

Hanif and ors. Vs. Emperor

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Court : Kolkata

Decided On : Jul-06-1932

Reported in : AIR1932Cal786,140Ind.Cas.723

Appellant : Hanif and ors.

Respondent : Emperor

Judgement :

Mallik, J.

1. These two appeals were heard together. In Appeal No. 873 the appellants are three in number, namely, Hanif, Khatir and Fazulla. In Appeal No. 854 there are five appellants, namely, Jafiruddin, Azimuddin, Asimuddin, Hoehen and Refaz. The eight appellants in these two appeals with another man Him Pramanik were put on their trial on charges under Sections 419/120-B and 467/120-B, I. P. C. The trial was held with the help of a jury and the unanimous verdict of the jury was that Him was not guilty of any of the charges. Hanif, Khatir and Fazulla were found not guilty of the charge under Section 419/120-B but guilty under Section 467/120-B while the remaining five accused persons were found guilty under both of the sections. The case for the prosecution briefly was that the accused persons with some others were parties to a criminal conspiracy for cheating the Panchbibhi Industrial Bank in the District of Bogra by making false applications for loans executing forged bonds in favour of the said Bank and thereby dishonestly

inducing the said Bank to deliver money to them. The modus operandi pursued by these men consisted in impersonating well-to-do persons of the locality and after procuring the settlement khatians, filing loan applications in the names of those persons and when the loan applications were recommended by some of them by executing the bonds in favour of the Bank by forging the names of those persons. According to the prosecution these operations lasted from 1333 to 1334 B. S , and was detected only in Bhadra 1335 B. S. An information was given to the police and an investigation followed. The case against one of the accused was withdrawn and this man Abdul Gafur was examined by the prosecution as a witness. The result of the prosecution was as I have stated before. On behalf of the appellants in Appeal No. 873 a preliminary point was raised before us--a point that was purely a point of law. As the appeals were heard on other points as well, I propose to deal with this pure question of law at a later stage.

2. The first point urged on behalf of the appellants was that the learned Judge in his charge to the jury did not sufficiently explain the law to them and in this connexion our attention was drawn to that part of the charge where the Judge notes:

Sections 419, 467 and 120-B and other connected Sections 415, 416, 463, 464 and 120-A, I. P. C., read and explained to the jury.

3. It was contended that the charge did not disclose how the learned Judge actually explained these sections. There would have been some force in this contention if there was any special difficulty; about any of these sections. None of these sections however presented any particular difficulty and when the learned Judge in his charge says that he explained the sections to the jury, we are not prepared to hold that the explanation was not sufficient. (His Lordship after considering certain other points not necessary for this report proceeded.) I now come to the pure question of law to which I referred at the outset and which applies to the appellants in Appeal No. 873 alone. The point was that as the appellants in this appeal have been found guilty under Section 467/120-B only, the conviction was bad in law inasmuch as the previous consent in writing of the Local Government or District Magistrate empowered in this behalf by the Local

Government had not been obtained under Section 196-A, Sub-section (2), Criminal P. C. In support of this contention our attention has been drawn to a decision in the case of Nibaran Chandra v. Emperor : AIR1929 Cal754 . The facts in Nibaran Chandra v. Emperor : AIR1929 Cal754 were not quite similar to the facts in the present case. In the Nibaran Chandra v. Emperor : AIR1929 Cal754 case conviction was by a Magistrate by whom apparently cognizance of the offence had been taken. In the present case the conviction was by a jury and if there had been anything wrong, it had been done by the Magistrate who made the order of commitment. This Nibaran Chandra v. Emperor : AIR1929 Cal754 case was moreover a decision of a singly sitting Judge. In an. unreported case decided by a Division Bench of this Court in Criminal Appeal No. 370 of 1929 disposed of on 20th November 1929 in which the facts were almost on all fours with the facts of the present case, the view that was held was that when no objection is taken on the ground of Section 196-A, Sub-section (2), at any stage of the inquiry or trial, the verdict of the jury and a conviction based thereon cannot be held to be illegal merely because the previous consent of the Local Government had not been taken before the prosecution started. Following the decision in this unreported case, I would therefore hold that there has been no illegality in the present case on the ground taken by the appellants in Appeal No. 873 that a previous consent in writing of the Local Government had not been taken. Both the appeals therefore fail and are dismissed accordingly.

4. The appellants in Appeal No. 873 will surrender to their bail and serve out the unexpired portion of their sentence.

Remfry, J.

5. I agree.