

CRIMINAL REVISION.*Before Sanderson C. J. and Richardson J.***CHHAKMAL CHOPRA***v.***EMPEROR.***

1916

Aug. 10.

Stamp-duty—Mere fact of putting a stamp not of proper value, whether an offence—Stamp Act (II of 1899), ss. 64, cl. (c), 68—Intention to defraud.

In construing clause (c) of s. 64 of the Indian Stamp Act, the words "any other act" must be taken to mean an act of a like nature to those which are specified in clauses (a) and (b); and the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within clause (c) of section 64, unless there is an intention to defraud the Government.

Queen-Empress v. Somasundaram Chetti (1) referred to.

RULE obtained by Chhakmal Chopra and another, accused.

The petitioner No. 1 was a pleader practising in the Calcutta Small Cause Court, but he had a joint family business at Mahiganj in the district of Rangpur in connection with his cousin, the petitioner No. 2. The petitioners brought a suit in the Court of the Munsif, 2nd Court, at Rangpur against one Lal Mahomed Barkandaz for the recovery of a sum of money due on a *hatchitta* in connection with transactions of the said business. But the Munsif being of opinion that the said *hatchitta* was virtually an agreement and that the stamp of one-anna affixed thereon by the plaintiff was insufficient, ordered the said document to be impounded and directed the petitioners to pay the

* Criminal Revision, No. 670 of 1916, against the order of B. N. Mukerjee, Subdivisional Officer of Rangpur, dated June 2, 1916.

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proper duty of 8 annas, together with a penalty of Rs. 5, which was done. On the 18th March 1916, the Deputy Collector ordered the claimants and executant to show cause why they should not be prosecuted under section 62 (i) of the Stamp Act. On the 20th April 1916, the Deputy Collector ordered the production of the *khata* book, which was in the possession of the claimants, and as he failed to do so, on the 10th May 1916, suggested the prosecution of the claimant under section 64 (c) of the Stamp Act. On the 22nd May 1916, the Collector ordered the prosecution of the claimants under section 64 (c) of the Stamp Act. On the 31st May 1916, the District Magistrate transferred the case to the Sadar Subdivisional Magistrate for trial who issued summons on the 2nd June 1916. Being aggrieved by these two orders of the 31st May and 2nd June the petitioners moved the High Court.

Babu Manmatha Nath Mukerjee, for the petitioners. The petitioners are money-lenders and took a *hatchitta* from a debtor. Refers to s. 64, cl. (c) of the Stamp Act (II of 1899). The Munsif thought that a one-anna stamp was insufficient as an eight-anna stamp was necessary, it being an agreement, and inflicted a penalty of Rs. 5, being 20 times the value of the proper stamp. I submit that the liability of paying stamp-duty was on the debtor. That suit is pending and I am now ordered to be prosecuted for not paying the duty I was required by law to do. I submit *first*, I have not done anything to evade payment of duty and there is no intention to defraud the Government, which is the element of the offence under section 64, clause (c). *Secondly*, I have not committed any offence. It may be that the debtor has: *Queen-Empress v. Nihal Chand* (1).

(1) (1898) I. L. R. 20 All. 440.

Mr. Gregory (Junior) for the Crown. There can be no doubt that the accused, who carried on a loan-business, knew that an eight-anna stamp was required, therefore their intention was to defraud Government: see s. 64, clause (c). Section 61 provides for penalty. (See proviso also.) Intention is to be inferred from petitioners' act, and therefore it is abetting. This is a matter of great moment to Government, and that is the reason for Government taking it up.

[RICHARDSON J. Suppose I accept a receipt without stamp.]

There is absolutely no other way of proving intention in such cases.

[SANDERSON C.J. The Collector must show that it is an offence against the stamp law; and that the intention was to defraud Government.]

The trial has not begun yet—the prosecution has only been sanctioned, and, if there is a conviction, all this can be gone into then. A receipt for money would ordinarily require a one-anna stamp, but such a document requires an eight-annas stamp: see *In re Jamnadas Harinaran* (1).

Babu Manmatha Nath Mukerjee, in reply. The receiver of an unstamped or insufficiently stamped document cannot be prosecuted under section 61 as abettor even, vide *Queen-Empress v. Nihal Chand* (2). Nobody says I put the stamp there. The law requires the debtor to stamp an agreement as I stated it.

Section 29 of the Stamp Act requires the expenses as to stamp to be borne by the debtor. Section 5, cl. (b). There is no provision in the Stamp Act as to the person who is to pay duty on an agreement. What ordinarily happens is that the penalty when received is added to the costs the defendants will have to pay under the decree.

(1) (1897) I. L. R. 23 Bom. 54.

(2) (1898) I. L. R. 20 All. 440.

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[SANDERSON C.J. The law puts the penalty on the person who produces the document personally and it cannot be passed on to another under the decree.]

But originally it is payable by the debtor. In any case section 62 has no application. There is no reported case in point, and I am using as my argument the remarks of Mr. Donough in his book on the Stamp Law, 5th ed., p. 211 (or 4th edition, p. 198), *re* section 64. *Vide* also *Queen-Empress v. Somasundaram Chetti* (1). In conclusion I submit that the execution of a document is not an act mentioned in section 68 and therefore cannot be such an act as is mentioned in section 64 which is wider.

SANDERSON C.J. We think that this Rule should be made absolute.

The charge against the two petitioners was under section 64(c) of the Indian Stamp Act (II of 1899) which says that "Any person who, with intent to defraud the Government does any other act calculated to deprive the Government of any duty or penalty under this Act shall be punishable with fine which may extend to five thousand rupees."

Now, what happened in this case was that the petitioners alleged that they had lent money to one Lal Mahomed Barkandaz, and Lal Mahomed had signed an undertaking in one of the petitioners' books to this effect: "I shall pay interest on this *hath-chitta* up to date of realization at the rate of Rs. 3 per cent. per mensem. (Sd.) Sri Lal Mahomed. That document was stamped with a one-anna stamp. When it was necessary for the petitioners in certain proceedings against Lal Mahomed to put in this document, an objection was taken by the officer of the Court that it was not duly stamped; and the result was that the petitioner

had to pay the proper amount of stamp and penalty which amounted to Rs. 5. Then the Collector, when he had this matter brought to his attention, directed that the petitioners should be prosecuted under the section which I have read and summons was issued by the Magistrate to the petitioners in that respect.

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A Rule has been obtained in this Court by the petitioners on the grounds, *first*, that on the facts and circumstances of the case no offence under section 64(c) had been disclosed; and, *secondly*, that there being nothing to show that there was an intention of evading the payment of the proper duty, the Collector ought not to have directed a prosecution in the case.

The act relied on by Mr. Gregory, who appears on behalf of the Crown, is this: He says that the petitioners who were people carrying on money-lending business must have known when they put the stamp upon the document, that it was not a stamp of sufficient value; and, therefore, they must have intended to evade payment of the proper duty.

The first point that was taken by Manmatha Nath Mukerjee was that it was not the duty of the petitioners to put on the stamp at all, and that it was the duty of the debtor to put on the stamp. But inasmuch as it was an agreement, and the stamp required was that applicable to an agreement, there is no provision in the Stamp Act as far as I am able to find, which provides that in such a case it is the duty of the debtor to put on the stamp, and inasmuch as this acknowledgment was made in the books of the petitioners themselves I think it is fair to assume that in all probability they were the parties to put the stamp upon the document.

Then the learned vakil for the petitioners takes a further point. He says that the mere fact of putting a stamp upon a document which is not of proper value,

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even though the party who puts that stamp knows that it is not of the proper value, is not an act which comes within clause (c) of section 64. I agree with him. Clause (c) comes after two other clauses; and the section must be read as a whole to understand the meaning of clause (c). The section runs thus: "Any person who, with intent to defraud the Government, (a) 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; or (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or (c) does any other act calculated to deprive the Government of any duty or penalty under this Act; shall be etc., etc." The learned pleader's argument is that in construing clause (c) it is right to say "that any other act" must be taken to mean an act of a like nature to those which are specified in clauses (a) and (b). I think that is the proper construction to put upon the section; and, if that be so, then the mere fact that a person puts a stamp on a document which he knows is not of proper value, would not, in my judgment, come within clause (c) of section 64.

It is argued by the learned counsel for the Crown that unless the construction, for which he contends, be put upon clause (c), it would be a very serious thing for the Revenue authorities, and they will have no means of punishing a man for wrongly stamping a document. But I do not think that weighs with us very much because if one looks at section 62 (1), paragraph (b) one finds that at all events a person, who signs a document which is chargeable with duty without the same being duly stamped, is liable to be prosecuted for an offence under that section; and the

Revenue authorities, if they think right, can proceed against a person who signs such a document without a proper stamp being put upon it. I am confirmed in the judgment at which I have arrived by the decision of the Madras High Court in the case of *Queen-Empress v. Somasundaram Chetti* (1). It is true that the learned Judges there were not concerned with the particular section, but they were considering section 67 which practically corresponds to section 68 of Act II of 1899; and the reasoning which the learned Judges applied in that case is exactly the reasoning which appeals to me in this case.

For these reasons, I think that the Rule should be made absolute.

RICHARDSON J. I have come to the same conclusion. I think that the act charged is not an act which comes within clause (c) of section 64 of the Indian Stamp Act.

G. S.

Rule absolute.

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