

Abdullah Khan Vs. Emperor

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Court : Kolkata

Decided On : Sep-30-1909

Reported in : (1910)ILR37Cal52,5Ind.Cas.62

Judge : Chatterjee and ;Ryves, JJ.

Appellant : Abdullah Khan

Respondent : Emperor

Judgement :

Chatterjee, J.

1. In this case the petitioner has been convicted under Section 193 of the Indian Penal Code for giving false evidence in the course of a judicial proceeding. The nature of that judicial proceeding was as follows. The Assistant Settlement Officer made an inquiry under Section 476 of the Criminal Procedure Code as to whether he should or should not order the prosecution of certain persons for filing false receipts in the course of a settlement proceeding before him. The petitioner is said to have given false evidence in that inquiry. The petitioner obtained a Rule on the District Magistrate to show cause why the sentence passed upon him should not be set aside on the ground that the proceeding under Section 476 of the Criminal Procedure Code was not a judicial proceeding. 'Judicial proceeding' has been defined in Section 4 of the Criminal Procedure Code, and it includes any proceeding in the course of which evidence is or may legally be taken on oath.

Now, in order to see in what proceeding evidence can be taken on oath, we must refer to the Oaths' Act. Section 4 of Act X of 1873 lays down that all Courts and persons having by law or consent of parties authority to receive evidence are entitled to administer oaths. The next thing to consider is whether the Assistant Settlement Officer was such a person. Under Rule 40 of the Government Rules published, under the Bengal Tenancy Act the Assistant Settlement Officer has all the powers exercisable by a Civil Court in the trial of suits. Receiving evidence is certainly within such power and, therefore, the Assistant Settlement Officer was authorised to receive evidence; and if he was authorised to receive evidence then comes the question whether, although authorised to receive evidence on oath, he could receive evidence on oath in a proceeding under Section 476 of the Criminal Procedure Code. Now, Section 476 says that when any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence brought under its notice in the course of a judicial proceeding, such Court after making any preliminary inquiry that may be necessary may send the case for inquiry or trial. The Assistant Settlement Officer, therefore, was entitled to make the preliminary inquiry that he made in this case.

2. The next question that arises is whether he had authority to administer oath in such a proceeding or to receive evidence in such a proceeding. Inquiry must be upon evidence. It has been held in the case of *Raghoobuns Sahoy v. Kohil Singh* (1890) I.L.R. 17 Calc. 872, that one mode of making an inquiry is certainly to take evidence, and, therefore, if the Settlement Officer was authorised to make an inquiry he was authorised to take evidence. If he was authorised to take evidence, then the whole question is answered, because then it is a judicial proceeding and the petitioner has been rightly convicted.

3. The question, however, can be looked at in another way also. Under Section 193 of the Indian Penal Code, Explanation (2), an investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. This preliminary investigation, there can be no doubt upon the wording of Section 476, is an investigation or inquiry directed by law, although the Magistrate is given a certain amount of discretion with regard to the same; and, therefore, reading by

the light of this Explanation also it would seem that the preliminary inquiry before the Assistant Settlement Officer was a stage of a judicial proceeding. In that view also the conviction would be right. It has been held in the case of Emperor v. Gopal Barik (1906) I.L.R. 34 Calc. 42 46 that a proceeding under Section 476 is a judicial proceeding. Although that case was dealing with the question of such a proceeding being a judicial proceeding within the meaning of Section 439 of the Criminal Procedure Code, still we think that the proceeding, if it is a judicial proceeding for one purpose, is also a judicial proceeding for another purpose, and such being the case we think that the conviction in this case is correct. The sentence, however, is reduced to the eleven days already served by the petitioner, and he will be discharged.

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