

CALCUTTA HIGH COURT

Aswini Kumar Gupta

Vs

Emperor

(R.C. Mitter, J.)

22.04.1936

ORDER

R.C. Mitter, J.

1. The petitioner Aswini Kumar Gupta was charged with having committed offences under Sub-section 419 and 468, I. P. C., and on conviction was sentenced by the learned 3rd Presidency Magistrate of Calcutta, to rigorous imprisonment for six months under each of the above provisions of the law: the sentences running concurrently. The charges against the petitioner were that he cheated the Registrar of the Calcutta University by pretending to be Samaresh Chandra Mukherjee, a candidate for B. A. examination for 1935, bearing Roll Call. No. 160, in the examination hall, and that he forged answer papers of the B. A. Economics, purporting to be answer papers by Samaresh Chandra Mukherjee, intending that they shall be used for the purpose of cheating as aforesaid. As has been indicated already, the conviction of the petitioner was under both the charges mentioned above. The Rule granted by this Court, on the application of the petitioner, was to show cause why the conviction and sentence passed on the petitioner should not be set aside on grounds Nos. 3, 4, 8, 17 and 22 mentioned in the application. The first of these grounds was that the facts and circumstances accepted by the trial Court did not constitute any offence under Sub-section 419 and 468, I. P. C., or for the matter of that, any section of the Indian Penal Code. The second ground was that the conviction and sentence complained of were bad in law, inasmuch as they were based upon erroneous hypothesis and assumptions not warranted by the legal materials on the record. The eighth ground mentioned in the application to this Court was that the necessary materials of an offence under Section 419, I. P. C., had not been established, the conviction and sentences were accordingly illegal and liable to be set aside.

2. The fourth of the grounds on which this Rule was issued was that in view of the findings as to the admissibility of an alleged confession by the petitioner, the Magistrate acted illegally in considering that evidence against the petitioner. The last ground related to the severity of the sentence passed on the petitioner. As the Rule was issued by us, it may be mentioned at the outset that of the several grounds referred to above, the one relating to a confession by the petitioner appealed to us most, when we decided to issue the rule and we felt inclined to examine the nature of the confession made by the accused to which definite reference was made by the trial Court in its judgment. At the hearing of the rule, no stress was laid by the learned Counsel appearing for the petitioner on the ground bearing upon the confession. We have ourselves

examined the materials on the record to satisfy ourselves that the Magistrate's appreciations of the confessional statement was correct; and we are unable to hold that the Magistrate, in the case before us, acted illegally in considering the confession as evidence against the petitioner. The findings arrived at by the trial Court in the case before us cannot be challenged and were not challenged before us at the hearing of the rule. The questions raised in support of the Rule were those bearing upon the ground taken in the application to the Court that the necessary elements of an offence under Section 419, I. P. C., had not been established, It was urged that it was not established in this case, that the Registrar of the Calcutta University, who was alleged to have been cheated, or the University of Calcutta had suffered damage or harm in reputation, as contemplated by Section 415, I. P. C., and conviction under Section 419, I. P. C., was therefore not sustainable under the law. In this connexion, it was pressed before us, that the fact that the Registrar had not given his evidence was very significant, and that went to the root of the matter.

3. We are entirely of a different opinion, so far as the effect of the non-examination of the Registrar as a witness for the prosecution was concerned, as the findings arrived at by the trial Court in the case before us were not, and could not, be challenged on the materials on the record establishing the case for the prosecution, in the matter of deception as contemplated by Section 415, I. P. C. The question was whether the act done by the petitioner through deception had caused damage or harm to the reputation of the Registrar or the University; and in this connexion it was pressed before us that the deception practised by the petitioner could not have caused any damage or harm, inasmuch as Samaresh Chandra Mukherjee, whom the petitioner personated falsely, could not possibly have passed the B. A. examination he having failed miserably in the papers answered by himself on dates previous to the date on which the petitioner wrote answer papers purporting to be written by Samaresh Chandra Mukerjee.

4. It is somewhat difficult to appreciate this argument in support of the case for the petitioner; and we fail to understand how the act of Samaresh Chandra Mukerjee could be brought in to the aid of the petitioner, in the matter of falsely personating Samaresh Chandra Mukerjee and forging answer papers for the purpose of cheating. In our judgment, the only question that required consideration in this case was one to which reference has been made, namely, whether on the facts proved, it was made out that harm or damage to the reputation of the Registrar or of the University had resulted, so as to sustain a charge under Section 419, I. P. C., and that question must be answered in the affirmative, an answer directly following from the facts proved against the petitioners. On this part of the case, reference was made to the decision of the Madras High Court, on the case of *Emperor v. C. Srinivasan* (1902) 25 Mad 726 where in the case of a person charged with cheating the Registrar of the University of Madras by passing himself off for another person and trying to obtain a duplicate of the Matriculation certificate of that other person, it was held that as there was no proof of harm or damage to the Registrar or to the University and no wrongful gain to the accused or loss to the University, the charge of cheating must fail. It is worthy of notice, however, that the above decision is not in consonance with the view taken by the Madras High Court in *Queen-Empress v. Appasami*¹ where in the case of a person falsely representing himself to be another at a University examination, getting a hall ticket under that other person's name, and signing answer papers of questions, it was held that offence of cheating by personation as also of forgery had been committed.

5. The decision in *Emperor v. C. Srinivasan*² was expressly disapproved by the Madras High Court, in *Kotamraju Venkatrayadu v. Emperor*³ and it is also opposed to the decision of the

Allahabad High Court, in *Queen-Empress v. Soshi Bhusan*⁴ In the state of authorities indicated by the decisions, to which reference has been made above, we have no hesitation in expressing agreement with the reasons underlying the decisions of the Madras High Court in *Queen-Empress v. Appasami*⁵ and *Kotamraju Venkatrayadu v. Emperor* (1905) 28 Mad 90, and the decision of the Allahabad High Court in *Queen-Empress v. Soshi Bhusan* (1893) 15 All 210(Supra), and dissenting from the view taken by the Madras High Court in *Emperor v. C. Srinivasan*⁶ on which reliance was placed by the learned Counsel for the petitioner in support of the position that no harm or damage to the reputation of the Registrar or the University had resulted. In our judgment the necessary elements of an offence of cheating and forgery for the purpose of cheating as contemplated by law, was committed by the petitioner, regard being had to the conclusions on evidence arrived at by the Magistrate in the case before us.

6. On the above conclusion on the questions submitted for our consideration in the case, the conviction of the petitioner must be affirmed; and we direct accordingly. The sentence of rigorous imprisonment for six months passed under Sub-section 419 and 468, I. P. C., to run concurrently, do not, on the facts and circumstances of the case before us, appear to be severe, regard being had to the gravity of the offence committed as also to the position that the petitioner, a brilliant alumnus of the Calcutta University occupying the post of a lecturer of an important College in Calcutta took a defence which was entirely false and unworthy of a person of his status in society. The sentence is required to be deterrent as far as possible. The Rule is discharged, the conviction of the petitioner and the sentence passed on him are upheld. The petitioner must surrender to his bail, and serve out the sentence passed on him.

Cases Referred.

- 1(1899) 12 Mad 151
- 2(1902) 25 Mad 726
- 3(1905) 28 Mad 90
- 4(1893) 15 All 210
- 5(1899) 12 Mad 151
- 6(1902) 25 Mad 726