

Md. Abul Hasnath Vs. the State

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Court : Kolkata

Decided On : Mar-24-1970

Judge : R.N. Dutt and ;Sarma Sarkar, JJ.

Appellant : Md. Abul Hasnath

Respondent : The State

Judgement :

R.N. Dutt, J.

1. On some first information report lodged by the Inspector of Post Offices, Rampurhat the police made an investigation and submitted charge-sheet against the petitioner under Section 420 of Indian Penal Code and against one Kashi Nath Das under Sections 420/114 of the Indian Penal Code.

2. The prosecution alleged that one Mir Sawkat Ali sent an insured letter No. 005 dated March 10. 1964, for Rupees 175/- from Rampurhat Post Office to one Balaram Kurmi under Bishnupur Branch Post Office. Kashi Nath Das was the Post Master of the Bishnupur Branch Post Office at the relevant time The petitioner is said to have received this insured latter posing himself as Balaram Kurmi and Kashi Nath Das delivered the postal letter to him knowing that he was not Balaram Kurmi.

3. The learned Magistrate on perusal of the Police papers framed a charge against the petitioner and Kashi Nath Das under Section 34 of the Indian Penal Code and then a charge under Section 420 of the Indian Penal Code.

4. Mr. Das Gupta points out that there is no separate offence under Section 34 of the Indian Penal Code and no charge can or should be framed under the said section of the Indian Penal Code. No punishment is provided for under Section 34 of the Indian Penal Code. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is under Section 34 of the Indian Penal Code made liable for that act. But this is not a separate offence and is not separately punishable. The learned Magistrate has, as we have said also framed a charge against Kashi Nath and the petitioner under Section 420 of the Indian Penal Code. The effect of the charges as framed and that should have been the charge as intended to by the learned Magistrate is a charge against both under Section 420/ 34 of the Indian Penal Code.

5. Mr. Das Gupta then argues that the learned Magistrate has no jurisdiction to try such offence. Kashi Nath Das is a public servant and since the charge recites an offence under Section 420 of the Indian Penal Code said to have been committed by such public servant, this offence is triable by a Special Court and since the offence against Kashi Nath Das is triable by a Special Court the offence against the petitioner is also triable by the Special Court.

6. Mr. Sen submits that the proper charge should have been a charge under Section 420 of the Indian Penal Code against the petitioner and against Kashi Nath Das under Section 420/114 of the Indian Penal Code. But the State has not moved the higher Courts against the charges framed and on the charges as framed the learned Magistrate has no jurisdiction to try the petitioner and Kashi Nath Das. The instant proceedings now pending against the petitioner and Kashi Nath Das should therefore, be quashed.

7. In the result, the Rule is made absolute. The charges framed against the petitioner and Kashi Nath Das are set aside and the proceedings now pending against them before the learned Magistrate are also set aside.

8. The State will, however, have the liberty to initiate appropriate proceedings against them in accordance with law.

J. Sarma Sarkar, J.

9. I agree.

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