributed to the jury is, first of all, that the Mokhtear made the identification rashly or reprehensibly from want of reasonable caution that a man came to him, told him a yarn, persuaded him that he was Jyotish Chunder Banerji and that accordingly he went to the Poddar and identified the man as such.

4. In a case of this sort one has to draw a rigid line between two positions. If one is going to consider whether the man was in the swindle a person taking part in a conspiracy by forgery to get money from the Treasury, that is one position. The Judge and the jury, have negatived that. If however, we have to look to the question under Sections 182, and 420 Indian Penal Code, we are to do it on the basis that it cannot be imputed to him that he was in the swindle at all. Looking at it in that way, the question is what is the evidence, first of all, under Section 182, Indian Penal Code, that he has given to the Poddar information which he knows or believes to be false. The charge in this case perverted the section by saying as follows: 'which you know or had reason to believe' and, in that respect, it is an entirely damnable charge. The evidence of the Poddar is to the effect that the statements actually made by the accused were two separate and distinct

statements. One was that, when asked if he knew the payee Jyotish Chunder Banerji, he said that he knew him. The other was that he pointed out the man who drew the money as Jyotish Chunder Banerji, whom he knew.

5. The jury were, to my mind, right to reject the story of any such identification as that, splitting up the two questions whether the man was Jyotish Chandra Banerji and whether the accused knew Jyotish Chandra Banerji; but, assuming that such suggestion could be accepted on the evidence, it is also reason-ably clear that the accused may well say that rashly or not, foolishly or not he did think that he knew Jyotish Chunder Banerji. Ho may be wrong; ho had taken little pains to be right. But the question is whether he was honest. It has to be observed that, if he was not honest, it is very difficult to see how the Judge and the jury would acquit him of being in the swindle. As regards the charge under Section 420, Indian Penal Code, all that I can say is that, on this view of the facts of the case, I am at a loss to discover what Section 420 can have to do with this matter. For these reasons, it appears to me that this reference ought not to be accepted. The accused must, therefore, be acquitted and released. His bail bond will be discharged.

Mukerji, J.

6. I agree.

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