

Pramatha Nath Vs. the State

Pramatha Nath Vs. the State

SooperKanoon Citation : sooperkanoon.com/865382

Court : Kolkata

Decided On : Jul-26-1951

Reported in : AIR1951Cal581

Judge : P.B. Mukharji and ;Guha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 110A, 463 and 464; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190, 196 and 367

Appeal No. : Criminal Revn. No. 262 of 1951

Appellant : Pramatha Nath

Respondent : The State

Advocate for Def. : Debabrata Mukherjee, Adv.

Advocate for Pet/Ap. : S.8. Mukherjee, ;Pritibhusan Barman and ;Kishore Mukherjee, Adv.

Judgement :

P.B. Mukharji, J.

1. This is an application in revision by one Pramath Nath Harabab for setting aside the order of the Magistrate of Uluberia dated 12th April 1950.

2. The applicant was convicted under Section 465/ 110, Penal Code, for having abetted forgery of a document. The document in question is a petition for withdrawal filed before the Appellate Officer Uluberia under the Bengal Agricultural Debtors Act.

3. There was another co-accused by the name of Suchandra Kumar Samanta. He was charged under Section 465 Penal Code, for having forged that particular document. Suchandra has been acquitted by the Sessions Judge.

4. Two main points have been argued before us on behalf of the applicant. One is that the offence disclosed is not one of forgery and the other is that in any event there is no abetment of such offence with which the applicant has been charged. It is necessary to set out here at the outset the charge against the applicant. The charge was that on 4th May 1948 the applicant intentionally aided Suchandra in forging the withdrawal petition which was filed in the Court of the Appellate Officer Uluberia in Case No. A/40 of 1945-46 under the Bengal Agricultural Debtors Act, the act of forgery being committed in consequence of his abetment. The charge against Suchandra was that he forged that particular withdrawal petition and committed an offence under Section 465, Penal Code.

5. The document in this connection is, as I have said, the withdrawal petition. The prosecution case is that one Hari Charan Harabab filed an application in the Kharuberia Debt Settlement Board on behalf of Naresh Dhara for getting possession of land sold at auction at the instance of Haradhan Banerjee. Naresh Dhara is the son of Hari Charan's daughter. The application was dismissed and Hari Charan preferred an appeal against the order of dismissal in the Court of the Appellate Officer. The applicant Pramatha Nath Harabab is the son of Hari Charan's brother and worked as pleader's clerk in that case before the Debt Settlement Board. An appeal was filed against that order dismissing the application of Hari Charan. The petition of withdrawal which is the document concerned in this revision purported to withdraw that appeal. It is the prosecution case that Hari Charan did not authorise Pramatha to put in or file that withdrawal petition. According to the evidence of Hari Charan he did not authorise the applicant Pramatha to withdraw the appeal on his behalf.

6. The withdrawal petition is written out by Suchandra Kumar Samanta. It purports to be executed by Hari Charan Harabab as the guardian of minor Naresh Chandra Dhara. That part is also in the handwriting of Suchandra. This withdrawal petition is signed by Bejoy Kumar Roy Chowdhury as B. K. Roy Chowdhury, the pleader , who filed the petition before the Appellate Officer.

7. There are certain facts which are undisputed. They are that so far as the body of the petition is concerned no part of it was written out by the applicant Pramatha. The petition also does not purport to be executed by the applicant or signed by him as the executant of that document. There is an endorsement on the petition which is in the handwriting of the applicant Pramatha. The endorsement is to this effect that Pramatha had authority to file this petition and he is handing over this petition to the lawyer. This portion of the endorsement is signed by Pramatha and bears his signature. The prosecution case is that this document was written out under the advice of Pramatha.

8. It is on these facts that the argument is advanced that there has been no forgery and consequently there can be no offence of abetment of forgery. The determination of this question turns on the construction of the words 'makes any false document'. Section 463, Penal Code, provides inter alia :

'Whoever makes any false document or part of a document with intent to cause damage or injury to any person or with intent to commit fraud or that fraud may be committed commits forgery.'

What is 'making a false document' is described in Section 464, Penal Code. In the first paragraph of Section 464 it is provided leaving out the details not necessary for the purposes of the present case :

'A person is said to make a false document who dishonestly or fraudulently makes a document or part of a document with intention of causing it to be believed that such document or part of a document was made by or by the authority of a person by whom or by whose authority he knows that it was not made.'

The argument on behalf of the applicant is that there has been no 'making' of a false document. The matter is one of considerable importance. It has been argued that in order to make a false document there must be either some writing of (sic) part of the document itself or signature or (sic) or execution. On the other hand, on behalf of the prosecution it has been submitted before us that if that were so, the word 'makes' would become superfluous in the context of the language in Section 464, Penal Code. This question has been the subject of some judicial decision. The one that we need refer at the present stage is the decision of Garth C. J. in the matter of the petition of Riasat Ali; *The Empress v. Riasat Ali*, 7 Cal. 352. There the learned Chief Justice made the following observations while construing Section 464, Penal Code. These observations so far relevant for our present purpose are :

'I consider that the 'making' of a document or part of a document does not mean 'writing' or 'printing' it but signing or otherwise executing it; as in a legal phrase we speak of making an indenture or 'making a promissory note' by which is not meant the writing out of the form of the instrument, but the sealing or signing it as a deed or a note. The fact that the word 'makes' is used in the section in conjunction with the words 'signs', 'seals' or 'executes' or makes any mark denoting execution etc., seems to me to be very clearly to denote that this is its true meaning. What constitutes a false document, or part of a document, is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some person to the document or part of a document knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document or part of (sic) being signed or sealed with the name or (sic) son who did not in fact sign or seal it.'

This particular observation of the learned Chief Justice has been criticised by Stokes in his commentary on the Anglo Indian Codes, vol. I, p. 269, and the learned author in reference to this case says : 'Why then were 'makes' and 'made' used as well as 'signs', 'executes', 'signed', 'executed' ' The decision of the learned Garth C. J. was the decision of a Bench of this Court and with those observations of the learned Chief Justice, Prinsep J. sitting with him agreed and is binding on us. We do not feel that it is necessary for us to go any further on this point and

refer this question to a Full Bench for a fuller consideration of the criticism of Stokes. What needs emphasis however is that every forgery postulates a false document either in whole or in part however small. A piece of blank paper is not a document. Procurement of a piece of paper or of writing instrument or of a scribe cannot separately or by combination be regarded as making a false document. Until a false document is made either in whole or in part there cannot be in my opinion any forgery. Mere preparation for the commission of a possible crime of forgery without a false document in part or in whole cannot itself be either forgery or abetment of forgery. I will only observe here that the observation of Garth C. J. regarding the offence of attempt to commit a crime under Section 511, Penal Code in that case was criticised by a Bench of the Allahabad High Court in the matter of the Petition of R. MacCrea, 15 ALL. 173. Knox and Blair JJ. dissented from the view expressed by Garth C. J. with regard to the interpretation of the word 'attempt' as used in Section 511, Penal Code. But that dissent does not in my opinion affect the main question. That in the case of forgery there must be the making of a false document. Here again I am not concerned with a case of attempt under Section 511, Penal Code. Here the charge is abetment under Sections 109 and 110, Penal Code. The learned Lord Chancellor of England delivering the judgment of the Judicial Committee in appeal from that Allahabad decision in *Ex parte MacCrea*, 20 I. A. 90 at p. 94 in upholding the decision of the Allahabad High Court clearly pointed out 'the distinction between preparation to commit an offence and acts done towards the commission of the offence.' On the question of the interpretation of the word 'attempt' in Section 511, Penal Code, therefore it must be taken that the views of Garth C. J. have been overruled by the Privy Council. But as I have said before this does not affect the question before me on the construction of the words 'makes a false document' in Sections 463 and 464, Penal Code.

9. The more cogent reason in this case is that whatever may be the construction of the words 'makes a false document' it is an essential ingredient of the offence of forgery that there must be the fraudulent or dishonest intention. Now, in this case the prosecution case is that although the petition purports to be made by Hari Charan as guardian of Naresh Dhara, Hari Charan never authorised the making of this petition. The question therefore is: Did the accused-applicant have the

authority or did he dishonestly or fraudulently put in this petition or was instrumental in putting in this petition before the Appellate Officer? In every case of forgery where the question of authority is raised, as it is raised here, it is essential to prove not only lack of authority but also the dishonest intention with probably more than usual care. The reason is that mere abuse of authority would not necessarily lead to a conclusion that there is a forgery. Abuse of authority can be in various forms and every abuse of authority is not a crime. It is not forgery where the act is done under the honest belief that the party doing it had a right to do it although in point of fact he had really no such authority. I will assume that the evidence given by Hari Charan and by his son Amulya, the complainant, to be correct on the point that neither Hari Charan nor Amulya gave any authority to the accused Pramatha to put in this petition. Nevertheless it is consistent with Pramatha making an honest mistake that he had the authority. It will be an abuse of authority if he did so, but not forgery in that case or abetment of forgery. The learned Editor of the Tenth Edition of Russell on Crimes at p. 1474, vol. II observed :

'As it is not forgery where the act is done under the honest belief that the party doing it had a right to do it, although in point of fact he had really no such right, evidence which tends to show that there was reasonable ground for such belief is admissible on behalf of the prisoner.'

In this context, a particular fact is relevant and that is Pramatha is the nephew of Hari Charan and was employed by Hari Charan in fact to look after this appeal and was a Tadbirkar. How far he had authority as a Tadbirkar is not clear on the evidence except the oral testimony of Amulya and Hari Charan that he had no authority to put in this particular petition. The other fact relevant on this consideration is that if the accused Pramatha was careful enough not to write any part of the document, nor to sign nor to execute it but to have it written out by Suchandra, why would he be bold enough to put in that endorsement stating that he had the authority and that the petition is being handed over to the lawyer? This endorsement is consistent with his own honest belief in that context that he had the necessary authority. Where there are two reasonable or probable conclusions, one consistent with the innocence of the accused and the other with his guilt, it is

well settled that the one that is consistent with his innocence should be adopted.

10. The next question is about the evidence on which the accused Pramatha has been convicted of the offence of abetment of forgery. As I have said before, the charge was that he abetted Suchandra in forging this withdrawal petition. Suchandra has been acquitted. His acquittal however does not make the charge against the present accused Pramatha incompetent because Suchandra was given the benefit of doubt in the sense that although he made the document and wrote it out, he wrote it out innocently without knowing that the accused Pramatha had no authority to do so. Besides, the actual provisions of Sections 108 and 110, Penal Code are in my opinion clear on this particular question. In Explanation 3 to Section 108, Penal Code, it is laid down that it is not necessary that the person abetted should be capable by law of committing an offence or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge. Then again in Section 110, Penal Code, it remains punishable if the person abetted does the act with a different intention or knowledge from that of the abettor. The learned Advocate on behalf of the prosecution in making the argument that he did on the words 'making a false document' was between the horns of a dilemma. According to his construction of the word 'makes' he was in fact charging the accused Pramatha with the actual making of the document because he advised the creation of that document, but that was not the charge against Pramatha on which he was tried. He was charged with abetment.

11. The only evidence on which the prosecution relies for proving abetment is that of Suchandra Samanta. A good part of the argument addressed to us was taken up by the question whether the deposition of Suchandra before he became a co-accused in this case was admissible evidence. This deposition is marked Ext. 4. It is unnecessary for us to decide the technical point as to whether the deposition is admissible or not, because in any event such deposition in our view does not prove abetment. What Suchandra said was this :

'I wrote it under the advice of the accused Pramatha Nath Barabab. Pramatha told me he was busy and so advised me to write this petition.'

There is no evidence what that advice was. Advice is not necessarily abetment In order that there may be abetment there must be either instigation or intentional aiding or engaging in a conspiracy as laid down in Section 107, Penal Code. General advice; is far too vague an expression to prove abetment under the Penal Code. Apart from Suchandra's evidence there is no other evidence at all on abetment in the whole record.

12. On behalf of the accused, it has been contended that the offence disclosed was (sic) if any, not under Section 463 or Section 464, (sic) abatement of such offence of forgery but (sic) might have come under Section 182, Penal Code, or Section 54, Bengal Agricultural Debtors Act. In either event sanction was necessary. The argument was that as no sanction was taken here, therefore the trial or the prosecution was incompetent. Having regard to the recent decision of the Full Bench of this Court in the case of Dhirendra Nath Bera v. Narul Huda, in Full Bench Reference No. 4 of 1951 arising out of criminal Revn. Case No. 769 of 1950, we do not consider that this argument can any longer be accepted. If the offence disclosed can be laid under different sections of the Indian Penal Code, some requiring sanction and others not requiring sanction, it is quite competent for the prosecution to bring the offence under a section which does not require sanction.

13. For the reasons stated above, we set aside the orders of the Magistrate and the Sessions Judge and direct that the accused-petitioner Pramatha Nath Harabab be acquitted of the charge framed against him and discharged from his bail bond.

14. The Rule is made absolute.

Guha, J.

15. I agree.