BOMBAY HIGH COURT

Emperor

Vs.

Sanjiv Ratnappa

(Baker and Broomfield, JJ.)

30.03.1932

JUDGMENT

Baker, J.

1. In this case accused No. 1, Sanjiv Ratnappa Ronad, late Sub-Inspector of Kolhar, and accused No. 2 Mahomad Haja-ratsa, who was a constable serving under him, were convicted by the Sessions Judge of Bijapnr, No. 1 under Sections 830, 348 and 465, and No. 2 under Sections 330 and 348 read with Section 109 of the Indian Penal Code with voluntarily causing hurt to extort a confession and with wrongful confinement of persona with a view to extort a confession, and accused No. 1 was farther convicted under Section 465 of forgery for having made a false document, viz, a copy of his case diary as evidence in his favor. The accused were sentenced to various periods of imprisonment and fine, [His Lordship after stating the facts summarized above proceeded :]

2. The charge of forgery in this case has been the subject of considerable argument and has given rise to two or three questions of some importance in law, which, I think, should be dealt with before I go to the facts, The first point raised by the learned Counsel for the appellants was that in view of the provisions of Section 195 (1)(c) of the Code of Criminal Procedure it was not open to the Sessions Court to take cognizance of the offence of forgery described in Section 463 without the complaint of the committing Magistrate, and in support of that proposition the learned Counsel referred to a number of cases, viz., *Bhau Vyanhatesh, In re*[1] *Nalini Kanta Laha v. Anukul Chandra Laha*[2] and *Kanhai-ya Lal v. Bhagwan Das*[3] and the learned Government Pleader has quoted ***Noor*** *Mahomed v. Kaikhosru*[4] But the point which arises in all these cases is not one which arises in the present case at all, Those are all cases in which a document produced in a Court in connection either with civil proceedings or with proceedings under the Criminal Procedure Code, Section 145, or in some matter unconnected with the actual offence of forgery, has been found to be a forged document, and no prosecution for the offence of forgery could be taken cognizance of by a criminal Court except on the complaint of the Court in which the document was produced or given in evidence. But that is entirely different to the facts of the

present case where the document was produced in Court not in connection with any other case, but in a prosecution founded upon it, for the purpose of convicting the accused of an offence in relation to it, and none of the cases which have

[1](1925) I.L.R. 49 Bom. 608 : S.C. 27 Bom. L.R. 697
[2](1917) I.L.R. 44 Cal. 1002
[3](1925) I.L.R. 48 All. 60
[4](1902) 4 Bom. L.R. 263

been quoted will apply. No question of giving sanction by the committing Magistrate could arise when he himself was considering the question of what charge should be framed on this document. The first objection, therefore, in my opinion, does not stand.

3. Then another objection was raised that even supposing that no complaint of the Court in which the document was produced will be necessary, nevertheless the charges under Sections 330 and 348 could not be combined with the charge under Section 465, and that Section 235 of the Criminal Procedure Code, which is the only section which would cover the case, would apply, because the series of acts are not so connected together as to form the same transaction. But a consideration of the facts of the present case will show that that contention has nothing in it. According to the prosecution accused No. 1 beat and confined the Katbus in order that they might confess their share in the theft into which he was inquiring and might produce property. When, however, the present proceedings were instituted against him, according to the prosecution, he altered his diary in order to save himself from the consequences of his own acts, and these acts seem to be all parts of the same transaction, and the case is as a matter of fact very similar to that in which persons are charged with murder under Section 302 and causing the disappearance of evidence under Section 201. Under the rulings of this Court in *Emperor v. Sheruf-alli*[5] *(*and *Emperor v. Datto Hanmant Shahapurkar*[6] there must be a continuity of action and purpose in order that the acts may form the same transaction, and as a matter of fact the case is on all fours with the case in *Emperor v. Balwant*[7] which is on precisely similar facts. In that case the accused was charged with having caused grievous hurt to a person for the purpose of extorting from him confession of his guilt and having, after his death from the injuries, prepared false official records to conceal the cause of his death. He was tried at one trial for the offence under Sections 331, 193 and 218 and convicted on all the charges. It was objected that the trial was bad on the ground of misjoinder of charges, It was held that there was no misjoinder, as the case fell under the plain words of Section 235 and its ill. (f) of the Criminal Procedure Code; the transaction of making a series of false entries so as to attribute another cause for the death was in con tinuation of and pursuant to the same transaction of voluntarily causing grievous hurt with the view of extorting confession, That case is on all fours with the present and is quite sufficient to dispose of the argument.

4. The third argument, however, is more serious, It has been argued that in order to constitute an offence of forgery under Sections 463 and 464, the document must be made dishonestly or fraudulently and those words must be read in the sense in which they are defined in the Indian Penal Code, As dishonesty involves wrongful gain or wrongful loss, obviously it does not apply to the present case where no pecuniary question arises. The definition of "dishonestly" in Section 24 of the Indian Penal Code applies only to wrongful gain or wrongful logs and although there are conflicting rulings on the question of the definition of the word " fraudulently," the concensus

of opinion of this Court has been that there roust be some advantage on the one side with a corresponding loss on the other. The learned Counsel for the appellants has referred to *Surendra Nath Ghose v. Emperor*[8] and *Emperor v. Harjivan Valj*[9]*i*In *Surendra Nath Ghose v. Emperor* it was held that the expression " intent to defraud " implies conduct coupled with an intention to deceive and thereby to injure; the word "defraud") involves two conceptions, viz., deceit and injury to the person deceived,

[5]1902) I.L.R. 27 Bom. 135 : s.c. 4 Bom. L.R. 930
[6](1905) I.L.R. 30 Bom. 49, 56 : s.c. 7 Bom. L.R. 633
[7](1911) 11, Bom. L.R. 41
[8](1910) I.L.R. 38 Cal. 75, F.b
[9] (1925) 28 Bom. L.R. 115

that is, an infringement of some legal right possessed by him, but not necessarily deprivation of property. And in *Emperor v. Harjivan Valji*[10], it was held that the word " defraud" in the Bombay District Municipal Act having been used in a popular sense, i.e., to deprive a person of some rights or property to which he was entitled, there was an intention to defraud the Municipality' At p. 124 in Mr. Justice Fawcett's judgment reference is made to Cour's Penal Law saying that the word "defraud" has at least three meanings: and in the Penal Code in Section 25 the term is used rather in the first, than in the second or third sense, the first meaning being to deprive one of a right, either by obtaining something by deception or artifice, or by taking something wrongfully without the knowledge or consent of the owner.

5. The learned Counsel further referred to *London and Globe Finance Corporation Limited, In re*[11] and *Kotamraju Venkat-rayadu v. Emperor*[12] so also to *Emperor v. Balkrishna*[13], The Government Pleader has relied on *Queen-Empress v. Abbas Ali*[14] *Causley v. Emperor*[15] and also on *Kotamraju Venkatrayadu v. Emperor*[16] and on *Kamatchinatha Pillai v. Emperor*[17]

6. Each case will have to be decided on its own facts, and it does not seem that in the present case the act of the accused, assuming it to have been committed, in altering the diary so as to make it appear that he had not kept the Katbus under surveillance, would amount to forgery inasmuch as the element of fraud as defined in the Indian Penal Code is absent. Very recently the case of *Emperor v. Kashinath Ramchandra Davari*[18] decided by Beaumont C.J. and Murphy J. on January 7,1931 (Unrep.). dealt with this very point, In that case a Kulkarni who had omitted to make certain payments made false entries in the accounts in order to screen himself and it was held that the offence with which he was charged under Section 477A and which requires an intent to defraud was not complete. There is no question in the present case of any loss being caused to the Deputy Superintendent of Police who was inquiring into this case by the fact of this diary being altered and pages substituted for the original,

7. It would be a straining of language to say that because he was thereby likely to be led to come to a wrong conclusion as to the guilt of accused No. 1, or that there was a probability that the proceedings against accused No. 1 might not result in his conviction, this would, therefore, render the alteration of the document fraudulent within the meaning of the Indian Penal Code, In these circumstances, although possibly there are other sections such as Section 192 which might apply to the act of the accused (but that question has not been raised nor the accused has been

charged with that offence) it seems that the conviction under Section 465 cannot stand whether the facts are proved or whether they are not, and in view of that it is not necessary to go into the facts, and therefore the conviction and sentence under Section 495 of the Indian Penal Code will be set aside.

8. Turning to the charges under Sections 330 and 348, the learned Judge has dealt with the evidence in very great detail, and the case also has been argued before us by the learned Counsel for the appellants in Court in great detail for about 1 1/2 days, and I do

[10](1926) 28 BOMLR 115 [12](1905) I.L. R. 28 Mad. 90, 96, F.B [14](1896) I.L.R. 25 Cal, 512, F.B
[11][1903] 1 Ch. 728, 734 [13](1924) 26 BOMLR 978, 84 Ind Cas 254 [15](1915) I.L.R. 43 Cal. 421
[16](1905) I.L.R. 28 Mad. 90, F.B [18](1931) Crim. App. No. 525 of 1930
[17](1918) I.L.R. 42 Mad. 568

not think it necessary to go into all these details, because, taking a broad view of the case, there are very strong grounds for holding that this is a true case. [His Lordship after examining the evidence concluded :

9. The learned Sessions Judge has gone into all these details at great length and has written a very careful judgment and I see no reason to differ from the conclusion which he has expressed therein as to the guilt of accused Nos. 1 and 2 with, regard to the charges under Sections 830 and 348 of the Indian Penal Code. I would, therefore, confirm the convictions and sentences under those sections and dismiss the appeal.

Broomfield, J.

10. The facts of this case have been detailed in the judgment of my learned brother. The framing of the charge of forgery by the Sessions Judge has given rise to some interesting points of law, The first point taken by counsel for the appellants is that Section 195 (1)(c) of the Criminal Procedure Code prevented the Sessions Judge from taking cognizance of the offence of forgery in the absence of a complaint from the committing Magistrate in whose Court the diary alleged to have been forged was first produced. Section 195 (1)(c) provides that no Court shall take cognizance of any offence described in Section 463 of the Indian Penal Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate. The question is whether that provision applies in the present case. The offence of forgery is no doubt alleged to have been committed in respect of a document which was produced before the committing Magistrate, and at the time of the production accused No. 1 was of course a party to the proceeding. But he was not a party to the proceeding at the time the forgery is alleged to have been committed, and at the time the document was made use of by him there was no proceeding in Court at all. The diary is alleged to have been forged sometime between July 18 and 23, after the accused was suspended on July 17, The Deputy Superintendent of Police, Exhibit 71, states that he got orders to register the offence under Sections 330 and 348 of the Indian Penal Code on

July 19, and sent up the charge sheet under those sections on August 24. The diary Exhibit 34 was sent to the Magistrate subsequently by the Police with a request to frame a charge under Section 218 of the Indian Penal Code. It is important to note the terms of the charge which the Sessions Judge framed under Section 465, which are as follows :-

And further you the said first accused between the dates 2-7-1931 to 27-7-1931 (as I have mentioned the date of the alleged forgery was subsequently confined to the period 18 to 23rd July) forged the document, viz., the case diary of the investigation of Crime No. 19/1931 of Kolhar Thana...with intent to commit fraud, namely that of causing it to be believed that such document was made by you in due course of your official capacity when as a matter of fact you knew that it had not been so made, intending thereby to deceive your superior officers and to induce them to believe that the diary was a true diary and thereby committed an offence punishable under Section 468 of the Indian Penal Code and within the cognizance of this Court.

11. In support of his contention that the sanction or complaint of the committing Magistrate was not necessary the learned Government Pleader referred us to the case of *Noor Mahomed v. Kaikhosru*[19] The facts there were that before the criminal prosecution for forgery there had been litigation in the Bombay Court of Small Causes in which the document alleged to be a forgery (a cheque) had been produced by the defendant who was afterwards the accused. A question was raised whether sanction under Section 195 (1)(c) was necessary and the Chief Presidency Magistrate referred to the High Court the following question: " Whether in the event of an offence punishable under Section 471 of the Indian Penal Code being made out in a complaint, the use complained of being prior in date to the use of the document in question in evidence in civil Court, the sanction of such Court is necessary under Section 195 (1)(c) of the Criminal Procedure-Code, before a criminal Court can take cognizance of such offence." The judgment of this Court was as follows:-"The Court thinks that the answer to the question put by the Chief Presidency Magistrate should be in the negative. Sanction under Section 195 (1)(c) of the Criminal Procedure Code for an offence under Section 471 of the Indian Penal Code is not necessary in respect of a use made outside the Court." That is no doubt an authority for holding that a complaint under Section 195 (1)(c) would not be necessary in the present case. This decision was not approved of by the High Court of Calcutta in *Nalini Kanta Laha v. Anukul Chandra Laha*[20] and the High Court of Allahabad in *Kanhaiya Lal v. Bhagwan Das*[21] expressed the opinion that the decision was obsolete in view of the alteration of the language of Section 195 (i)(c) by the amending Act of 1928. Instead of the words " when such offence is alleged to have been committed " the clause originally ran "when such offence has been committed." With great respect I doubt very much whether this alteration in the language can really be said to have made any difference to the meaning. It is obviously incorrect to say that an offence has been committed before the Court has even taken cognizance of the case, and I think the presumption is that the legislature merely intended to give more appropriate expression to what must all along have been the meaning of the provision. At the same time the judgment in *Noor Mahomad v. Kaikhosru* is very brief and no reasons were given for it. In view of the contrary decisions of other High

Courts, it may perhaps be necessary at some other time to consider whether the law was correctly stated on the facts of that case. However, it is not necessary to express any opinion on that point here, because the facts in that case, and in the other cases to which reference has been made, are clearly distinguishable from those with which we have to deal.

12. We have not been referred to any other case where the question of the necessity for sanction or complaint arose in respect of a document alleged to be forged which was produced for the first time at the trial or in the inquiry preliminary to the trial of the' forgery itself. The cases cited were all cases of production of the document in an independent proceeding. Let us suppose for the sake of argument that the Police here had treated this as an offence of forgery and not as an offence under Section 218. In that case there could have been no question of moving any Court to make a complaint, because the document had not been produced in any proceeding in Court. The only thing that could be done would be to send up the accused for trial or for the Magisterial inquiry preliminary to the trial, At the same time, of course, the document alleged to be forged, the corpus delicate so to speak, would have to be produced in Court. Mr. Velinker's argument would

[19](1902) 4 Bom. L.R. 268 [21](1925) I.L.R. 48 All. 60

[20](1917) I.L.R. 44 Cal. 1002

require us to hold that the Court instead of inquiring into the case or trying it could do nothing but make a complaint and send it to some other Court to deal with. That, I think, would be an absurdity which the legislature can hardly have intended and it would be equally absurd to require a complaint of another Court when the Sessions Judge frames the charge himself. There is nothing in any of the cases cited which would make it necessary for us to hold a complaint to be necessary in such a case, and, in my opinion, Section 195 (1)(c) has no application when the document which is alleged to be forged is produced at the trial of the person alleged to have - forged it, not having been produced in any independent proceeding.

13. The second point taken by Mr. Velinker was that the charge of forgery could not be tried jointly with the charges under Sections 330 and 348. That depends on the construction of the words "same transaction" in Section 285 (1) of the Criminal Procedure Code. The Courts have held that there must be some continuity of action and purpose, but, on the whole, they have been disinclined to put a narrow construction on the words. The case of *Emperor v. Balwant*[22] to which my learned brother has referred, is clearly in point, and I hold that there has been no misjoinder.

14. I now come to Mr. Velinker's third and most important point of law. He contends that even if the facts alleged by the prosecution in relation to the charge of forgery are true, it does not amount to the offence of forgery as defined in the Indian Penal Code. The definition is contained in Sections 463 and 464. If accused No. 1 wrote out a new diary after he was suspended intending to induce his superior officers to believe that he had written it while he was investigating the offence, that would be a false document within the meaning of Section 464, if it was done dishonestly or fraudulently, and if it was also done with one of the intentions mentioned in Section 463, it would amount to forgery. In view of the rather narrow definition of

the word "dishonestly" in Section 24 of the Code, the prosecution has to rely here on the word "fraudulently", which according to Section 25 requires intent to defraud, What is an intent to defraud is not defined in the Code. A definition was suggested by Sir James Stephen in his History of the Criminal law of England (Vol. II, p. 121) in these terms:-

> Whenever the words ' fraud ' or ' intend to defraud ' or ' fraudulently " occur in the definition of a crime, two elements at least are essential to the commission of the crime; namely, first, deceit or an intention to deceive or in some cases mere secrecy ; and, secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy.

Sir James Stephen went on to say (Vol. II, p. 122):-

> A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this : Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that that advantage should not have had an equivalent in loss, or risk of loss, to some one else ; and if so, there was fraud.

[22](1911) 14 Bom. L.R. 41

15. This has been generally accepted by the Courts as a good definition for practical purposes, see for instance, *Emperor v. Balkriahna* , *Surendra Nath Ghose v. Emperor*[23]**.** which was followed in *Emperor v. Barjivan Valji*[24] and *Emperor v. Kaahinath Ramchandra Davari*[25] decided by Beaumont C.J. and Murphy J., on January 7, 1931, (Unrep.) But there has been difference of opinion as to whether an intent to cause loss or injury to another is an essential element in the offence. In *Kotamraju Venkatrayadu v. Emperor*[26] the most important of the cases relied on by the learned Government Pleader, the question was considered by a Bench of five Judges. Two of the Judges held that there cannot be forgery unless there is a deception which involves some loss or risk of loss to an individual or to the public, and that it is not enough to show that the deception was intended to secure an advantage to the deceiver. The majority of the Judges were inclined to take the view that either an intention to secure a benefit on the one hand, or to cause loss or detriment on the other, by means of deceit, is an intent to defraud. But the expression of opinion on that point was dearly obiter, because the learned Judges who formed the majority all held that as a matter of fact both intentions were present in that case, It was a case of forgery of a certificate to obtain admission to an University examination. It was held by : the majority of the Judges that injury must necessarily result to the University. In a similar case in Lahore it was held that the injury was rather to the other candidates in the examination : The *Grown v. Chanan Singh*[27] In the other cases cited by the learned *Government Pleader, Queen-Empress v. Abbas Ali*[28] and *Causley v. Emperor*[29] the element of injury or risk of injury to an individual or to the public may also be said to have been present. I think in view of the Bombay decisions to which I have referred we must hold that that is an essential ingredient in the definition of forgery. In the great majority of cases the point is not very material. As Sir James

Stephen said, it is hardly possible that the author of the deceit should be able to gain an advantage without there being an equivalent in loss or risk of loss to some one else. But there may occasionally be a case in which the element of loss or injury is absent, and I think the present is such a case. If the accused's intention was as alleged in the charge, it is obvious that there was no risk of loss or injury to any individual, and the risk of injury to the public or Government appears to me to be much too remote to be taken into consideration. The act of the accused, assuming the allegations to be true, would, of course, be official misconduct of the most reprehensible kind, and, but for the accident of his having been suspended, it would have amounted to a criminal offence under Section 218, But, I think, we must hold that it would not amount to forgery. That being so, we have taken the view that accused No. 1 is entitled to be acquitted on the charge of forgery, and have not gone into the facts relating to that charge,

16. Coming to the merits, that is in respect of the charges under Sections 380 and 348, the prosecution case depends mainly on the evidence of the five Katbus, Hanmya Ex. 25, Dundya Goulya Ex. 37, these two being from Jenapur, and Davalya Ex, 3, Lakkya Ex. 26 and Dundya Rama Ex. 35, the three from Kolhar. The evidence of these witnesses has been read in detail and very carefully analysed both by the learned Counsel for the accused and by the learned Government Pleader. Each of these witnesses deposes that he himself was beaten or otherwise ill-treated by one or other or both of the accused with the object of inducing him to confess and that he was kept in confinement with the same

[23](1910) I.L.R. 38 Cal. 75, F.B [25](1931) Crim. App, No. 525 of 1930 [27](1928) I.L.R. 10 Lah. 545
[24](1925) 28 Bom. L.R. 115 [26](1905) I.L.R. 28 Mad. 90, F.B [28](1896) I.L.R. 25 Cal. 512, F.B
[29](1915) I, L.R. 43 Cal. 421

object. Each of the witnesses deposes that the other Kat-bus were also kept in confinement. Hanmya and Dundya Goulya 'alao depose to the beating of Mallya by the accused. If the story of these witnesses is substantially true there can be no doubt but that the case improved up to the hilt. [His Lordship then dealt with the discrepancies in the evidence of the witnesses urged by the counsel of the accused and other evidence in the case and concluded :

17. The learned Sessions Judge has recorded the fact that three at least of the Katbus witnesses gave their evidence in a very realistic and convincing manner, Having regard to that and the circumstantial evidence, I am satisfied that the charges under Sections 330 and 848 have been established beyond reasonable doubt. I agree, therefore, that the conviction and sentence under these sections must be confirmed.

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