

J.E. James Vs. Emperor

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Court : Kolkata

Decided On : Jun-09-1933

Reported in : AIR1933Cal606a

Appellant : J.E. James

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. This is an appeal against an order of the Additional Presidency Magistrate of Calcutta summoning the appellant under Section 193 I.P. C, on a complaint made by the Chief Presidency Magistrate under Section 195(b), Criminal P.C. The case arises out of an unfortunate matrimonial trouble between the appellant and his wife. Apparently there had been unhappiness for some time between them, and mutual recrimination, which ultimately resulted in divorce proceedings instituted by her. The appellant went on leave in 1931, and when he returned to Calcutta he stayed with friends, and eventually with Mr. Hope Johnson whose name was mentioned in the matrimonial proceedings. This lady's husband was dead, and she used to take in paying guests. On 28th October 1932, the appellant was served with a notice in divorce proceedings.

2. On 1st December he left Calcutta for Bandel, and on his return found that Mrs. James had entered Mrs. Hope Johnson's flat in the absence of her and her

daughter and servants, on the night he left Calcutta. According to the evidence of the appellant and Mrs. Hope Johnson and others, the flat was found in a state of disorder, and a gramophone and a suit case were missing. The appellant also missed a sum of Rs. 410 which he had left in an unlocked drawer. The appellant reported the matter to the police and Mrs. James and her lady friend who accompanied her to the flat were charged with theft of these articles and the money. Mrs. James claimed the gramophone and the suit case, which turned out to be a blouse case worth about Rs. 10, presents given to her by her husband. She did not dispute the fact that he had paid for them both, except that the gramophone which was bought on the instalment system, was not fully paid up. The learned Magistrate deduced from this fact that it was obvious that Mrs. James did not act dishonestly. We are not quite sure that such a deduction can be made even on the evidence as it stands, because it was quite unnecessary to throw the whole of the furniture of the flat into disorder in order to possess herself of these articles. However it is perfectly obvious that she was an angry woman, and no doubt the appellant was equally angry when he informed the police of what had happened. Probably the Magistrate was quite right in treating the case against her as trivial one which he dismissed.

3. But during the examination of the appellant he was asked about the Rs. 410 and where he got this money from. He answered that it was part of a sum of Rs. 500 which he had borrowed from Mrs. Hope Johnson, to pay his lawyer in connexion with the divorce proceedings which were the going on. When Mrs. Hope Johnson came into the box to be cross-examined she having been absent when the appellant made his statement about the loan, she was asked a number of questions about the car, and the taxi, and the time when the appellant returned home, and then without further introduction she was asked whether she had lent Mr. James Rs. 500. She shook her head and said 'I did not lend Mr. James Rs. 500. I have my own business' and then she paused and said 'as far as I can remember.' The next question was whether she had helped Mr. James to assault Mrs. James on the night of 9th October 1932, and whether there was a double bed in their room and other questions. It is clear therefore that question put to her about the loan was an isolated one, without explaining to her what the question was directed to, when the loan was made, what it was for, or any of the

circumstances surrounding it. If she had been asked these questions, it might possibly be that she would have remembered assisting him with money which he urgently required for meeting the demands of his lawyers. However the learned Magistrate allowed the evidence to be left in this incomplete state, and came to the conclusion that the appellant's statement was a deliberate falsehood.

4. He says that Mrs. Hope Johnson, who was cross-examined immediately after the conclusion of Mr. James' cross-examination, was asked whether she had lent Rs. 500 to Mr. James. She shook her head and said, she 'never' lent him Rs. 500. She repeated that at least twice. Realising that she had blundered and given Mr. James away, she lamely added. As far as I can remember.' I accept the notes of evidence attached to the record and supplied by the learned Chief Presidency Magistrate as accurate, and accepting them as such, they do not bear out the statements made in his judgment. If the learned Magistrate has correctly stated the evidence, it is clear that he has exaggerated it in his judgment. The Magistrate says that from these facts, he is satisfied that Mrs. Hope Johnson had never lent Mr. James the money, and that Mr. James committed perjury by stating that he had left Rs. 410 in an unlocked drawer, and that his whole story was palpably false, and that in the interests of justice he thinks that the appellant should be prosecuted for perjury.

5. As I have pointed out, no opportunity was given to Mrs. Hope Johnson to explain her isolated answer, nor was the appellant recalled to amplify the evidence which he had given. It appears almost as if a trap having been laid in this way for the appellant, such a trap is not to be used for the purpose of prosecuting him for perjury. That is not the way in which criminal cases ought to be instituted. Courts are not established to set traps and catch people out, but, after a proper examination of the facts, to decide whether they ought to be prosecuted for criminal acts or not. A charge of perjury, obviously, is a serious charge, and it ought not to be lightly made or based upon a mere isolated answer, such as this.

6. For these reasons, we think that the complaint ought not to have been made. Although the Code gives a Magistrate or a Judge a full discretion as to whether or not he shall give the accused an opportunity to show cause why a complaint

should not be made against him, we think that this was a case in which the learned Magistrate ought to have given notice to the accused before making the complaint because the accused might well have been able to explain more fully the circumstances in which he gave his evidence, and to satisfy the learned Magistrate that in fact, he had not made any falsa statement. We think therefore that in such a casa as this, the discretion of the learned Magistrate was not exercised judicially, although in many other cases it may be quite unnecessary to give any notice or even to make an enquiry. We accordingly, allow this appeal and set aside the order of the Additional Presidency Magistrate and the complaint and quash the proceeding.

McNair, J.

7. I agree.

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