

Sharvan Kumar

Vs

State of Uttar Pradesh

Criminal Appeal No. 427 of 1976

(R. S. Pathak, A. P. Sen, JJ)

29.07.1985

JUDGMENT

R. S. PATHAK, J. -

1. This appeal by special leave is directed against the judgment and order of the High Court of Allahabad dismissing an appeal filed by the appellant and affirming his conviction and sentence for an offence under Section 465 of the Indian Penal Code.
2. The appellant was the clerk of an advocate, Shri Prem Chand Gupta, practicing at Bulandshahar. One Kalli was an accused in a criminal cases, and when his Pairokar was unable to persuade a Moharrir, Jaswant Singh, to secure Kalli's releases on bail, the Pairokar approached the appellant for that purpose. The advocate, Shri Prem Chand Gupta, moved an application for bail, and the application for bail was granted by the Judicial Magistrate, Shri Khem Singh, on October 16, 1968. The appellant prepared surety bonds and presented them before Shri Prem Chand Gupta in order that the advocate should identify the sureties and attest their status. Apparently because Shri Gupta did not know the sureties, he refused to identify them or attest their status. The appellant then forged the necessary endorsement regarding identification and attestation of the sureties as well as the signatures of another Advocate, Shri Mangal Singh, on the surety bonds. He presented the surety bonds before the Judicial Magistrate, who believing the endorsement to be genuine issued a warrant for Kalli's release. It appears that Kalli happened to meet the Moharrir, Jaswant Singh, and disclosed that he had secured his releases on bail through Shri Mangal Singh. When Shri Mangal Singh came to know from the Moharrir of this conversation, he suspected foul play and filed an application before the Judicial Magistrate asserting that he had not identified or attested the bonds on the basis of which Kalli had been released. The Judicial Magistrate recorded the statement of Shri Mangal Singh, and after making a preliminary inquiry he filed a complaint for the prosecution of the appellant. The appellant was committed to the Court of Session to stand his trial for offences under Sections 205, 465 and 471 of the Indian Penal Code. During the trial, the appellant admitted that he had prepared the bail bonds and the affidavits and that the sureties had affixed their thumb marks on the documents in his presence but he denied that the endorsement regarding identification and attestation of the sureties and the signatures of Shri Mangal Singh on the bail bonds had been made by him. The trial court found the appellant guilty and convicted him under Sections 467 and 471 of the Indian Penal Code and sentenced him under the former charge to undergo imprisonment for a period of one and half years. No separate sentence was awarded in respect of the offence under Section 471 of the Indian Penal Code.
3. In appeal before the High Court, the only question raised was whether the appellant had forged the endorsements regarding identification and attestation of the sureties and the signatures of

advocate. The High Court examined the entire evidence on the record, and founds that the case in fact fell squarely under Section 468 of the Indian Penal Code. However, it did not disturb the conviction in respect of the offence under Section 465 of the Indian Penal Code. It was vehemently urged before the High Court that the appellant was a misguided young man, that he had no previous conviction against him and that he should, therefore, be released on probation of good conduct. It was pointed out that the appellant was about 22 to 23 years of age when he committed the offence. The High Court rejected the prayer and dismissed the appeal.

4. We have heard learned counsel for the parties on this appeal, and we are satisfied that the High Court is right in maintaining the conviction of the appellant. We are also satisfied that this is not a case where the benefit of Section 360 of the Code of Criminal Procedure should be extended to the appellant. The offence is serious one and we do not think that the appellant should be entitled to release on probation of good conduct. But having regard to all the circumstances of the case, including the circumstance that the offence was committed as long ago as 1968 and the appellant has already suffered sufficiently, we reduce the sentence of imprisonment imposed on him to the period already undergone. We are told that the appellant has already served nine months in jail.

5. The appeal is allowed in so far only that while we maintain the conviction of the appellant we reduce the sentence to the period of imprisonment already undergone. The appellant is on bail, and his bail bond shall stand cancelled.

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