CALCUTTA HIGH COURT

Emperor

Vs

Abani Bhushan Chuckerbutty

(Holmwood, C.J. Sharfuddin and Chatterjee, JJ.)

06.06.1910

JUDGMENT

Holmwood, J.

1. The plea has been raised before us that there is no proper finding that the forfeiture of pardon under Section 339 of the Criminal Procedure Code was incurred in this case, and that, therefore, this Court has no jurisdiction to try the case. Whether we look at the section as it stands, or at the law as laid down by the Bombay and Madras Courts under the present Act, or by this Court under the Act of 1898, there seems to be no doubt that the procedure followed in this case has been the correct procedure.

2. The defence has principally relied upon Emperor v. Kothia (2), where Beaman J. lays down precisely the procedure which has been adopted in this case as the procedure to be followed. At the termination of the trial in which the pardon is given, the accomplice must be discharged by the Court which tries the case. In this case it was the Special Tribunal. "Then, if so advised, the Crown may re-arrest and proceed against him for the offence in respect of which he was given a conditional pardon. When put upon his trial for that offence, he may plead to a competent Court his pardon, in bar. And that is a plea that the Court would be bound to hear and decide upon before going further and putting him on his defence" Emperor v. Kothia (1). It is clear, therefore, that the Special Tribunal could not in any way proceed against him for the offence in respect of which he was given a conditional pardon. It may also be inferred, from the wording of Clause (1906) I.L.R.30 Bom. 611, 621, Section 339 of the present Code of Criminal Procedure, that the forfeiture is incurred ipso facto by the acts of the approver, that is to say, if he either wilfully conceals anything essential or gives false evidence, he does not comply with the conditions upon which the tender was made, and the pardon is forfeited.

3. In dealing with the matter, the Court will have to consider whether the approver has or has not complied with the conditions upon which the pardon was tendered, and whether he has made a full and true statement and disclosed the true facts. The only difficulty that can arise is whether

the inquiry should be made by the committing Court, or be made before us.

4. It seems clear that the committing Court must be intended to be the Court where the inquiry is to be made, and for this reason. As soon as a charge is drawn up, the accused is ipso facto put upon his defence. It does not, therefore, appear to us that the inquiry should be re-opened here, and in the case of *Queen-Empress v. Manick Chandra Sarkar*[1] which is the only authority in this Court, and which appears to apply with equal force to the present law as to the former law, it was laid down that the withdrawal of the conditions of pardon should be under Section 339 by the authority that granted it and not by the High Court. The word withdrawal has been left out of the present Code, and, as I have just said, the forfeiture appears now to operate ipso facto.

5. In the case of *Kullan v. Emperor*[2] which followed the case of *Queen-Empress v. Ramasami*[3] the procedure where has been adopted here appears to have been approved. In the Bombay case *King-Emperor v. Bala*[4] the facts were quite different. There the withdrawal appears to have taken place behind the accused's back, either in the committing Court, before the first case was tried, or in the Sessions Court immediately the judgment was delivered in the main case,

6. Now, let us see what happened in this case. The accused, Abani Bhushan Chuckerbutty, was asked, on being produced before the Magistrate when put upon trial in the present case, whether he relied upon the pardon under Section 337 of the Criminal Procedure Code as part of his defence. This is his reply--"I cannot say anything." Evidence was accordingly produced for the purpose of proving that he gave false evidence "either in the lower Court, the Magistrate's Court, or in the High Court. The sanction of the High Court was put in, also the High Court's judgment, and one witness was examined. The accused did not wish to call witnesses, and the Magistrate held that it had been proved that Abani Bhushan Chuckerbutty, after accepting pardon, had given false evidence, and that he had thereby forfeited that pardon and would have to be tried for the offence under Section 395 of the Indian Penal Code.

7. Were we to hold that we had jurisdiction to re-open this matter, we should be prejudicing the accused and pre-judging the very question that has to be tried. It is open to the accused here to show that the statement he made on oath was not a false statement, or was a false statement induced by improper influence. It is obviously improper for us to enter upon that which is the main issue in the case, as a preliminary enquiry. The objection is, therefore, overruled.

Sharfuddin, J.

8. I agree with my learned brother in the conclusion he has arrived at on the law as contained in Section 339 of the Criminal Procedure Code. The law is silent regarding the Court by whose order a pardon to a person who has not complied with the conditions under which it was tendered may be withdrawn. The law is also silent as to the Court by which this question may be determined. The corresponding section of the former Act has declared that such an order could

be passed by the Magistrate before trial, or the Court of Session before judgment has been passed; and the High Court is the Court of Session here.

9. From the wording of the section, it seems to me to be clear that the mere fact that the approver has wilfully concealed anything essential, or has given false evidence, is sufficient to show that he has not complied with the conditions upon which the tender was made, and in that case he may be tried in respect of the offence for which a pardon was tendered, or for any other offence of which he may appear to be guilty in connection with the same matter.

10. The second clause of this section lays down that a statement made by a person who has accepted a tender of pardon may be used as evidence against him when the pardon has been forfeited.

11. It is to be observed that the word "forfeited" is not used in the first clause, but in the second, and if, both the clauses are taken together, it is clear that the intention of the Legislature was that by the mere fact of concealment or incomplete disclosure or false evidence forfeiture would follow. With these words I agree with my learned brother Mr. Justice Holmwood.

Chatterjee, J.

12. The contention of learned Counsel for the defence that the question as to whether the accused has, by giving false evidence, forfeited his pardon, ought to have been tried by the previous Special Tribunal, does not seem to be sound. The accused was in that case a mere witness. He was not on his defence for any offence charged against him he had no opportunity to cross-examine any of the witnesses examined in the case. To hold, therefore, that the Tribunal before which he was deposing as a witness was to decide that he was giving false evidence, would be to hold that an accused person may be made liable for an offence without his having had an opportunity to cross-examine the witnesses who are examined against him. It cannot, therefore, be said that the Tribunal before which he gave his evidence was the only Tribunal that could decide whether he gave false evidence.

13. If that was not the proper Tribunal, then the next authorities to be considered are the Magistrate before whom the Crown initiated fresh proceedings against him under Section 339 of the Criminal Procedure Code, and this Court.

14. It must be remembered that this Court is a Special Tribunal acting only after commitment under the provisions of the Criminal Law Amendment Act. Therefore, this Court would not have any jurisdiction to try that question, so that the Magistrate who committed the case was the proper authority to decide that question, but for the purpose of the commitment alone. Upon the evidence adduced by the Crown the pardon was, therefore, forfeited,

15. The result, therefore, is that I agree with my learned colleagues in holding that it was for the committing Magistrate to decide this question, and he has decided it in this case.

16. I say this with this qualification, that this is only for the purpose of the commitment, and it is perfectly open to the accused to show before us in this Court that the statements which are alleged to be false are true in fact, or were induced by improper influences.

Cases Referred.

1(1897) I.L.R. 24 Calc. 492
2(1908) I.L.R. 32 Mad. 173
3(1900) I.L.R. 24 Mad. 321
4(1901) I.L.R. 25 Bom. 675