

Dharmadeo Rai

Vs

Ramnagina Rai

Criminal Appeal No. 33 of 1969

(J. M. Shelat, K. K. Mathew JJ)

18.01.1972

JUDGMENT

MATHEW, J. -

1. This appeal, by special leave, is directed against the judgment passed in Criminal Appeal No. 58 of 1966, whereby the High Court of Patna set aside the acquittal of the appellant by the Additional Sessions Judge of Chapra and convicted him under Section 82(d) of the Indian Registration Act (hereinafter referred to as the Act) and sentenced him to six months' rigorous imprisonment.

2. One Ramnagina Rai filed a complaint before the Sub-Divisional Officer, Sadar, Chapra, against Bishundeo Rai, Sheo Deo Prasad Rai, Mohan Rai, Jangli Rai and the appellant stating that they entered into a conspiracy and forged a zerpeshgi deed on January 25, 1964, purporting to be executed by Bishundeo Rai and Nageshwar Rai in favour of Jangli Rai in which Sheo Deo Prasad Rai falsely personated Nageshwar Rai. The Sessions Court, to which the case was committed, after trial, came to the conclusion that Sheo Deo Prasad Rai, posing, as Nageshwar, son of Bujhawan, executed the zerpeshgi deed and that Sheo Deo Prasad Rai falsely personated as Nageshwar before the Sub-Registrar, that no such person as Nageshwar existed and that Bishundeo Rai, the father of Sheo Deo Prasad Rai and co-executant of the document was a party to the forgery. The Court, therefore, convicted Bishundeo Rai and Sheo Deo Prasad Rai of offences under Section 467 and Section 120-B of the Indian Penal Code. Bishundeo and Sheo Deo Prasad were also convicted under Section 82(d) and 82(c) respectively of the Act. The remaining three accused were given the benefit of doubt and acquitted. Two appeals were filed from this judgment to the High Court, namely, Criminal Appeal No. 205 of 1966 and Criminal Appeal No. 58 of 1966. We are only concerned with the appeal filed by the complainant against the acquittal of the appellant, namely, Criminal Appeal No. 58 of 1966. In that appeal, the High Court came to the conclusion that the Sessions Judge was wrong in acquitting the appellant as there was clear evidence that it was he who identified Sheo Deo Prasad Rai as Nageshwar, son of Bujhawan, before the Sub-Registrar. The Court, therefore, convicted him under Section 82(d) of the Act for abetment of an offence under Section 82, after over-ruling his contention that the complaint was not maintainable without the permission as required by Section 83 of the Act.

3. In this Court, the only point argued on behalf of the appellant was that the complaint was incompetent as it was filed by a person without obtaining the necessary permission under Section 83 of the Act and, therefore, the conviction was bad must be set aside. Section 83 of the Act provides :

"83(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the

permission of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class."

4. On a reading of the section, it would be clear that it deals only with prosecution for an offence under the Act coming to the knowledge of the Registering Officer in his official capacity. It, in effect, provides that where an offence comes to the knowledge of the Registering Officer in his official capacity, a prosecution may be commenced by or with the permission of any of the officers mentioned in the section. The section can possibly have no application to cases in which offences are committed under the Act, but the offences do not come to the knowledge of the Registering Officer in his official capacity. If the Registering Officer does not know in his official capacity that the document produced before him is a false document or that the person appearing before him is personating some other person, the section has no application. The section is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of an offence comes to the knowledge of the Registering Officer in his Official capacity, the section does not prohibit a private person from commencing a prosecution as the section is clearly permissive in its language and intent. In other words, the section is an enabling one. It enables the persons mentioned therein to commence a prosecution in cases where the commission of the offence under the Act comes to the knowledge of the Registering Officer in his official capacity. The section enables the officers named to use their official position for the purpose of prosecution without personal risk.

5. In *Gopinath v. Kuldip Singh and Others*, [ILR 11 Cal 566] the question whether the section prohibits a private person from commencing a prosecution without the permission as provided in the section, came up for consideration and a Full Bench of the Calcutta High Court answered the question by saying that the section is not prohibitory in character and that it does preclude a private person from commencing a prosecution for an offence under the Act without the permission as envisaged in the section. This case has been followed by the Madras High Court in *Re Piranu Nadathi and Others*. [ILR 40 Mad 880]. There also the Court has taken the view that the section is an enabling one in that it only authorises the authorities mentioned therein to commence a prosecution, and does not prohibit a private person from commencing a prosecution without the permission as required by the section. In *Emperor v. Yesa Nana Didwagh and Others*, [AIR 1937 Bom 191] Beaumont, C.J., speaking for the Court, said that the section is intended to provide only for cases where the knowledge of an offence under the Act comes to a Registering Officer in his official capacity and that it has no application when he has no such knowledge, and that even in cases where he has knowledge of the commission of the offence in his official capacity, the section is only enabling and does not preclude a private person from launching a prosecution for the offence. The same view was taken by a Bench of the Patna High Court in *Ganga Dibya and Another v. Emperor*, [AIR 1943 Pat 227] and also by the High Court of Jammu and Kashmir in *Habib Shah v. Mehda Shah*. [AIR 1060 J & K 18]. In *Nga Pan Gaing and Others v. King Emperor*, [AIR 1927 Rang 61] the Rangoon High Court held that the word 'may' in Section 83 of the Act should be read as equivalent to 'must be' and that a prosecution for an offence under the Act coming to the knowledge of a Registering Officer in his official capacity cannot be commenced by a private person without the permission mentioned in the section. A Full Bench of the Allahabad High Court, in *Emperor v. Mohd. Mehdi and Others*, [AIR 1934 All 963] took the view that Section 83 lays down a special procedure for prosecution of the offences created by the Act and, therefore, that

procedure should be followed, that although the word 'may' occurring in the section cannot be read as 'must', it has to be read in the context as having a mandatory character. The Court said that the offences contemplated by Section 81 and 82 of the Act are offences committed against registering authority, that only indirectly that private persons would be affected and, therefore, the provisions of the section are prohibitory in character. In our view, this reading of the section is inadmissible for the obvious reason that the section, as we have said, provides only for one type of cases, namely, cases in which the commission of an offence under the Act comes to the knowledge of the Registering Officer in his official capacity and even there, the language of the section is permissive and not mandatory. Section 81 of the Act makes the endorsing, copying translating or registering of a document by a Registering Officer charged with those duties in a manner which he knows or believes to be incorrect, intending thereby to cause injury as defined in the Penal Code to any person, an offence punishable with imprisonment which may extend to seven years or with fine or with both. Section 82 deals with four classes of offences classified under clauses (a), (b), (c) and (d) of the section. Clause (a) deals with intentionally making false statements before officers acting under the Act, clause (b) with intentionally delivering to a Registering Officer a false copy of a map or plan; and (c) with false personation and presentation of a document or the making of an admission or a statement in the assumed character in any proceeding or enquiry under the Act. Clause (d) deals with the abetment of the above offences.

6. If the authorities mentioned in Section 83 of the Act were to collude with the person guilty of an offence under Section 82 of the Act, or if they fail to launch a prosecution against the Registering Officer for an offence under Section 81 of the Act, there would be a total bar to prosecution by a private person in case we accept the reasoning of the Rangoon and Allahabad High Courts. We do not think that a construction which would lead to that result is warranted by the plain language of the section.

7. One would have expected a more apt phraseology if the purpose of the Legislature was to prohibit the prosecution of an offence under the Act by a private individual. Seeing that a private person will be more seriously injured by the action of an offender who not only forges a document but endeavors to give it a higher efficacy by registering it, we can perceive no reason why the private person should be denied the liberty to prosecute the offender. We also see no reason why a Registering Officer guilty of an offence under Section 81 of the Act should get immunity from prosecution by a private individual injured thereby. Counsel for the appellant referred to the decision of the Court in *K. M. Kanavi v. State of Mysore* [(1968) 3 SCR 821 : AIR 1968 SC 1339 : (1969) 1 SCJ 168 : 1968 Cr LJ 1510], and contended that Section 83 of the Act is prohibitory in character. There is no merit in this contention as the language of the provision there considered was totally different.

8. It is permissible in this connection to look into the language employed in similar sections in other statutes where the Legislature intended a prohibitory effect. Section 195(1) of the Criminal Procedure Code provides that :

"No Court shall take cognizance, (a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned."

Section 70(1) of the Indian Stamp Act, states that :

"No prosecution in respect of any offence punishable under the Act..... shall be

instituted without the sanction of the Collector or such other officer as the State Government generally, or the Collector specially authorises in that behalf."

Section 29 of the Indian Arms Act, 1878, says :

"No proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the District or, in a presidency town, of the Commissioner of Police."

In all these sections, the language employed is prohibitory in character. Section 83(1) of the Act is not prohibitory either in terms or in intention.

9. We think that, on the point under consideration, the decisions in *Gopinath v. Kuldip Sing and Others (supra)*, *Re Piranu Nadathi and Others (supra)* and *Emperor v. Yesa Nana Didwagh and Others (supra)*, lay down the correct law.

10. We cannot appreciate or approve the reasoning in *Emperor v. Mohd. Mehdi and Others (supra)* and *Nga Pan Gaing and Others v. King Emperor (supra)*, or the cases followed in these rulings.

11. The result is that the appeal has to be dismissed and we do so.

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