

Abdul Gafur Vs. Emperor

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Court : Kolkata

Decided On : May-15-1936

Reported in : AIR1936Cal418,165Ind.Cas.415

Appellant : Abdul Gafur

Respondent : Emperor

Judgement :

Cunliffe, J.

1. The petitioner here obtained a rule against his conviction and sentence under Section 82, Registration Act. When he was tried before the Magistrate of Comilla, there were two other men with him as co-accused and they were convicted of abetment. On an appeal being heard on the part of the three persons before the Sessions Judge at Tipperah, the two persons who were charged with abetting the petitioner were acquitted. The sentence, the petitioner received in the trial Court, was one year's rigorous imprisonment and before the appellate Court this sentence was reduced to six months.

2. The actual charge against the petitioner was that he made a false statement before the Sub-Registrar in relation to a certain deed. This is how the lower appellate Court describes the material facts. The learned Judge says One Asafali executed a deed of gift in favour of the sons of his only son Abdul Gafur (who is the petitioner here). But before the deed could be registered, Asafali died. On a

certain date Abdul Gafur presented the deed for registration before the Sub-Registrar of Muradnagar when Abdul Gafur himself as well as the attesting witnesses Ramijaddin, Fazarali and Chandmia said that Abdul Gafur was the only child and heir of Asafali. The Sub-Registrar was about to register the deed when a deed-writer, Baikuntha Debnath, who apparently knew Asafali, came forward and said that Asafali had left four daughters also who were his heirs along with Abdul Gafur. It is also found as a fact that thereafter the SubRegistrar had refused to accept the deed for registration. The next day then turned up at the office the husbands of the four sisters and admitted the proper execution of the deed and after that it was registered in due form. Nevertheless Abdul Gafur was prosecuted.

3. The main point argued before us was that this scene before the Sub-Registrar was not really a happening which is contemplated by the Act and that there was not enough formality to bring it within the language of the Act and more especially within Section 35. The statute however does contemplate these informal inquiries such as the Sub-Registrar was making on this occasion. Sub-s. (2), Section 35, for example, seems to be particularly appropriate to what was taking place with regard to this execution. It lays down that the registering officer, may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, examine any one present in his office.

4. No doubt the statement made by Abdul Gafur was made in furtherance of the procedure under this section. It seems to be contemplated by the Act that particular care should be exercised when the executant of the document which was being presented is dead. One cannot understand this. But we are not convinced that the action of Abdul Gafur on this occasion and the statement he made, although undoubtedly untrue, was a very serious lie. We think there can be very little doubt that the reason which prompted him to give vent to this half truth was to save his sisters (who were Mahomedan ladies not accustomed to go to offices) from the trouble of turning up before the Sub-Registrar. To me it is rather irritating to find that the lower appellate Court Judge and the Magistrate pompously delivered themselves of the opinion that this was a very very serious offence indeed. No doubt it is an offence but it is certainly not a serious one. We shall reduce the sentence, whilst upholding the conviction, to the period the petitioner

has already undergone and direct his release. The rule is made absolute to this extent.

Henderson, J.

5. I agree. I have no doubt that the reasons given by the learned Judge in reaching the conclusion at which he arrived have been rightly characterised as unsound by the learned advocate who has appeared in support of this rule. On the other hand, the learned Magistrate reached the same conclusion for reasons which appear to me to be good reasons. Under Section 35, Sub-section (2) of the Act, the Sub-Registrar was entitled to examine the petitioner for any purpose contemplated by the Act. Under the Act if a representative of Abdul Gafur appeared and denied execution, the Sub-Registrar would have been compelled to refuse to register this document. It seems to me to be impossible to say that this officer when endeavouring to find out whether there were such persons, was not carrying out some purpose contemplated by the Act.

6. I am bound to say that I find it difficult to appreciate why either the Magistrate or the Judge thought it necessary to impose a sentence of imprisonment. This lie was the most harmless lie that has ever been told. This petitioner was not attempting to benefit himself or to cheat his sisters. It is the Mukhtear who told him that if the Sub-Registrar became aware of their existence, they would have to be brought to the office in person and it is quite obvious that Abdul Gafur suppressed the fact of their existence in order to save them from this to their wholly unwarranted trouble.