LAHORE HIGH COURT

Emperor

Vs

Abdul Hamid

(Sale, J.)

16.12.1943

JUDGMENT

Sale, J.

1. This is an appeal preferred on behalf of the Provincial Government against a judgment of the learned Sessions Judge of Lahore acquitting, on appeal Abdul Hamid who had been charged and convicted by a Magistrate on two counts: (1) that he had fraudulently and dishonestly misrepresented his date of birth in taking up service in April/May 1926, in the P.W.D. and thereby intentionally cheated the department to accept him in service and thereby committed an offence punishable under Section 417, Penal Code, and (2) that he abetted the forgery and use of certain letters as genuine issued between 5th February 1941 and 28th April 1941, and thereby committed an offence punishable under Sections 465/471 read with Section 109, Penal Code. The Magistrate in convicting under Section 417 on the first count sentenced Abdul Hamid to six months' rigorous imprisonment and in convicting under Sections 465/471 read with Section 109, Penal Code, on the second count sentenced him to a further period of one and a half year's rigorous imprisonment. On appeal the learned Sessions Judge held that the facts alleged by the prosecution had been conclusively established but that the action attributed to the accused did not amount in law to the offences with which he was charged and, therefore, acquitted him. In appealing from this judgment Mr. Sikri on behalf of the Crown does not press the charge under Section 417. His contention is that the learned Sessions Judge is wrong in his application of the law to the facts found so far as the offence under Sections 465/471.read with Section 109, Penal Code, is concerned and he contends that there should be a conviction on this head of the charge.

2. The facts material for the purpose of this appeal which have been found to be conclusively established by the learned Sessions Judge, are not questioned by Mr. Sethi on behalf of the respondent. Abdul Hamid applied in March 1926, for an appointment in the P.W.D. without mentioning his age. He was accepted as an unpaid candidate, appointed as clerk in April 1926, and duly confirmed later. On 1st May 1926 his service book was prepared and the date of birth, as supplied by himself, was entered as 15th April 1898.

3. So the matter rested until 1941 when Abdul Hamid's brother Abdul Wahid, apparently out of spite, wrote a letter to the Under-Secretary, P.W.D. 1enclosing Ex. P.E./1, a University Certificate, which showed the date of Abdul Hamid's birth as 15th April 1891 and suggested that action be taken against Abdul Hamid. The Chief Engineer then entered into correspondence with the University authorities and it is proved that the University authorities on 5th February 1941 wrote a letter to the Chief Engineer informing him that according to the University records the date of Abdul Hamid's birth was 15th April 1891. This letter was suppressed, admittedly by the accused, who in its place forged a letter Ex. P.F. dated 5th February 1941, which suppressed the damaging fact relating to the date of his birth. This letter, which purports to be signed by the Assistant Controller of Examinations only stated that there was no discrepancy in the dates of Mr. Abdul Hamid's birth but did not mention what the correct date of birth was. In reply the P.W.D. authorities asked for further information, in particular the date of Abdul Hamid's birth. The University authorities replied with the letter Ex. P.S./1 dated 22nd April 1941, giving the date of his birth as 15th April 1891. On receipt of this information, Abdul Hamid was asked by his office to explain the discrepancy between this date and the date which he had himself supplied for the purpose of his service book. His explanation, admittedly made by him is Ex. P.R./2, written on the back of Ex. P.R. 1. The date of this explanation appears to be 29th April 1941, the figure "29" being subsequently altered to 28. This explanation is important because it has special reference to certain facts contained in another forged letter dated 28th April 1941, Ex. P.F./1, received by the office on 29th April 1941, which Abdul Hamid must have known, when he was writing his explanation, would shortly be seen by his officers. The explanation, Ex. P.R./2 is to the effect that Abdul Hamid "fully remembers that he got the date corrected in the University though he does not remember the exact date." Now, in the forgery, Ex. P.F./1, it is stated that the date of birth though originally 15th April 1891 was corrected to 15th April 1897.

4. This forged letter was accepted by the office of the P.W.D. which corrected the date of birth in Abdul Hamid's service book accordingly, and there the matter rested for about a month. Up to this time Abdul Hamid had admittedly been employed in Lahore but shortly afterwards, he was transferred to Kulu. In his absence some one in the office of the P.W.D. consulted the Government Gazette of 1911 and discovered that when Abdul Hamid passed his Matriculation in that year his age was given as 19 years 11 months a figure which fixes the date of birth as 15th April 1891. The Chief Engineer then asked the University authorities how in the face of this information they had corrected the date of his birth as stated in the letter Ex. P.F./1. It was in this way that the forgery came to light since the University authorities were quickly able to discover that they had issued no such letter. as Ex. P.F./1. Nevertheless, in a desperate attempt to avoid disclosure, some further forgeries were committed though presumably not by the accused himself, who at this time, as already stated, was in Kulu. On 14th August 1941 during the time when the University authorities were looking up their records to trace the circumstances under which the forged letter, Ex. P.F./1, came to be issued (and for this purpose had asked the P.W.D. to send the letter Ex. P.F./1 in original), a telegram Ex. P.G./2 dated 14th August 1941, purporting

to come from the University, was received by the P.W.D. Secretariat saying that there was no need to send the original, and promising to send the reason by letter which was to follow. This telegram was confirmed by the letter Ex. P.G./1, dated 22nd August 1941. It reiteftited that the date of birth had been altered to 15th April 1897 on the basis of certain certificates received from the Lahore Municipality and from a recognized school at Aligarh. Admittedly both the telegram Ex. P.G./2 and the confirmatory letter Ex. P.G./1 are forgeries. The fact that these four documents the letter Ex. P.F. dated 5th February 1941, the letter, Ex. P.F./1 dated 28th April 1941, the telegram Ex. P.G./2 dated 14th August 1941 and the confirmatory letter Ex. P.G./1 dated 22nd August,1941 are forgeries was established by an interview held by a representative of the P.W.D. with the University authorities on 11th September 1941. The case was then handed over to the police and Abdul Hamid was charged and convicted, as stated, by the Magistrate.

5. In appeal the learned Sessions Judge acquitted Abdul Hamid of an offence under Section 417, Penal Code, in the absence of proof that the accused had secured his appointment in consequence of any deception regarding his age. The finding of the learned Sessions Judge on this point is not challenged in appeal. As regards the use of forged documents the learned Sessions Judge held that although Abdul Hamid was in Kulu at the time when the telegram Ex. P.G./2 dated 14th August 1941 and the confirmatory letter Ex. P.G./1 dated 22nd August 1941 were forged presumably in Lahore, all the four forgeries Ex. P.F., Ex. P.F./1, Ex. P.G./1 and Ex. P.G./2- formed part of a single plan of campaign and that even if the accused did not himself carry out the plan with his own hand there can be no reasonable doubt that he abetted it and actually took part in its execution with regard to the letters Ex. P.F. and Ex. P.F./1. He held, therefore, that Section 109, Penal Code, would apply provided that all the necessary elements of the offence of forgery were established. Now, as regards the use of the forged documents the learned Sessions Judge said that he could not conceive any "clearer or more bare faced case of forgery in the ordinary sense of the word," but he held that to constitute legal fraud there must be two elements (1) of deception, and (2) intent to injure, and that since the object of the forgeries in the present case was not to injure any one but merely to conceal a deception which had already taken place some years previously, the action of the accused in abetting the forgeries of these four documents did not amount to forgery as defined in Section 463, Penal Code. It is contended on behalf of the Crown that this finding is wrong in law and that on the facts admitted in this case the accused should have been convicted of abetment of forgeries as charged.

6. Before discussing the legal point involved, it is necessary to notice an argument advanced by Mr. Sethi to challenge the finding by the learned Sessions Judge that Abdul Hamid has been guilty of abetment within the meaning of Section 109, Penal Code, in respect of the "forgery" of the three letters and the telegram in question. Mr. Sethi frankly admits that whatever was done in the matter of forging these documents was done to accused's inrerest, that nobody else was served by the forgeries except the interest of the accused and that the three letters and the telegram were in fact forgeries, but he contends that since by 14th August 1941 when the forged telegram Ex. P.G./2 was sent to the P.W.D., Abdul Hamid was in Kulu and could not therefore

either have forged the telegram himself or have known at the time of the fabrication of this particular false document, it cannot be assumed that Abdul Hamid instigated these fabrications merely because they were to his benefit. The answer to this argument is that the abetment in this case was not abetment by instigation but abetment by conspiracy which consists in the combination and agreement of persons to do some illegal act or to effect some illegal purpose by illegal means. Proof of such conspiracy is, as pointed out in *The King v. Brisac*[1] cited in Ratan Lals Law of Crimes, p. 240 of Edn. 15, generally a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them.

7. Now, admittedly Abdul Hamid was serving in the office of the P.W.D. in Lahore when the first two false documents were fabricated, viz., the letter Ex. P.F. dated 5th February 1941 and the letter Ex. P.F./1 dated 28th April 1941. Clearly, therefore, the first two portions of what the learned Sessions Judge calls a single plan of campaign, were carried out with the direct assistance of Abdul Hamid, if not by Abdul Hamid himself. It is impossible to believe that Abdul Hamid was not a party to the fabrication of these two false documents. That Abdul Hamid was taking a direct part in the campaign is clear from his explanation, Ex. P.R./2, on the back of Ex. P.R./1 dated 28th April 1941. This explanation has a direct reference to the substance of the forged letter, Ex. P.F./1, which purported to emanate from the office of the University on 28th April 1941 and was received by the P.W.D. on 29th April 1941. No other inference is possible except that Abdul Hamid wrote the explanation Ex. P.R./2, with special reference to the forged letter Ex. P.F./1. Mr. Sethi admits the force of this argument but contends that the only inference that should be drawn, is that Abdul Hamid was a liar in giving a false explanation, but that it should not be inferred that Abdul Hamid was party to a conspiracy for fabricating false documents. But the only possible inference to be deduced from this confession of wrongful act is that drawn by the learned Sessions Judge that all these documents were fabricated as part of a single plan of campaign; and we hold, therefore, that Abdul Hamid is guilty of being a party to the conspiracy to fabricate false documents. We now come to the legal interpretation of forgery as defined in Sections 463 and 464, Penal Code. The portions of Sections 463 and 464 on which the counsel for the Crown lays special emphasis are:

> Section 463. Whoever makes any false document ... with intent to support any claim or title....or with intent to commit fraud or that fraud may be committed commits forgery.

8. In Section 464 the essential element for making a false document is that it should be made "dishonestly or fraudulently." It is contended on behalf of the Crown that Abdul Hamid has fabricated false documents "fraudulently" (within the meaning of Section 464, Penal Code) with "intent to support a claim or title, or with intent that fraud may be committed" (within the meaning of Section 463, Penal Code) and that in these circumstances no question of proof of injury or risk of injury arises. Mr. Sethi had endeavoured to support the finding of the learned Sessions Judge that there has been no "legal" fraud in this case by two arguments : (a) That fraud

as understood in these sections involves, as an essential ingredient injury 6t risk of injury to some third person and that no such injury is proved in this case; and (b) that this risk of injury must exist at the time of supporting the claim; and since the action of the accused in obtaining employment in 1926 has been held not to be an offence, his action in covering by deceitful means and lies, his previous conduct which was not an offence

[1](1803) 4 East 164 at p. 171

merely to screen an inquiry or to save himself from being retired earlier, is not culpable.

9. The first contention that an intent to cause injury is an essential ingredient in the offence of forgery is not, in our view, in accordance with the terms of the statutory definition. The intents, as recited in Section 463, include among various alternatives, an intent to cause damage or injury, but this phrase does not govern the other intents mentioned in the section. It is an intent complete in itself. The definition in Section 463 is itself subject to the definition in Section 464, Penal Code, in which the two essential elements are that the act should be done "dishonestly or fraudulently." In other words whichever of the intents given in Section 463 may be applicable the act itself must be done dishonestly or fraudulently to sustain a conviction for forgery. Now the use by the Legislature of words "dishonestly or fraudulently" in the alternative obviously means that they are not tautological but must be given different meanings. "Dishonestly" is defined in Section 24, Penal Code, as the intention of causing wrongful gain or loss. "Fraudulently" is not defined except that in Section 25, Penal Code, a person is said to do a thing fraudulently if he does that thing with intent to defraud. Obviously therefore, the intention to defraud is something other than the intention to cause wrongful gain or loss. Sir James Stephen, in his History of the Criminal Law of England, Vol. 2, p. 121 as cited on p. 58 of Ratan Lals Law of Crimes, Edn. 15, in pointing out that the essential meaning conveyed by the word "fraud" is the intention to deceive, says:

> 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?

10. It is true that in one place Sir James Stephen appears to suggest that two elements at least are essential to the commission of the crime namely, first, deceit or an intention to deceive; and secondly, either actual injury or possible injury by means of that deceit. But he goes on to point out that the principal object of the fraudulent person is, nearly in every case, to secure his own advantage and that it is hardly possible in many cases 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. It follows, therefore, that whether the advantage gained by the deceiver is or is not proved to involve loss or injury to some one else, it is immaterial for the fraudulent character of a deception for criminal purposes that such loss, injury or risk of injury, be proved unless, the nature of the fraud committed is definitely expressed to be with the intention of causing damage or injury, as being one of the intents of Section 463. It may be noted in this connexion that the word "injury"

as defined in Section 44, Penal Code, is very wide as denoting "any harm whatever, illegally caused to any person, in body, mind, reputation or property." Probably, therefore, it would not be difficult in any case of forgery, (that is to say, securing an advantage to oneself by deceitful means) to assume that some sort of injury has been caused to some one else. But in a case such as the present it is not necessary for the prosecution to establish any such injury.

11. Much the same process of reasoning led a Full Bench of the Calcutta High Court in *Queen Empress v. Abbas Ali*[2] to hold that "fraudulently" in Sections 464 and 471, Penal Code, does not imply deprivation of property and that the making of a false certificate to secure the necessary qualification for entering a competitive examination, is a forgery punishable under Section 471, Penal Code. To much the same effect is a Division Bench decision of the Lahore High Court reported in *Emperor v. Chanan Singh*[3] though the decision in that case is not relevant to the present case. In that case the intention to cause injury was obvious from the fact that an attempt had been made to obtain admission to a competitive examination by a false certificate. There the whole basis of the case appeared to be forgery with intent to cause injury which is a different ingredient from the element of forgery in the present case.

12. Mr. Sethi has endeavoured to distinguish *Queen Empress v. Abbas Ali (98) 25 Cal. 512 (E.B.)(Supra)* and *Emperor v. Chanan Singh*[4] on the ground that both cases related to a forgery for the purposes of a competitive examination which necessarily imports the risk of injury to other candidates. It is true that this fact was expressly recognized in *Emperor v. Chanan Singh A.I.R. 1929 Lah. 152(supra)*, but that was only because the risk of injury was obvious in that case. This ruling is not an authority for the proposition that the risk of injury is an essential ingredient in every act of forger ya proposition which, as we have already remarked, is contrary to the terms of Sections 463 and 464, Penal Code. Mr. Sethi in attempting to support his contention that the element of injury or risk of injury is an essential ingredient for the definition of forgery relies particularly on two authorities: (1) a Single Bench decision of the Rangoon High Court cited in *Hga Tun Sein v. Emperor*[5] and (2) a Division Bench decision of the Bombay High Court, cited in *Sanjiv Ratanappa v. Emperor*[6] In *Hga Tun Sein v. Emperor A.I.R. 1935 Rang. 203*, a learned Judge sitting in Single Bench held that a process-server who forged the names of certain persons on whom he was to serve notice was not guilty of the offence of forgery because, in the opinion of the Judge, forgery involves something more than deceiving. It involves the intent to cause injury. With due respect to the learned Judge we consider that this decision is not good law. To begin with, it is difficult to see how forging the names of persons on whom the process-server was to serve notice did not cause injury to the persons whose names were forged. Apart from that, the view of the learned Judge that the' intention to cause injury is an essential element of forgery is not borne out by the definition of Section 463, Penal Code, which prescribes an intention to cause injury as merely one of the ingredients of forgery. It is true, that the Division Bench authority, *Sanjiv Ratanappa v. Emperor A.I.R. 1932 Bom. 54(supra)*, appears to support Mr. Sethi, but it will be noticed that Baker, J. in his judgment in that case recognizes that there are conflicting rulings on the question of the definition of the word "fraudulent," but

chooses to follow the consensus of opinion of the Bombay Court that there must be some advantage to one side with a corresponding loss to the other. This conflict is developed in the judgment of Broom field, J. who, after citing the definition by Sir James Stephen in his History of the Criminal Law of England (to which we have already drawn attention), remarked (on top of p. 501) that in view of the Bombay decisions he must hold that the element of injury or risk of injury is an essential

[2](98) 25 Cal. 512 (E.B) [4] A.I.R. 1929 Lah. 152 [6] A.I.R. 1932 Bom. 54
[3](29) 16 A.I.R. 1929 Lah. 152 [5] A.I.R. 1935 Rang. 203

ingredient in the definition of forgery. With all respect, we must dissent from the view taken in *Sanjiv Ratanappa v. Emperor A.I.R. 1932 Bom. 54(Suupra)* that the element of injury or risk of injury is an essential ingredient in the definition of fraud because it appears to us that this view is based on a misreading of Sections 463 and 464, Penal Code. We are fortified in this view by some observations made in an earlier Division Bench authority of the Bombay High Court cited in *Queen Empress v. Ganesh*[7] This judgment refers with approval to an unreported Division Bench case of the Bombay High Court which had cited with approval an English authority *Haycraft v. Creasy*[8] a decision of 1801, in which LeBlanc, J. held that by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the ill will towards the other is immaterial.

13. The unreported case cited in *Queen Empress v. Ganesh*[9] contained a passage with reference to ill us. (k) to Section 464, as follows:

> To induce the Collector to enter into the contract to employ this man as a karkun under the belief induced by the forged certificate that he was not more than 25 years of age brings the case under Section 471. This case falls most strictly within the definition of using a forged document.

14. Another case cited by Mr. Sethi is *Surendra Nath v. Emperor*[10] This was a case in which on a difference of opinion between two Judges on appeal the case was referred to a third Judge, Mookerjee, J. On page 89 Mookerjee, J. observed:

> The expression 'intent to defraud' implies conduct coupled with intention to deceive and thereby to injure; in other words, 'defraud' involves two conceptions, namely, deceit and injury to the person deceived, that is, infringement of some legal right possessed by him, but not necessarily deprivation of property.

15. It appears to us, however, that the learned Judge's observations do not necessarily support the view that in the absence of proof of injury, a conviction for forgery cannot succeed. On the other hand, in *Abdul Razak v. Queen Empress*[11] Cr. Rivaz, J. with the concurrence of Roe, J. in discussing the meaning of the word "fraudulently" as defined in Section 25, Penal Code, held that the making of a false certificate with intent to procure on the strength thereof employment in a public department, was "fraudulent" within the definition and he cited in support of this

contention illus. (k) to Section 464, Penal Code. The learned Judge then pointed out that a false certificate of this nature was fraudulent within the meaning of the definition inasmuch as the immediate object was to deceive the public officer into believing that the person holding the certificate possessed a guarantee of efficiency which he did not really possess and so induce him to grant employment which he might otherwise have withheld. It will be observed that in that case the element of injury was not referred to as being an essential ingredient. It appears to me that the definition of fraud given by Leblanc, J. in *Haycraft v. Creasy (1801) 2 East 92(Supra)* that by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party

[7](89) 13 Bom. 506 [9](89) 13 Bom. 506 [11](95) 2 P.R. 1895
[8](1801) 2 East 92 [10](11) 38 Cal. 75

himself, or from ill-will towards the other is immaterial is a definition which is consistent with one of the elements under Section 463, Penal Code, and that it is not essential that the element of injury to others should always be proved. In the present case it is clear that in being a party to the fabrication of these documents Abdul Hamid intended to deceive the department and thereby secure an advantage to himself. This is within the definition of Section 463 and, in our view, therefore, amounts to forgery.

16. Mr. Sethi next argued that as the intention in committing the forgeries was merely to cover up previous conduct which was not itself culpable, the action of the accused would not amount to forgery in the same way as if he had been covering up culpable conduct contemporaneous with the fabrication of the false documents. In this connexion reference is made to *Lolit Mohan v. Queen Empress*[12] wherein the learned Judges dissented from the view that it would not amount to forgery under the Penal Code if the intention with which a false document was made was to conceal a fraud which had been previously committed; and Mr. Sethi attempted to distinguish this authority on the ground that it related to a fraud previously committed, whereas in the present case the previous action of the accused has been held to be not culpable. Now, the decision in *Lolit Mohan v. Queen Empress (95) 22 Cal. 313(Supra)* was considered by a later Division Bench in *Jyotish Chandra v. Emperor*[13] Sir Lawrence Jenkins C.J. in delivering the judgment, remarked that as to whether or not there is intent to defraud in any particular case must depend on the actual circumstances of that case, and pointed out that the case before him was distinguishable from *Lolit Mohan v. Queen Empress (95) 22 Cal. 313(Supra)*, because the forgery made was the correction of a wrong entry, that is to say, it showed that the postmaster was liable, and it is a statement of the true position of affairs, whereas in those eases the accounts were framed in such a way as to conceal liability and to present an untrue state of affairs.

17. Now, in the present case this is just the conduct of which the accused has been guilty. He has committed a forgery so as to conceal his liability and present an untrue state of affairs, and, in our opinion, therefore, although the action of the accused in securing the appointment in the department in 1926 may not have been culpable; his action in forging the four documents to conceal his liability and to present an untrue state of affairs, certainly amounts to an intention to defraud and, therefore, to forgery within the meaning of Section 463, Penal Code. We must,

therefore, accept the Crown appeal to the extent of setting aside the order 6f acquittal under Section 465/471 read with Section 109, Penal Code. We convict Abdul Hamid of the charge as framed under those sections, but in the particular circumstances of this case we do not recommit the accused to jail. In dealing with the question of sentence in a very similar case reported in *Emperor v. Chanan Singh A.I.R. 1929 Lah. 152* (supra)it was pointed out that the conviction must entail loss of Government employment and that the accused in that case had through no fault of his own been subjected to a long period of suspense instead of having his appeal dismissed in the first instance. On these considerations the learned Judge who delivered the judgment of the Bench observed that while he might have upheld the original sentence had he been the

[12](95) 22 Cal. 313 at p. 321

[13](09) 36 Cal. 955

original appellate Court, a light sentence was reasonable in the circumstances of the case. In the present case the accused appears to have served only four days in jail before being released on bail, but he is losing his employment after serving sixteen years, and we think that in the circumstances of this case it is sufficient to maintain the sentence of imprisonment already undergone and to impose in lieu of the balance a fine of ₹ 500/- which we direct should be paid by 23rd December; in default the accused Will undergo three months' simple imprisonment.

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