

ALLAHABAD HIGH COURT

Mohammad Mehdi

Vs

Emperor

(Sulaiman, CJ. Kendall and Bajpai, JJ.)

20.08.1934

JUDGMENT

Sulaiman, CJ.

1. Two questions have been referred to the Full Bench by the Division Bench before which the appeal came up for hearing. These are: (1) Is permission of the authorities mentioned in s, 83, Registration Act, necessary before an accused can be prosecuted under Section 82, Registration Act? (2) Does the permission accorded by the Inspector-General of Registration on August 28, 1933, validate the trial?

2. It appears that the accused persons were prosecuted under Section 467 read with Section 171, Penal Code, and under Section 82, Registration Act (XVI of 1908). The case against them was that a forged document purporting to bear the thumb-impression of another person was executed and then presented for registration before the Sub-Registrar and a false person was identified as the executant. No permission of either the Inspector-General or the Registrar or the Sab-Registrar was obtained before the inquiry was made by the Magistrate. He took action on the complaint made by a Deputy Collector who was hearing a mutation case following upon the registration of the disputed document. The learned Magistrate committed the accused to the Sessions Court. The order of reference assumes that no objection was taken on behalf of the accused before the Magistrate' as to the absence of permission. The Sessions Judge appears to have accepted the commitment, fixed a date for the trial and then took evidence. Before the hearing commenced a letter was received, which had been signed on behalf of the Inspector-General of Registration and which granted the permission. The learned Sessions Judge after concluding the trial came to the conclusion that the want of sanction was a fatal defect to the prosecution. He then acquitted the accused on the main ground that no such sanction had been obtained before the commitment to his Court.

3. The Government have appealed from the order of acquittal, but this Full Bench is concerned with the two questions of law which have been referred to it for answer. Part 14, Registration

Act, provides penalties for certain offences. Under Section 81 there is a penalty for incorrectly endorsing, copying, translating or registering a document with intent to injure some person. Then under Section 82, whoever intentionally makes a false statement, whether on oath or not, or intentionally delivers to a registering officer, a false copy or translation of a document, etc., or falsely personates another, and in such assumed character presents any document, or makes any admission or abets anything made punishable by the Act, is punishable with imprisonment for a term which may extend to seven years or with fine, or with both. Sub-section (i), reads as follows; '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 Sub-Registrar in whose territories, district or sub-district, as the case may be, the offence has been committed.'" Sub-section (2) provides as follows: "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. The language of the section is admittedly very unhappy and has been the source of considerable divergence of opinion. The first difficulty is caused by the use of the word "may," and it has been suggested in some cases that the section is not mandatory, but only directory, and that a private person can start a prosecution under Section 83, Registration Act, even without the permission mentioned therein. The argument is that the object of insisting on permission is for regulating the conduct of the registration authorities, and the section does not prevent private individuals from prosecuting accused persons under the section. On the other hand, it has been suggested that the word "may" in the section stands for the word "must" and the section is mandatory. There is difficulty in this view, because it could not have been intended that the Inspector-General of Registration or the Registrar or the Sub-Registrar is bound to commence a prosecution. Of course, if the intention of the Legislature had been that there is an absolute prohibition against the commencement of any prosecution without previous permission, the more appropriate phraseology to use would have been no prosecution shall be commenced without the permission, etc." The language unfortunately is not so clear.

5. But it is obvious that Sections 81 and 82 create new offences which do not necessarily come within the scope of the provisions of the Penal Code. It is also clear that in some cases a higher maximum of punishment is prescribed than is the case under the corresponding, sections, of the Penal Code. If an act amounts to an offence under any other law, it is open to a private individual to file a complaint and have the accused person convicted; but if he wishes to take advantage of the provisions of Sections 81 and 82 of the Act, it is necessary that he should follow the procedure laid down in the Act. The necessary result of taking a contrary view would be that private persons would be entitled to file complaints against registering Officers, although the higher registration authorities have inquired into the matter and are satisfied that no offence has been committed and refuse to give permission for their prosecution. The offences contemplated in these sections are principally offences committed against the registering authorities, though of course indirectly private persons may also be injured thereby.

6. So far as the rulings in this Court are concerned, they are all one way. We may refer to the case of *Emperor v. Jiwan*¹ *Husain Khan v. Emperor*² *Husain Khan v. Emperor*³ and *Mohan Lall v. Emperor*⁴

7. In *Husain Khan v. Emperor*⁵ Richards, C.J., pointed out that Section 83 was neither very clear nor grammatical, but that it should be borne in mind that the offence was the creation of the Registration Act and finds no place in the Penal Code, and that therefore, an accused person is entitled to the benefit of any ambiguity in the provisions of the Act. The learned Chief Justice considered that it was certainly not unreasonable to hold that, a prosecution for an offence under Section 82 should not be commenced without the permission referred to in the section. He rejected the contention that the permission mentioned therein referred to permission by a registering authority only for the reason that the different registering authorities are the very persons who are named by the section as the persons who should grant the permission. He agreed with the view previously expressed by Tudball, J., in *Emperor v. Jiwan*⁶ and held that the conviction and sentence under Section 83, in the absence of the previous permission, must be set aside. At the bar the Full Bench case of the Calcutta High Court: *Gopinath v. Kuldip Singh*⁷ was cited before him, but he did not follow it. On the other hand, the Calcutta High Court, in *Gopinath v. Kuldip Singh* 11 C. 566,(Supra) overruling the previous decision of a Bench of that Court, expressed the opinion that under s. 83 it is not necessary that some one of the officers who are mentioned in that section must have given previous permission to institute proceedings. They considered that the provisions of Section 83 were not obligatory, but they rather seemed to be intended for the purpose of enabling Officers of the Registration Department, when they saw fit, to prosecute any person under the Act. Beyond this they gave no further reason. It may be pointed out in this connection that Section 83 does not merely enable Officers of the Registration Department to institute any prosecution, but it enables private citizens to do so with the previous permission of such Officers. If a mere departmental discipline were intended, it could have been provided by mere Rules.

8. The Madras High Court in *Queen Empress v. Vythilinga* 11 M 500, followed the view of the Full Bench of the Calcutta High Court without giving any additional reason. But the matter was considered very carefully by a Division Bench of the Madras High Court in *In re Pirumu Nadathi* 38 Ind. Cas. 976 : AIR 1918 Mad. 439 : 40 M 880 : MLT 118 : 5 LW 414 : 18 Cr. LJ 416(Supra), and both the Judges came to the conclusion that permission was not absolutely necessary. Ayling, J., pointed, out that the wording of Section 83 was far from clear, but, on a consideration of the section, he felt inclined to take the same view as the Full Bench of the Calcutta High Court had taken. Napier, J., also said that the question was one on which it was possible to arrive at a different conclusion, and admitted that he had had great difficulty in arriving at his conclusion. This case was followed by the Madras High Court in *In re Palani Goundan*⁸ and by a Single Judge of the Patna High Court in *Gobinda v. Emperor*⁹ Cr., and also by the Nagpur Judicial Commissioner's Court in *Indrani v. Rani Badi Dulaiya*¹⁰ The question has since been re-

examined at considerable length by a Division Bench of the Rangoon High Court in *Nga Pan Caing v. Emperor*¹¹ both the learned Judges have examined almost every aspect of the question, and have come to the conclusion that the view expressed previously in the Allahabad cases was correct, and they have adopted that view in preference to the view expressed by the Calcutta and Madras Courts. With perhaps one exception, namely, that the word "may" has been used in the section in the sense of "must be," we agree with the numerous reasons given by the learned Judges in respect of the view they have taken.

9. Apart from the difficulty caused by allowing private persons to drag registering officers in the criminal Courts in spite of the refusal of the registration authorities to grant permission, there is the fact that Section 82 would make mere false statements made before a Sub-Registrar, though not on oath, punishable with imprisonment for seven years, whereas a statement made on oath may be punishable under Section 193 only with three years. It is also to be noted that the provisions in the earlier Act of 1866, were far more stringent, as they provided for a prosecution to be instituted by the registration authorities only provided that the prosecution for an offence under the Act, might be instituted by the registration authorities, but in the case of a Sub-Registrar with the sanction of the Registrar. It is also clear that if it had been the intention of the Legislature that private citizens should have the right to start a prosecution there would be no point in providing that the prosecution might be commenced by or with the permission of the registering authority. This appears to be the latest well-considered judgment agreeing with the views previously expressed by three learned Judges of this Court. We see absolutely no reason to differ from that view because in our opinion that is the only reasonable interpretation that can be put on e. 83 of the Act.

10. The second question that has been referred to us is whether the belated permission by the Inspector-General of Registration validated the trial. As in our opinion, it was absolutely essential to obtain the previous sanction of the registration authorities, the prosecution of the accused under Section 53 of the Act, was certainly illegal and contrary to the provisions of that section. The learned Government Advocate has urged before us that the defect was cured in this case because permission was obtained before the trial commenced in the Sessions Court. His contention is that under Section 532, Criminal Procedure Code, it was open to the Sessions Judge to accept the commitment in spite of the defect, and that that defect must be deemed to have been cured because subsequently the permission was obtained. He further contends that the omission to obtain this permission in time was a mere irregularity and is cured by Section 537 of the Code.

11. In our opinion Section 537 can have no application to this case. So far as the High Court is concerned, Section 537 can be applied against an applicant who wants to have an order or sentence passed by a Sessions Court set aside, and the High Court would refuse to set aside on account of any error, omission or irregularity, etc., if no failure of justice has been occasioned. In this case the order of acquittal is in favour of the accused persons, and they do not want to have it set aside on any ground of error, omission or irregularity. The learned Government Advocate also

does not want to have that order set aside on the ground of any such error, omission or irregularity. His contention really is that the learned Sessions Judge has erred in law in holding that the prosecution was illegal. He, however, further contends that the order of acquittal is illegal.

12. As far as Section 532 is concerned, it appears to us that that section does not apply to a case where the prosecution is illegal on the ground of want of such permission: In the first place, Section 537 used to have a subsequent Clause (b), dealing with the want of, or any irregularity in, any sanction required by Section 195, etc. This has been deleted. The deleted clause suggests that want of sanction was not contemplated in Section 532. Section 532 deals with cases where a Magistrate, purporting to exercise powers of commitment which are not so conferred upon him, commits an accused person for trial before the Sessions Court. In the present case there was no question as to the competence of the Magistrate. He was a Magistrate of the First Class, who was perfectly competent to inquire into a criminal case and to commit the case to the Sessions Court. The main defect was that the prosecution was illegal for want of sanction. We agree with the view expressed by the Bombay High Court in *Emperor v. Madhav Laxman*¹² that Section 532 does not apply to a case where there is no question that the Magistrate who committed the accused for trial to the Court of Session had the power to do so, but the only defect is that there was no previous sanction. In such a case the Sessions Judge had no power to quash the commitment and direct a fresh inquiry, but the proper procedure was to make a reference to the High Court.

13. That this is necessarily the correct interpretation is obvious from sub-section 2, Section 532 which provides that if the Sessions Court considers that the accused was injured or if such objection was so made, it shall quash the commitment and direct fresh inquiry by a competent Magistrate. Where the Magistrate who has committed an accused is not competent to commit an accused, the Sessions Judge may either accept the commitment, if there is no injury to the accused and if no objection had been taken before the, Magistrate, or may quash the commitment and then direct that another Magistrate who is competent to commit the accused should inquire into the case. Obviously where there is a defect of want of previous permission, there can be no competent Magistrate who can inquire into the matter. Section 532, therefore, would not be applicable to such a case. The learned Sessions Judge, therefore, should not have gone on with the trial when he was satisfied that the Magistrate had acted illegally in committing the accused to his Court in the absence of proper permission, and he felt that he himself had no power to try the case and convict the accused; he should have reported the case to the High Court for the quashing of the order of commitment. The learned Sessions Judge has erred in acquitting the accused when admittedly he had no jurisdiction to try them.

14. A Magistrate can take cognizance of an offence on a complaint filed before him: but a Sessions Judge can take cognizance of a case only when a case has been properly committed to his Court. If the commitment is wholly illegal and is not merely irregular, so that the defect

cannot be cured by him, the Sessions Judge has no option, but to refer the case to the High Court. The learned Advocate for the accused has contended before us that Section 215 cannot apply to this case because the Magistrate who committed the accused to the Sessions Court was not a competent Magistrate. We are unable to accept this contention. There was no question of incompetence of the Magistrate in this case. He was perfectly competent under Section 206 to commit the accused to the Sessions Court within the meaning of Section 215, Criminal Procedure Code, but his commitment was illegal as it was contrary to law. The High Court, therefore, has ample power under the section to quash the commitment on a question of law. When a matter is brought before the High Court and it appears that the order of commitment was illegal, the High Court will, of course, quash the commitment, and may either drop the proceedings altogether or act under Section 439 read with Section 423 of the Code, and order a fresh inquiry.

15. Our answers to the two questions referred to us are as follows: (1) Permission of the authorities mentioned in Section 83, Registration Act, is necessary before an accused can be prosecuted under Section 82, Registration Act. (2) The permission accorded by the Inspector-General of Registration on August 28, 1933, did not validate the Sessions trial because the commitment to the Sessions Court was itself illegal.

Cases Referred.

127 Ind Cas. 208 : AIR 1915 All. 114 : 16 Cr. LJ 114 : 37 A 107 : 13 ALJ 4

236 Ind. Cas. 145 : AIR 1916 All. 64 : 14 Cr. LJ 465 : 38 A 354 : 14 ALJ 412

339 Ind. Cas. 690 : AIR 1917 All. 410 : 18 Cr. LJ 546 : 39 A 293 : 15 ALJ 136

464 Ind. Cas. 142 : AIR 1921 All. 205 : 22 Cr. LJ 750 : 19 ALJ 213

5145 : AIR 1916 All. 64 : 14 Cr. LJ 465 : 38 A 354 : 14 ALJ 412

627 Ind Cas. 208 : AIR 1915 All. 114 : 16 Cr. LJ 114 : 37 A 107 : 13 ALJ 4

711 C. 566

862 Ind. Cas. 582 : AIR 1921 Mad. 140 : 22 Cr. LJ 566 : 40 MLJ 211 : 13 LW 195 : (1921) MWN 144 : 29 MLT 141

981 Ind Cas 124 : AIR 1924 Pat, 754 : 25 Cr. LJ 636 : 5 PLT 372 : (1924) Pat. 199 : 2 Pat. LR 162

1087 Ind Cas 913 : AIR 1925 Nag. 344 : 26 Cr. LJ 1025 : 21 NLR 167

1199 Ind. Cas. 401 : AIR 1921 Mad. 140 : 22 Cr., L 154 : 4 R 437 : 5 Bur. LJ 156.

1248 Ind. Cas. 871 : AIR 1918 Bom. 117 : 20 Cr. LJ 71 : 43 B 147 : 20 Bom. LR 607