

Adhi Mallick Vs. the State

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Court : Kolkata

Decided On : Apr-27-1955

Reported in : AIR1955Cal473,1955CriLJ1246,59CWN832

Judge : J.P. Mitter and ;Debabrata Mookerjee, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 419, 420, 463 and 465

Appeal No. : Criminal Revn. No. 822 of 1954

Appellant : Adhi Mallick

Respondent : The State

Advocate for Def. : Nirmal Chandra Sen, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;Kishore Mokerji, Advs.

Judgement :

Debabrata Mookerjee, J.

1. The petitioner Adhi Mallick was charged on three counts -- first with having committed an offence under Section 419, secondly with having committed an offence under Section 420 and thirdly with having committed an offence under Section 465, Penal Code.

2. The facts upon which the three counts of charges were attempted to be sustained were briefly these:
3. The petitioner put himself forward as owner of a certain plot of land which in fact he was not. As a result of this false representation the complainant was induced to part with a sum of money (Rs. 2500/-) and a deed of sale was said to have been executed by the petitioner in favour of the complainant's son. The document was registered in due course. A considerable time afterwards it was discovered that the petitioner had nothing to do with the land in question and that he had perpetrated fraud upon the complainant. A complaint was made which ultimately led to the petitioner being tried upon the three counts of charges indicated above.
4. To these three charges the petitioner pleaded not guilty and his defence appears to be that he had not executed the document in question.
5. At the trial quite a large number of witnesses was examined in support of the three charges framed in the case and the learned Magistrate after having considered the evidence came to the conclusion that the first two counts of charges under Section 419 and under Section 420, I. P. C. could not possibly be sustained. The learned Magistrate however, thought in the facts and circumstances proved in the case that the charge under Section 465, I. P. C. had been made out. The result was that the petitioner was convicted under Section 465, I. P. C. and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default, to undergo rigorous imprisonment for a further term of three months.
6. The petitioner appealed but the learned Judge who dealt with the appeal ultimately dismissed it and affirmed the findings arrived at by the learned Magistrate. The petitioner then applied to this Court and obtained the present Rule.
7. Mr. Mukherjee appearing on behalf of the petitioner has raised several points in support of the Rule. It is not necessary to refer to the others except the first which is that in view of the order of acquittal made so far as the two counts of charges under Sections 419 and 420, I. P. C. are concerned, it is no longer possible to

convict the petitioner under Section 465, I. P. C.

8. The contention seems to be well founded. The implication of the order of acquittal so far as the charge under Sections 419 and 420, I. P. C. are concerned must be that upon the evidence adduced in the case it was not possible to hold that the elements necessary to sustain these charges had been satisfied. Taking these two charges together it must be said that they implied that there was some false representation made by the petitioner on the basis of which the cheating in the two forms covered by Sections 419 and 420, I. P. C. was alleged to have been committed. The element of false representation does not find mention in either of the two charges under Sections 419 and 420, I. P. C. as framed by the learned Magistrate.

In any event, it is quite clear from the evidence in the case that the false representation intended to be relied upon by the prosecution in support of two charges related to the fact that the petitioner put himself forward as the owner of the land when as a matter of fact he was not the owner. That is in substance the false representation in the case upon which the two charges under Sections 419 and 420, I. P. C. were based, although as I have indicated, there is no mention in the charges themselves as to what exactly the false representation was. Taking this to be the false representation said to have been made by the petitioner that he was the owner of the land when as a matter of fact the owner was somebody else, the prosecution set out to prove that the petitioner put himself forward as the real owner at the Registration Office and thus induced delivery of a certain sum of money. There can be no doubt whatever that the learned Magistrate by acquitting the petitioner of these two charges meant to hold that the false representation alleged was not fit to be believed or acted upon. In any event, that representation was not proved according to the learned Magistrate which entailed the consequence of acquittal in respect of these two charges.

9. The position thus created by acquittal with respect to offences under Sections 419 and 420, I. P. C. has to be considered 'vis-a-vis' the remaining charge under Section 465, I. P. C.

10. Section 465, I. P. C. punishes the offence of forgery. Forgery is denned in Section 463 of the Code, which again is very widely worded. That section implies the making of a false document with intent to commit fraud or with intent to cause wrongful loss or wrongful gain. Now the making of a false document is defined in Section 464, I. P. C. Leaving out the words which are unnecessary for our immediate purpose the 1st clause of Section 464, I. P. C. says that when a person dishonestly or fraudulently makes or signs or executes a document or part of a document with the intention of causing it to be believed that such document or part of a document was made, signed or executed by a person by whom he knows it was not made, signed or executed makes a false document. Therefore, it is quite clear that in order that a charge of forgery under Section 465, I. P. C. can be sustained it has to be proved in the first instance that there was forgery within the meaning of Section 463, I. P. C. which again implies that there was the making of a false document in terms of Section 464, Penal Code.

11. Taking the facts of this particular case into account, it has to be found, therefore, that the document which forms the subject-matter of the charge must be proved to have been made fraudulently or dishonestly with one or other of the intentions mentioned in Section 463, I. P. C. by the petitioner who made it or executed it, with the intention of causing it to be believed that it was made, signed or executed by a person by whom he knows it had not been made, signed or executed.

12. It follows, therefore, that there must be found fraudulent intent which is an essential ingredient of Section 465, I. P. C. but the learned Magistrate refused to believe the only evidence of fraud and consequent dishonesty implied in the charges under Sections 419 and 420 of the Code. I have already indicated that the gravamen of the two charges was a certain definite false representation that he was the owner of the land when in point of fact he was not the owner. This was negatived as a result of the finding arrived at by the learned Magistrate as regards the two charges under Sections 419 and 420, I. P. C. It is, therefore, not possible in the circumstances to hold that the findings of the learned Magistrate upon these two charges leave wholly unaffected the charge under Section 465, I. P. C. It is impossible to view the acquittal of the petitioner as respects the two charges

compart-mentally and in a manner wholly unrelated to the totality of facts which must be taken in their entirety and upon which these three separate charges were framed. When the learned Magistrate did not find it possible to believe the prosecution case on the two charges with all their implications, the charge under Section 465, I. P. C. cannot possibly survive the consequence of such acquittal.

13. The result is that this Rule is made absolute and the conviction and sentence imposed upon the petitioner under Section 465, I. P. C. are set aside and the fine, if paid, will be refunded.

14. Let the petitioner be discharged from his bailbond.

J.P. Mitter, J.

15. I agree.

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