

Har Gobind and 3 Others

Vs

State of Haryana

Criminal Appeal No. 19 of 1973

(Syed M. Fazal Ali, P. s. Kailasam JJ)

26.04.1979

JUDGMENT

FAZAL ALI, J. –

This appeal must succeed on a short point. By the order impugned the Additional District Judge filed a complaint under Section 467/109 against the two appellants. It appears that in a suit filed by the plaintiff basing his claim on a will executed by the testator the appellants are alleged to have been attesting witnesses and taken part in the execution of the will. The trial Court of the Sub-Judge as also the Additional District Judge in appeal held that the will was not genuine and was a forged document. In fact, after going through the findings of the judgments in the suit it would appear that all that the courts really found was that the will was executed under suspicious circumstances and not that it was a downright forgery. Even so after issuing notice to the appellants the Court of the Additional District Judge which filed the complaint has not at all given any finding as to the part played by the appellants in the execution of the will. Nor has he clarified as to how the appellants could be prosecuted under Section 467/109. Under the provisions of Section 476 CrPC it was incumbent on the Court filing the complaint to record a clear finding regarding the exact offence which was committed by the appellants. No such finding has been recorded by the District Judge. In absence of such a finding the order filing the complaint cannot be supported in law. For these reasons the appeal is allowed and the order of the Additional District Judge is set aside and the complaint filed by the District Judge is hereby quashed.

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