

Emperor Vs. Mohit Kumar Mukerjee

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Court : Kolkata

Decided On : May-15-1925

Reported in : AIR1926Cal89,(1925)ILR52Cal881

Judge : Page, J.

Appellant : Emperor

Respondent : Mohit Kumar Mukerjee

Judgement :

Page, J.

1. At the Fifth Criminal Sessions of the High Court for 1924, Mohit Kumar Mukerjee, Bankim Chandra Ghose and Surendra Nath Shaha were tried before me under Sections 120B and 471 of the Indian Penal Code on a charge of conspiring-dishonestly or fraudulently to use as genuine a certain receipt for Rs. 50,000, when they knew or had reason to believe that the receipt was a forged document, in consequence of which conspiracy the said document was so used as aforesaid. The receipt in question purported to acknowledge the payment of a sum of Rs. 50,000 as salami in respect of a sub-lease of certain mining rights in lands of which the firm of Dickie & Co. were the lessees. Dickie and Co. became insolvent, and in the course of the insolvency proceedings the Official Assignee became aware of a claim which had been preferred by the accused Bankim and Suren that the accused Mohit, as one of the partners of Dickie & Co., had

executed in their favour a sub-lease of the said mining rights. An order was obtained by the Official Assignee, therefore, to examine the three accused under Section 36 of the Insolvency Act (III of 1909). The accused were served with a summons to produce inter alia 'any books and documents in connection with the said alleged payment by them or either of them of Rs. 50,000 to any member or members of the said insolvent firm for the purpose of obtaining the 'above lease'. In the course of the examination of Suren, who stated that the receipt in question was given by Mohit to Bankim and afterwards was retained by the witness, the receipt was tendered by the Official Assignee and admitted as an exhibit in the insolvency proceedings. In his examination on the same day Bankim stated that 'it was arranged that Suren and I should advance monies in equal shares. Mohit told me that he would not execute a registered lease in our favour as the lease in his favour had not been registered. He said that he would not give us a receipt for Rs. 50,000.

2. Q. That is all that you hold now? Yes, at that time. A. copy of the lease from Mr. Greet to Mohit was sent to us in May 1921. I had the lease drawn up in favour of Suren and myself on the same lines as Mr. Greet's lease, and sent it to Mohit for approval.

3. Q. What happened after that? We pressed Mohit to return the draft approved, and he returned it to us approved on the 11th August.

4. Q. What document did you get on the 25th February 1920? This receipt (produced) and when we paid Rs. 15,000 a second receipt was written out on the same paper.

5. At the close of the case for the Crown, counsel for the accused contended that there was no evidence that the accused or any of them had 'used' the said receipt fraudulently, dishonestly, or otherwise, within the meaning of that term in Section 471 of the Indian Penal Code, and that there was no evidence upon which the jury would be entitled to find the accused guilty. I overruled the objection, and the jury found all the accused guilty of having dishonestly and fraudulently 'used as genuine' the said receipt in consequence of the said conspiracy. In view of the conflicting decisions on the subject I was invited by counsel to deliver a considered

ruling as to the meaning which is to be attributed to the words 'fraudulently or dishonestly uses as genuine' in Section 471 of the Indian Penal Code. In my opinion, whenever a person fraudulently or dishonestly presents a document to another person as being what it purports to be, or causes the same to be so presented, knowing or having reason to believe that the said document is a forged document, the document is 'used as genuine' within Section 471. As I construe the section, it matters not whether the document was presented by the accused himself, or by his agent expressly authorized in that behalf, see *Lala Ojha v. Queen-Empress* (1899) I. L. R. 26 Calc. 863, or whether it was produced by, the accused of his own motion or pursuant to the order of the Court, if in the event he uses it as genuine in the sense that I have indicated. Whether there has been an user or not must depend upon the circumstances of each case. If all that the accused has done is to swear that a forged document is a genuine document, no doubt, he has not 'used' the document within Section 471, but, in my opinion, if the evidence discloses that the accused, when called upon to produce a document which he knows or has reason to believe is a forged document, fraudulently or dishonestly presents that document as being a genuine document, he cannot claim absolution for the fraudulent or dishonest use which he has made of the document merely because he has been served with a subpoena duces tecum. For a summons to produce a document neither compels nor entitles the person served to be a party to a fraud, and if the person who has been served with the summons fails to disclose that he believes that the document has been forged, and fraudulently or dishonestly puts forward the document as being a genuine document, in my opinion, he is not acting involuntarily, but is deliberately using the document for a criminal purpose. To hold otherwise would be to afford a ready method by which the provisions of Section 471 could be evaded. For these reasons, with great respect, I am unable to acquiesce in the reasoning upon which the decisions of the Madras High Court were based in *Assistant Sessions Judge, North Arcot v. Ramammal* (1911) I. L. R. 35 Mad. 387 and *Re Muthiah Chetty* (1911) I. L. R. 36 Mad. 392.

6. Since the issue as to whether there has been a fraudulent or dishonest user is one of fact, it is, I think, neither possible nor advisable to do more than lay down a criterion by which the facts of any particular case may be tested. It is, however,

desirable that I should refer to *Ambika Prasad Singh v. Emperor* (1908) I. L. R. 35 Calc. 820 in which case the accused handed certain forged receipts to his mukhtear, and the receipts were filed in Court by the mukhtear with a list of documents. The receipts, having been denounced as forgeries, were retained in the custody of the Court, and subsequently the accused was charged with an offence under Section 471 of the Indian Penal Code. In the course of the judgment of Stephen and Holmwood JJ. their Lordships observed: 'It appears from the evidence of the accused's mukhtear and of his mukhtear's-muharrir that what had happened was that he with another party to the case produced the receipts in question, and they were entered in a list, which was filed with the statement made on behalf of the third party. They were at once denounced as forgeries and they were never tendered in evidence. In the first place, it appears to us that this does not on the facts before us constitute any user. There was no attempt to use these documents as evidence, and we are not at all satisfied that there was any fraudulent intention on behalf of the accused so to use them. There was certainly no attempt made to assert their genuine character after they had once been impugned, and under these circumstances we cannot hold that there has been any user.' As this case is widely reported it is well to bear in mind that, although the actual decision may be supported upon the ground that the evidence that the accused intended to file the document was exiguous, the observations in the judgment to which I have referred have been dissented from in *Krishna Prasad Mandal v. Rabindra Nath Dinda* (1911) 13 Cr. L. J. 6 and were subsequently explained by Holmwood J. in *Mobarak Ali v. King-Emperor* (1912) 17 C. W. N. 94. His Lordship there stated, 'what we did hold was that there was no evidence that these receipts had been used fraudulently or dishonestly by the accused. They were produced by a third party in the case under Section 144 of the Criminal Procedure Code. The case obviously depended upon its own facts as most criminal cases do. The filing of a document as the basis of the plea or as a necessary sequel to the plea in the plea is, in my opinion, in itself an user, and it then becomes incumbent upon the person using it to show that he had filed the document in all good faith, believing it to be genuine': see also *Rati Jha v. Emperor* (1911) I. L. R. 39 Calc. 463. In my opinion, the above observations of Stephen and Holmwood JJ. in *Ambika Prasad Singh v. Emperor* (1908) I. L. R. 35 Calc. 820

(sic)right not now to be followed. Again, in *Asimuddi Sheikh v. King-Emperor* (1907) 11 C. W. N. 838, it was held by Rampini and Gupta JJ. 'that the use of a forged document which is contemplated by Section 471 of the Indian Penal Code is such use as causes wrongful gain or wrongful loss; that is to say, that section applies to the case of a person who appears before some other person or before the Court with a document, and endeavours to induce that person or Court to do some act which he or it would not do if it was known to be a forgery.' The above definition of the nature of the user appears to me to be too narrow, for it gives no effect to the word 'fraudulently' which is found in the section. The definition of 'dishonestly' in Section 24, and 'wrongful gain' and 'wrongful loss' in Section 23, makes it clear that these terms are used in the Indian Penal Code with reference to the acquisition or the deprivation of property. Now, in Section 25 'fraudulently' is defined as meaning 'with intent to defraud' and In *re London and Globe Finance Corporation, Limited* [1903] 1 Ch. 728, 732. Buckley J. observed that 'to deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising deceit knows or believes to be false. To defraud is to deprive by deceit; it is, by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action'. This definition was followed by the Court of Criminal Appeal in *Rex v. Newton and Bennet* (1913) 23 Cox 609. But neither the acquisition nor the deprivation of property is an essential ingredient of the intent in an offence under Section 471 of the Indian Penal Code. In *Queen-Empress v. Soshi Bhushan* (1893) I. L. R. 15 All. 210. Edge C. J., in delivering the judgment of the Court, observed that 'we can see no difference in principle between the case of a man making a false certificate in order to obtain employment, and the case of a man making a false certificate in order to obtain admission to a law class. In each case the intention is to deceive another person, and thereby to obtain an advantage or a privilege, which, without such deception, could not have been obtained. We cannot agree with Norris J. in *Queen-Empress v. Haradhan* (1892) I. L. R. 19 Calc. 380 that the claim in that section is limited to a claim to property. There does not appear to us to be anything in the section to so limit the application of that word. In our opinion, the claim may be a claim to anything, as, for instance, a claim to a woman as the claimant's wife, a claim to the custody of a child as

being the claimant's child, or a claim to be admitted to a university or other examination, or a claim to the possession of immoveable or any other kind of property. Why should the making of a false document to support a claim to an old coat not worth Rs. 5 be a forgery and the making of a false document to support a claim to the custody of a child not be a forgery'? In *Queen-Empress v. Abbas Ali* (1897) I. L. R. 25 Calc. 512. Maclean C. J. in delivering the judgment of the Court which included O'Kinealy, Macpherson, Trevelyan and Jenkins JJ. observed: "Fraudulently' is defined by Section 25 in the following words---'a person is said to do St thing fraudulently' if he does that thing 'with intent of 'defraud but not otherwise.' As a definition this provision is obviously imperfect, and perhaps introduces an element of doubt which did not previously exist; for it leaves it to be determined whether the word 'defraud' as used in Section 25 implies the deprivation or intended deprivation of property as a part of result of the fraud. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and as it is not defined in the Code, and is not, so far as we are aware, to be found in the Code, except in Section 25, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found in Sections 471 and 464 together with the word 'dishonestly,' and presumably in a sense not covered by the latter word. If, however, it be held that 'fraudulently' implies deprivation, either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word 'dishonestly', and its use would be mere surplusage. So far as such considerations carry any weight, it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to a transaction of which the deprivation of property forms a part'. In *Queen-Empress v. Muhammad Saeed Khan* (1898) I. L. R. 21 All. 113. Mr. Justice Banerjee observed: Where, therefore, there is an intention to deceive and by means of the deceit to obtain an advantage. there is fraud, and if a document is fabricated with such intent, it is a forgery. This was held by this Court in *Queen-Empress v. Soshi Bhushan* (1893) I. L. R. 15 All. 210. A somewhat wider interpretation has been placed on the word 'fraud' by the Bombay High Court in *Queen-Empress v. Vithal Narayan* (1838) I. L. R. 13 Bom. 515 v. which was followed by the Calcutta High Court in *Lolit Mohan Sarkar v. Queen-Empress* (4) (1804) I. L. R. 22 Calc. 313. In the case of the Bombay High Court,

the learned Judges accepted the interpretation of Le Blanc J. in *Haycraft v. Creasy* (1801) 2 East 92 that by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from ill-will towards the other is immaterial': see also per White C. J. in *Rotamraju Venkatrayadu v. Emperor* (1905) I. L. R. 28 Mad. 90.

7. In *Surendranath Ghose v. Emperor* (1910) 14 C. W. N. 1076, 1085. Mookerjee J. stated that 'the expression 'intent to defraud' implies conduct coupled with intention to deceive and thereby to injure; in other words 'defraud' involves two conceptions, namely, deceit, and injury to the person deceived, that is, infringement of some legal right possessed by him but not necessarily deprivation of property.' With great respect I am unable to accept the view that the term 'fraudulently' in Section 471 of the Indian Penal Code, necessarily connotes deceit and injury to the person deceived. It may, but it need not, do so. In point of fact more often than not it happens that the intention of the accused is to deceive one person in order to injure or defraud another. Further, it is well settled that it is not incumbent upon the Crown to prove that any particular person was defrauded, *Rex v. Crooke* 2 Str. 901, or indeed, that in the circumstances of the case it was possible that any person could have been defrauded: *Reg v. Nash* (4) (1852) 2 Den. 493. In my opinion, the law was correctly laid down by Banerjee J. in *Queen-Empress v. Muhammad Saeed Khan* (1898) I. L. R. 21 All. 113, and that an offence is committed under Section 471 whenever a document known or believed by the accused to have been forged is used as genuine with the intention that some person thereby should be deceived, and by means of such deception that either an advantage should accrue to the person so using the document, or injury should befall some other person or persons. In practice the question tends to become merely academic, for 'the practical test as to the fraudulent character of deception for criminal purposes is this; did the author, of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that the advantage should not have had the equivalent of any loss or risk of loss of someone else. If so, there was fraud'. (Stephen's History of the Criminal Law of England, Vol. II, page 121). The ramifications of fraud, and the varied garbs in which it appears, make it undesirable to attempt to find an exhaustive definition of the term 'fraudulently', or 'intent to defraud'; and to do so is

unnecessary, for each case must turn on its own facts, and when the facts are known it is seldom difficult to draw a conclusion as to whether at the material time a fraudulent intention was present in the mind of the accused. In this case, the user, in my opinion, was both dishonest and fraudulent, and there was ample evidence to support the finding of guilty.

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