

AsrabuddIn Sarkar and ors. Vs. Kali Doyal Mullick and anr.

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SooperKanoon Citation : sooperkanoon.com/877286

Court : Kolkata

Decided On : Jun-17-1914

Reported in : AIR1915Cal596,28Ind.Cas.645

Judge : Sarfuddin and; Teunon, JJ.

Appellant : AsrabuddIn Sarkar and ors.

Respondent : Kali Doyal Mullick and anr.

Judgement :

1. In these two Rules it appears that, two prosecutions under Sections 474, Indian Penal Code, have been instituted against the petitioners in respect of certain documents, namely, in each case a kabuliyat and an amalnamah. It further appears that the petitioners instituted a rout suit (No. 324 of 1913) and that in that suit summoned the complainants in that criminal proceedings to produce the documents in question, each a kabuliyat and an amalnamah. The production of the documents followed. The case for the complainants is that the documents are not genuine and were in fact produced not by the complainants, hut by the plaintiffs, the petitioners before us. The contentions of the petitioners before us are that a sanction under Section 195 or an order under Section 476 of the Code of Criminal Procedure is necessary before they can be prosecuted, and that in any case pending the decision of the rent suit the prosecution should be stayed.

2. On behalf of the complainants-opposite parties it is contended, first, that the documents having been merely filed there has been no user, and, secondly, that the prosecution under Section 474 requires no sanction. The second contention cannot be disputed, and in support of the first reference is made to the case of *Ambika Prasad Singh v. Emperor* 35 C. 820 : 8 Cr. L.J. 398. But in at least three subsequent cases *Rati Jha v. Emperor* 14 Ind. Cas. 201 : 39 C. 463 : 15 C.L.J. 509 : 13 Cr. L.J. 201 : 16 C.W.N. 623; *Mobarak Ali v. Emperor* 15 Ind. Cas. 81 : 17 C.W.N. 94 : 13 Cr. L.J. 449 and *Krishna Proshad Mandal v. Rabindra Nath Dinda* (sic) it has been held that at least in certain circumstances the filing of a document may constitute a user. On the case for the prosecution, in the present instance, the documents were produced by the petitioners as documents coming from the custody of the complainants. We are of opinion that this, if established, constitutes a user within the meaning of Section 471, Indian Penal Code. It follows that the offences, if any, committed, are offences under Section 471 of the Code and in respect of those offences sanction under Section 195 or an order under Section 476, Criminal Procedure Code, is necessary.

3. Apart from this, it is not disputed that the decision of the issues in the rent suit depends largely on the question whether the documents in question are or are not genuine. That being so, we are of opinion that it is expedient that the criminal proceedings should be deferred pending the final disposal of the rent suit. After that suit is disposed of, it will be open to the Courts and to the complainant to take further appropriate action. These Rules are, therefore, made absolute and the present criminal proceedings quashed.

4. The petitioners will now be discharged from, their bails.