

CALCUTTA HIGH COURT

Panchanan Roy

Vs

Emperor

(Mukerji, J.)

08.05.1929

JUDGMENT

Mukerji, J.

1. This rule has been issued to show cause why the convictions of and the sentences passed on the two petitioners Panchanan Roy and Kuran Chandra Das should not be set aside or why such other order should not be made as to this Court may seem fit and proper on grounds 1 to 6 of the petition. Panchanan has been convicted under Section 64(a), Stamp Act, and Kuran under Section 64(b) of the same Act. Panchanan has been sentenced to pay a fine of Rs. 100, in default simple imprisonment for one month and Kuran to pay a fine of Rs. 50 in default to undergo simple imprisonment for 15 days. The facts shortly are that there was a kabala in respect of a sale in which one Serajuddin was the vendor, Panchanan the purchaser and Kuran the scribe. The kabala stated that the consideration for the sale was Rs. 100. It was presented for registration and Serajuddin apparently made a statement before the Sub-Registrar to the effect that the consideration was really Rs. 161. On these facts prosecution was started as against all the three persons against Serajuddin and Panchanan for having committed an offence under Section 64(a) and Kuran under Section 64(b), Stamp Act. At the trial Serajuddin made a statement of a confessional nature admitting that the consideration was really Rs. 161 and not Rs. 100 which was mentioned in the document. Thereafter the said Serajuddin as well as the two petitioners who obtained this rule were convicted in respect of the offences for which they were tried.

2. At the outset it will be seen that the conviction of Panchanan under Section 64(a), Stamp Act, is not justified by the allegations that have been made against him, far less by any evidence that has been adduced. Section 64(a) is in these words: Any person who with intent to defraud the Government executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such "instrument are not fully and truly set forth etc.

3. It may be conceded that Section 27 requires the sale price to be fully and truly set forth in the document, but then Panchanan did not execute the document but the document was executed in

his favour. He is not hit by Section 64(a). I have considered the question as to whether he may be brought in under Section 64(b), for if the circumstances of the case would justify his conviction under Section 64(b), his conviction may properly be altered to one under that section. On reading the evidence, however, I find that there is not one word in it to the effect that he personally took any part whatever in the transaction, and though it was a document executed in his favour it cannot upon the materials that are on the record for a moment be suggested that he was employed or concerned in or about the preparation of the document, far less that he neglected or omitted to set forth the value fully and truly. The result is that the conviction of Panchanan must be set aside and I order accordingly.

4. As regards Kuran Das, as I have already said he has been convicted under Section 64(b). His conviction must rest upon the knowledge if any that he had as regards the real price of the property. Of that again there is no evidence whatsoever. On the other hand the prosecution witnesses themselves say that it was given out at the time when the document was being prepared that the value of the property was Rs. 100. Under these circumstances to convict him upon the statement of Serajuddin, even if for argument's sake it may be taken that Serajuddin meant to say anything which would go to indicate that Kuran had knowledge as regards the real price of the property, will not be supportable from any point of view. His conviction also cannot stand.

5. The rule is made absolute. The convictions of the two petitioners being set aside it is ordered that the fines if paid by them be refunded.

