

Sanmukhsingh and Another Vs. the King

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Court : Privy Council

Decided On : Nov-07-1949

Reported in : AIR1950PC31

Judge : Lord Simonds, Sir John Beaumont & Sir Lionel Leach

Appeal No. : Privy Council Appeal No. 12 of 1947 (From Sind)

Appellant : Sanmukhsingh and Another

Respondent : The King

Advocate for Pet/Ap. : Dingle Foot and Alfred Stone, for Appellants; J. M. Pringle and J. M. R. Jayakar, for the King. Solicitors for Appellant, Hy. S.L. Polak and Co., Solicitors for the King, Sanderson Lee and Co.

Judgement :

LORD SIMONDS:

Their Lordships, having at the conclusion of the hearing intimated that they would humbly advise His Majesty to dismiss this appeal, now give their reasons.

2. This is an appeal by special leave from an order of the Chief Court of Sind, in its Appellate Criminal Jurisdiction, dated 18th July 1945, which summarily dismissed the appeal of the appellants from the conviction and sentences passed on them on 24th March 1945, by a Judge of the said Court, exercising Sessions Court

jurisdiction, who, in accordance with the majority verdict of a jury, found (1) both of them guilty of being parties to a criminal conspiracy to cheat one Rochiram Asoomal Canser (S. 120B read with S. 420, Penal Code); (2) the first appellant guilty of having, in pursuance of the said conspiracy, forged two documents (referred to in the Record as exs. A and b) purporting to be an agreement in duplicate executed at Lahore by a fictitious person called Dr. S. C. Rao, described therein as "General Manager, Herbarium Lahore", and at Karachi by the said Rochiram as "Chairman, Sunderson Limited", wherein receipt of Rs. 3000 as paid by appellant 1 to the Herbarium on behalf of Rochiram, was acknowledged (section 467, Penal Code); (3) the second appellant guilty in pursuance of the said conspiracy of having aided and abetted appellant 1 in forging the said documents (S. 467 read with S. 109, Penal Code); (4) both of the appellants guilty of having, in pursuance of the said conspiracy, fraudulently and dishonestly used the said documents in an attempt to induce Rochiram to pay to them Rs. 3000 (S. 471, Penal Code); and sentenced appellant 1 to rigorous imprisonment for 18 months under (1), for 5 years under (9) and for 5 years under (4); and the second appellant to rigorous imprisonment for 18 months under (1), for two years under (3) and to 1 years under (4); and directed the sentences in each case to run concurrently.

3. It will be observed that the appellants were charged with forging or abetting the forgery of certain documents and were convicted of this offences. It is contended on their behalf that the Court had no jurisdiction to try them for this offence because by S. 195 (1) (C), Criminal P.C., a Court is barred from taking cognizance.

"of any offense described in S. 463 or punishable under S. 471, S. 475 or S. 476, Penal Code when the offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding except on the complaint in writing of such Court or some other Court to which such Court is subordinate",

It was urged on behalf of the appellants that the documents in respect of which the charge of forgery was laid had been produced or given in evidence in certain

proceedings in the Magistrate's Court at Lahore, that the Lahore Magistrate had made no such complaint in writing as S. 195 presented, and that accordingly that section barred the jurisdiction of the Chief Court of Sind.

4. It appears, however, to their Lordships that this challenge, which was no doubt the substantial ground upon which special leave to appeal was given, is based upon a misapprehension of the facts. For upon a further examination of them it is clear that the documents in question were not in fact produced or given in evidence in the Lahore Court, but on the contrary there were produced in that Court documents which purported to be copies (but without the names of the executants) of the documents alleged to be forged. In these circumstances their Lordships think it plain that S.196 (1) (c) cannot operate as a bar. They concur in the opinion expressed by the Chief Court of Oudh in *Girdharilal v. Emperor*, AIR (12) 1926 Oudh 413 : (26 Cr LJ 929) that the section can only refer to the document alleged to be forged, not to a copy of it. This view which accords with the plain grammatical meaning of the words is supported by the practical common sense of the matter, for, as was observed in that Court, the Court before which a copy of a document is produced is not really in a position to express any opinion upon the genuineness of the original. It was suggested that a forged document might at least be said to be "given in evidence" if a copy was produced, but it appears to their Lordships that, though by production of a copy secondary evidence of the contents of a document might be said to be given, the forged document itself would not thus be given in evidence.

5. This ground of appeal therefore fails.

6. Numerous other grounds of appeal were urged by learned counsel for the appellants, all of which their Lordships have carefully examined. The appeals to the Chief Court of Sind having been summarily dismissed, their Lordships have not the advantage of knowing how far the learned Judges of that Court were influenced by S. 637, Criminal P. C., but their Lordships are satisfied upon a review of the whole case, that, whether that section is invoked or the more stringent test adopted which their Lordships have so frequently prescribed for the determination of criminal appeals, it is abundantly clear that there has been no

such failure or miscarriage of justice as would justify an interference with the order of the Chief Court. They do not propose to examine in detail the several matters of complaint which were urged by learned counsel. It is sufficient to say that any irregularities that a scrutiny of the proceedings may disclose afford no grounds for reversing the decision of the Chief Court.

Appeal dismissed.

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