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In Re: a Vakil

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Court : Kolkata

Decided On : Mar-07-1918

Reported in : 45Ind.Cas.686

Judge : Fletcher and ;Shamsul Huda, JJ.

Appellant : In Re: a Vakil

Judgement :

1. This is a Rule issued on a Vakil calling on him to show cause why under the provisions of Section 476 of the Code of Criminal Procedure proceedings should not be taken against him in respect of the evidence given by him in Appeal from Original Decree No. 248 of 1916, or why such other order should not be made with reference to the offences committed by the said Vakil before this Court or brought to its notice in these proceedings, as to this Court may seem fit. The appeal was heard by myself and Mr. Justice Shamsul Huda. It was a Probate case, and agreeing with the decision of the learned District Judge, we found that the Will was a forgery. Sanction to prosecute the appellant in the appeal had been granted by the lower Court and, on the Will or the document said to be the Will, the Vakil's name appeared as one of the attesting witnesses. The Vakil did not give evidence in the Court below, nor did he appear before the Commissioner under the commission issued by the lower Court for the purpose of taking his evidence. He stated that the parties had informed him that they did not require his evidence. We directed him to appear before us and with the consent of all parties his evidence was taken in this Court. He swore that the signature appearing on the alleged Will,

where his name appeared as one of the attesting witnesses, was not his signature. We did not agree with that view. We had before us documents which had been filed in this Court by him--Vakalatnamas--for the purpose of comparison and we came to the conclusion that the signature apparently was his. Having regard to his evidence and the circumstances of the case, we thought that we should not allow the case to rest where it was, more especially so as the person against whom this Rule was issued was a person practising in this Court as one of the qualified practitioners. We, therefore, issued the present Rule.

2. On the hearing of the Rule, it has been objected, first of all, that Section 476, Criminal Procedure Code, does not apply to an offence committed before a Court in the presidency town and, secondly, that even if it does the qualification in Section 195, Criminal Procedure Code, must be read into Section 476 and, therefore, except as regards the statements made in his evidence, it would not be competent to this Court acting under Section 476 to direct the prosecution of the Vakil for the offence of forging or abetting the forging of the Will. To deal with the first point first, reliance has been placed on the decision of this Court in the case of Kedar Nath Kar v. King-Emperor 3 C.L.J. 357 : 3 Cr. L.J. 329, where the learned Judge remarked: 'We have considered the course which we should take in the matter. Section 476 of the Criminal Procedure Code does not appear to provide for the case of an offence before a Court in a presidency town. It empowers a Court to send a case for enquiry or trial to the nearest Magistrate of the first class. But the nearest Magistrate, namely, the Presidency Magistrate is not a Magistrate of the first class.' Speaking for myself, I think that it may be open to question whether the nearest Magistrate of the first class is not a person who can be quite easily distinguished from the nearest Magistrate. The nearest Magistrate of the first class can be distinguished from all other Magistrates surrounding the High Court, whether they fall under the distinction of Presidency Magistrates salaried or not or Magistrates of a class inferior to the first. However, the decision referred to is in favour of the Vakil and in my opinion,, before we oan differ from that decision, it would be necessary for us to send this case for the consideration of the Full Bench. While I follow this decision with hesitation, I think in a case like the present, rather than to send the case for the decision of the Full Bench which would involve considerable time, it would be more convenient to adopt the procedure that was

suggested in that case and to send the case to the Legal Remembrancer with the present judgment for such action as he may think proper.

3. The other point, namely, whether the qualification mentioned in Section 195 ought to be read into Section 476 is again a matter on which judicial decision is not all one way. There is the decision in Akhil Chandra Sen v. Queen-Empress 22 c. 1004 : 11 Ind. Dec. (N.S.) 667. It seems to follow from the judgment, that the qualification in Section 195 is not to be read into the provisions of Section 476. But again there is a decision the other way reported as Jadunandan Singh v. Emperor 4 Ind. Cas. 710 : 37 C. 250 : 14 C.W.N. 330 : 10 C.L.J. 564 : 11 Cr. L.J. 37. There the learned Judges held, whilst recognizing that the course of decision was not all one way, that the recent decision of this Court was in favour of the view that the qualification mentioned in the former section, that is, Section 195 was to be treated as incorporated in the latter-provision, that is, Section 476. The same view was taken in the case of Debilal v. Dhajadhari Goshami 9 Ind. Cas. 577 : 15 C.W.N. 565 : 12 Cr. L.J. 101. Again in that conflict of authority, I think it would not be right for us in this case, specially in a case of this nature, to depart from the more recent authorities and to hold that the qualification mentioned in Section 195 does not apply to Section 476. That is a matter which, I think, if it has got to be determined, ought not to be determined in a case of the present nature but in some other proceedings where both sides are properly, represented.

4. In the result, we follow the course adopted in the case of Kedar Nath Kar v. King-Emperor 3 C.L.J. 357 : 3 Cr. L.J. 329 and direct that the judgment and the papers in the case be laid before the Legal Remembrancer for enquiry and for such action as he thinks proper. In the event of the Legal Remembrancer desiring to take action in the matter, he should apply on notice to the party to be proceeded against and stating the result of such enquiry for sanction to prosecute. The Rule is discharged.

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