

Baheruddy Sikdar Vs. Emperor

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Court : Kolkata

Decided On : Feb-20-1924

Reported in : 81Ind.Cas.919

Judge : Greaves and ;Panton, JJ.

Appellant : Baheruddy Sikdar

Respondent : Emperor

Judgement :

1. Sheikh Salimuddi and Sheikh Alimuddi, brothers of the appellant, were tried before the Assistant Sessions Judge of Barisal for forcibly cutting and taking away paddy from the field of the complainant Sheikh Iasin and causing grievous hurt. The defence was that the disputed land belonged to the appellant Baheruddy and one kabuliyut, one mortgage-bond purported to have been executed by Baheruddy in favour of the complainant, and two dakhilas purported to have been granted by the complainant in favour of the appellant Baheruddy were exhibited. The prosecution challenged these documents as forgeries. The Jury found the accused guilty and they were convicted. Complainant applied for the prosecution of the appellant Baheruddy for forgery but the learned Sub-Divisional Magistrate held that the case could not proceed without sanction. Thereupon the complainant applied for sanction against the appellant Baheruddy before the learned Assistant Sessions Judge who issued notice but in the meantime the learned Assistant Sessions Judge having been transferred the learned Sessions Judge granted

sanction and made the complaint under Section 476A of the new Criminal Procedure Code. The appellant was neither a party nor a witness in the case tried by the learned Assistant Sessions Judge.

2. Babu Jatindra Natli Sanyal, for the appellant: The learned District Judge had no jurisdiction to make, complaint against the appellant who was neither a party nor a witness in the case before the learned Assistant Sessions Judge. Whatever might have been the law under the old Code, under the new Code the law is quite clear and the appellant could not be said to have committed any offence in or in relation to a proceeding before the learned Assistant Sessions Judge as contemplated by Section 476, Criminal Procedure Code. Under the old Code also complaint could not be made against any person who was neither a party nor witness. [See *In re. Kallaru Eamalingam* 31 Ind. Cas. 653 : 40 M. 100 : 18 M.L.T. 488 : 2 L.W. 1135 : 10 Cr. L.J. 797] though there might be some cases in which a contrary view was taken. The section should be strictly construed, see *Jadunandan Singh v. Emperor* 4 Ind. Cas. 710 : 37 C. 250 : 10 C.L.J 564 : 14 C.W.N. 339 : 11 Cr. L.J. 37. Again the offence alleged to have been committed will not come within Section 193, Indian Penal Code, for it cannot be said that the appellant fabricated these documents for the purpose of using them in a Court of Law.

3. Mr. Khondkar, for the Crown (with Babus Surexh Chander Taluqdar, and Babu Mohendra Kumar Ghosh, for the Complainant): It is not necessary that the person against whom a complaint is made under Section 476 should be either a party or a witness to the proceeding in relation to which the offence is committed. The requirements of the law will be satisfied if the commission of the offence is brought to the notice of the Court in or in relation to a proceeding in that Court. See *Akhil Chandra Sen v. Queen-Empress* 22 C. 1004 : 11 Ind. Dec. (N.S.) 667.

4. The appellant fabricated these documents for the purpose of using them in a Court of Law to prove his title and the documents were actually used before a Court of Law. Therefore, Section 193, Indian Penal Code, will apply.

5. Panton, J.--This is an appeal under Section 476B of the Code of Criminal Procedure against an order of the learned. Sessions Judge of Bakerganj, dated the 24th of September, 1923, in which he made a complaint to the District

Magistrate of an offence under Section 193 of the Indian Penal Code, and any other appropriate sections, alleged to have been committed by the present petitioner Baheruddy Sikdar in relation to a trial before the Assistant Sessions Judge of Bakerganj. These offences are said to have been committed in respect of certain documents which were filed by the defence in the trial before the Assistant Sessions Judge. They are a kabuliyat, a mortgage-bond and some other documents.

6. Various grounds have been urged before us for holding that the order of the learned Sessions Judge was not in accordance with law. It is, however, unnecessary to go into all the points raised, by the learned Vakil for the appellant because we think that the appeal, must succeed upon one single ground and that is that there is no ground for supposing that Baheruddy committed any offence of the nature referred to in Section 476 in or in relation to a proceeding in any Court. It may possibly be the case, but as to this we express no opinion, that Baheruddy forged these documents, but there is nothing at present before us nor was there anything before the learned Judge, so far as I can see, to suggest that he did so for the purpose of using them in the Court, of the Assistant Sessions Judge, nor is there anything to show that it was he who used these documents in that Court. In the circumstances, we think that the appeal must succeed and that the order of the learned Sessions Judge must be set aside and his complaint withdrawn.

7. Greaves, J.--I agree.