Budhu Ram

Vs

State of Rajasthan

Criminal Appeal No. 229 of 1960

(P. B. Gajendragadkar, K. N. Wanchoo, J. C. Shah JJ)

24.07.1962

JUDGMENT

WANCHOO, J. -

This is an appeal by special leave against the judgment of the Rajasthan High Court. The appellant is a displaced person from West Pakistan. He obtained a registration card meant for displaced persons from the Rehabilitation Department in July 1949. In 1954, the Displaced Persons (Compensation and Rehabilitation) Act, (No. 44 of 1954) was enacted. Thereafter a notification was issued by the Central Government under the Act requiring displaced persons having verified claims to make applications for payment of compensation. Thereupon the appellant made an application for compensation (Ex. P-2) to the Assistant Settlement Officer, Alwar in March 1955, as required under the Act and the Rules framed thereunder. In support of that application, he submitted an attested copy of his verified claim (Ex. P-3). It appears that the Assistant Settlement Officer proposed to allot 132 acres of evacuee allotable agricultural land to the appellant on quasi-permanent basis, and asked the Tehsildar Nagar to make a proposal in that connection in consultation with the appellant. In the meantime, secret information was received that displaced persons in that area had obtained allotment of land on false and forged verified claims. The matter was then inquired into and it was found that the claim for compensation made by the appellant was based on a fabricated verified claim. Consequently, the appellant was prosecuted under ss. 466, 471 and 420 read with s. 511 of the Indian Penal Code and was committed for trial to the Court of Session, Alwar.

It may be mentioned that the original of which Ex. P-3 is a copy submitted along with the application (Ex. P-2) was never produced either before the Assistant Settlement Officer or in the Sessions Court. The case was tried by the Assistant Sessions Judge to whom it was transferred. The appellant's defence there was that the application (Ex. P-2) had not been submitted by him and that he had nothing to do with the said application or the enclosures accompanying it. He also contended that as the Assistant Settlement Officer, was acting as a court and as the offence under s. 471 was alleged to have been committed in respect of a document produced or given in evidence in proceedings before the Assistant Settlement Officer, his prosecution was incompetent in the absence of a complaint by the Assistant Settlement Officer. The Assistant Sessions Judge rejected the contention of the appellant that any complaint by the Assistant Settlement Officer was necessary before cognizance could be taken of the offence under s. 471 of the Indian Penal Code. He further held on the evidence led by the prosecution that the application (Ex. P-2) and the copy of the verified claim (Ex. P-3) and other papers accompanying the application were got prepared by the appellant and got attested and verified by him. He further held that though there was no direct proof of the fact that the application (Ex. P-2) was put in by the appellant in the office of the Assistant Settlement Officer, Alwar, there could be no doubt in the circumstances of the case that the

application (Ex. P-2) along with its enclosures could only have been put in by the appellant or by someone on his behalf in the office of the Assistant Settlement Officer. He, therefore, convicted the appellant under s. 471 as well as under s. 420 read with s. 511 of the Indian Penal Code and sentenced him to imprisonment as well as fine. There was then an appeal by the appellant to the Sessions Judge, Alwar. This appeal was dismissed with the modification that the sentence of fine was set aside. The substantive sentence of imprisonment, which was two years rigorous imprisonment under s. 471 and one year's rigorous imprisonment under s. 420 read with s. 511 of the Indian Penal Code, has been made to run concurrently by both the courts.

The appellant then went in revision to the High Court and the main point urged there was that the prosecution was incompetent in view of s. 195(1)(c) of the Code of Criminal Procedure in the absence of a complaint by the Assistant Settlement Officer, Alwar. The High Court rejected this contention. Further, the findings of the two courts below were challenged on the merits; but the High Court held that there was no reason to interfere with the concurrent findings of fact arrived at by the two courts below. Finally, it was contended that as Ex. P-3 was only a copy there could be no offence under s. 471, but this contention was also rejected by the High Court. In the result, the High Court confirmed the judgment of the Sessions Judge. There was then an application for a certificate to appeal to this Court, which was rejected. The appellant then came to this Court for special leave, which was granted; and that is how the matter has come up before us.

Learned counsel for the appellant has reiterated the points which were urged in the High Court, before us. His first contention is that the Assistant Settlement Officer must be deemed to be a court within the meaning of s. 195(1)(c) of the Code of Criminal Procedure and therefore the prosecution was incompetent in the absence of a complaint by the Assistant Settlement Officer. Further it is contended that as Ex. P-3 is only a copy there can be no offence under s. 471 of the Indian Penal Code, even if it be accepted that the application (Ex. P-2) along with its enclosures was filed before the Assistant Settlement Officer by the appellant or on his behalf. Lastly, it is contended that there is no evidence to prove that the application (Ex. P-2) was made by the appellant or on his behalf.

We do not think it necessary for the purposes of this appeal to decide whether the Assistant Settlement Officer when acting under Act 44 of 1954 can be deemed to be a court within the meaning of s. 195(1)(c) of the Code of Criminal procedure. We shall assume for present purposes that he is a court to which s. 195(1)(c) applies. But the question still remains whether a complaint by the Assistant Settlement Officer was necessary where as in this case it was not the original forged document which was produced before him but a copy thereof. This question came up for consideration before the Judicial Committee in Sanmukh Singh v. The King [[1949] L.R. 77 I.A. 7.], and it was held that s. 195(1)(c) refers only to the document alleged to be forged and not to a copy of it and therefore the absence of a complaint from a court where copies of forged documents are produced is no bar to the trial for an offence of forgery or using a forged document. The Judicial Committee observed 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 (Girdharilal v. The Emperor) [A.I.R. (1925) Qudh 413.], the court before which a copy of a document is produced is not really in a position to express any opinion on 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". We respectfully agree with this view.

Section 195(1)(c) is in these terms :-

> "195 (1) No Court shall take cognizance -
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> #(a) ....(b) ....##
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> (c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such 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 of some other Court to which such Court is subordinate."

It will be seen on a plain grammatical construction of this provision that a complaint by the court is required where the offence is of forging or of using as genuine any document which is known or believed to be a forged document when such document is produced or given in evidence in court. It is clear therefore that it is only when the forged document is produced in Court that a complaint by the Court is required. Where, however, what is produced before the court is not the forged document itself, s. 195(1)(c) will not apply on its terms. The reason for this, as stated by the Judicial Committee, "is the practical common sense of the matter, for the court before which a copy of a document is produced is not really in a position to express any opinion on the genuineness of the original". Therefore, even if the Assistant Settlement Officer is assumed to be a court within the meaning of s. 195(1)(c) no complaint was necessary because the forged document itself was not produced before the Assistant Settlement Officer in this case but only a copy thereof.

This brings us to the next question, namely, whether an offence under s. 471 of the Indian Penal Code can be said to have been committed in the circumstances of the present case. In this connection we may briefly refer to the facts found by the Sessions Court, with respect to Ex. P-3. These facts are that the original of Ex. P-3 was given by the appellant to Hotu Ram, a petition-writer, and he prepared the copy Ex. P-3. This copy was then presented to Mahesh Gaur, an Oaths Commissioner, who compared it with the original and then attested it. This attested copy was then sent as an enclosure along with the application for compensation (Ex. P-2) to the Assistant Settlement Officer. Further, there is clear evidence that the original of Ex. P-3 must have been forged for no such document was issued from the Office of the Chief Settlement Commissioner, Ministry of Rehabilitation, Delhi. Now s. 471 is in these words:-

> "Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document."

There can be no doubt that the appellant used the original of Ex. P-3 which was a forged document when he got the copy of it attested by the Oaths Commissioner. Further when he sent this copy along with his application (Ex. P-2) to the Assistant Settlement Officer, his intention was that the original which was a forged document should be used as genuine through the production of a copy before the Assistant Settlement Officer. It appears that under the Rules under the Act No. 44 of 1954 it is not necessary to send the original verified claim and it is enough if an attested copy is sent and that is what the appellant did. When he sent the attested copy of the original which was forged he was clearly using the original forged document, for by the production of the copy he was giving secondary evidence of the contents of a document which he knew or had reason to believe to be forged. What s. 471 requires is the use as genuine of any document which is known or believed to

be a forged document; it does not lay down that such use can only occur when the original itself is produced, for the section does not require the production of the original. Where, for example, under the Rules, an attested copy would suffice the production of an attested copy would in our opinion amount to use of the original document as genuine if it is known or is believed to be a forged document. The difference between s. 471 of the Indian Penal Code and s. 195(1)(c) of the Code of Criminal Procedure is that while s. 195(1)(c) requires the production of the forged document itself in a court to make it necessary for a complaint to be filed before a person can be prosecuted for forging or using such document as genuine, s. 471 does not require the production of the original forged document. Where it is possible to produce an attested copy of the forged document and that attested copy will serve the purpose of the original forged document there would in our opinion be use of the original forged document as genuine, though through the attested copy. We are, therefore, of opinion that as an attested copy of a forged document was produced in this case before the Assistant Settlement officer, it must be held that there was use of the document, which was known or was believed to be a forged document within the meaning of s. 471.

Lastly, it was urged that there was nothing to show that the appellant knew that the document was forged and also that there was no proof that the appellant was responsible for the production of Ex. P-3 as an enclosure to the application (Ex. P-2) before the Assistant Settlement Officer. The appellant's case, as we have already set out, was that he never got Ex. P-2 prepared; nor did he get Ex. P-3 prepared and attested. That case is clearly false. In these circumstances, we can see nothing improper if the courts below came to the conclusion that the application (Ex. P-2) must have been presented by the appellant to the Assistant Settlement Officer. It is true that no one in that office remembers whether the application came by post or was handed over personally by someone; but in the circumstances when it is established that it was the appellant who got Ex. P-2 and its enclosures prepared, there can be no difficulty in coming to the conclusion that Ex. P-3 along with its enclosures must have been presented or sent to the Assistant Settlement Officer by the appellant himself. Nor do we think that there is any merit in the argument that the appellant did not know that the original of Ex. P-3 was forged. The original of Ex. P-3 was a verified claim in favour of the appellant himself and nobody could know better than the appellant, whether he had in fact got his claim verified or not. The evidence from the Ministry of Rehabilitation is that no claim of the appellant was ever verified. In the circumstances, the inference must be that the appellant knew that the original of Ex. P-3 was a forged document and used it as genuine. That the use was dishonest is also clear on the facts of this case, for the appellant intended thereby to get an allotment to which he was not entitled and thus make a wrongful gain for himself. We are also satisfied that the case had gone much beyond the stage of preparation for the copy of the forged document was actually used by the appellant when he sent or presented it to the Assistant Settlement Officer. We are therefore satisfied that the appellant is rightly convicted. There is no force in this appeal and it is hereby dismissed. The appellant is on bail and steps will now be taken to carry out the sentence passed on him.

Appeal dismissed.

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