

Having regard to the principle laid down in *Khansa Bibi v. Syed Abba*(1), we are of opinion that the subject-matter of the suit was the specific share claimed, and that the suit ought to have been brought in the Court of the District Munsif. Though the objection was not taken in the Court below, yet it is apparent on the face of the plaint and has reference to the jurisdiction of the Court. We must, therefore, consider it, though it is only raised in appeal.

We set aside the decree of the District Court and direct that the plaint be returned to the plaintiff for presentation to the Court of competent jurisdiction. As the objection was not taken at the earliest opportunity, we direct that each party do bear his costs both in this Court and in the Lower Court.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

v.

PERA RAJU.*

1889.
June 6, 17.

Penal Code, ss. 419, 420, 467 and 468—Cheating—Forgery—Use of a false name with intent to defraud.

The accused was alleged by the prosecution to have advertised that a work on English idioms by Robert S. Wilson, M.A., was ready, stating that the price was Rs. 2-4-0, and that intending purchasers might remit it by money order to Robert S. Wilson, Council House Street, Calcutta: to have then requested the Postal authorities at Calcutta by a letter signed Robert S. Wilson, to have the money orders re-directed to him as above at Rajam: to have similarly requested the Post Master at Rajam to pay the money orders to his clerk Seshagiri Rau: to have subsequently received the value of money orders made out in favor of Robert S. Wilson from the Post Master at Rajam, signing receipts as Seshagiri Rau: Robert S. Wilson and Seshagiri Rau were alleged to be fictitious persons, and it was also alleged that the accused had no book on English idioms ready to be despatched to purchasers:

Held, that the above allegations supported charges of cheating and forgery.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused by

QUEEN-
EMPERESS
v.
PERA RAJU.

J. Kelsall, Sessions Judge of Vizagapatam, in sessions case No. 28 of 1888.

The *Acting Government Pleader (Subramanya Ayyar)* for the Crown.

The accused was not represented.

The facts of this case appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT.—This is an appeal from the judgment of acquittal recorded in sessions case No. 28 of 1888 on the file of the Court of Session at Vizagapatam. In that case the accused, one Pera Raju, was committed for trial by the Deputy Magistrate of Vizianagram on charges of forgery under sections 467 and 468, and of cheating under sections 419 and 420, Indian Penal Code. The Judge acquitted him without recording any evidence on the ground that the facts which the evidence before the Magistrate went to prove could not support a conviction for either of those offences. It is contended for the Crown in appeal that upon the facts stated by the Judge the acquittal was bad in law, and that the charges ought to have been amended, if necessary, under section 226, Code of Criminal Procedure. We are of opinion that this contention ought to prevail. The facts stated by the Judge as likely to be established by the evidence recorded by the committing Magistrate are shortly these:—

In June 1887, the accused by advertisements and hand bills, notified throughout India, that a work on English idioms, designed specially for matriculates, by one Robert S. Wilson, M.A., was ready, that the price was Rs. 2-4-0, and that intending purchasers might remit it by money orders to Robert S. Wilson, M.A., Council House Street, Calcutta. About a month or two later the accused signing a letter as Robert S. Wilson, wrote to the Postal authorities at Calcutta, asking that all money orders received for Robert S. Wilson might be redirected to him at Rajam in the district of Vizagapatam. Signing himself again as Robert S. Wilson, he wrote to the Post Master at Rajam to say that his clerk Seshagiri Rau would call in a day or two for these money orders, and that their value might be paid to the clerk, who would bring a note from him. The accused since called in person at the post office at Rajam and representing that he was the clerk Seshagiri Rau induced the Post Master to pay him the value of 25 money orders. On this occasion he produced a writing authorizing pay-

ment to Seshagiri Rau and signed by himself as Robert S. Wilson, and he also signed receipts acknowledging payment of value of the money order as Seshagiri Rau. There was no person known to the Post Master either as Robert S. Wilson or as his clerk Seshagiri Rau, and the case for the prosecution was that both were fictitious persons. It is also urged for the Crown that no book on English idioms was ready as notified by the accused in his advertisements and hand bills.

The charge of cheating as framed by the Magistrate stated that the accused falsely personated Seshagiri Rau, clerk of S. Robert Wilson, and thereby deceived the Post Master and fraudulently induced him to deliver to the accused 25 money orders which the Post Master would not have paid if he had not been so deceived. The charge of forgery stated (a) that the accused wrote a false letter to the Post Master of Rajam in the fictitious name of Robert S. Wilson, requesting that the money orders might be retained and their value paid to his clerk Seshagiri Rau; (b) that the accused signed 25 money orders in the feigned name of Seshagiri Rau; (c) that the accused wrote a false letter to the Post Master at Rajam in the name of Robert S. Wilson, requesting that the money orders subsequently received might be retained until further orders; and (d) that the accused signed the writing authorizing payment to Seshagiri Rau in the name of Robert S. Wilson.

Adverting to these facts the Judge observed that assuming the case for the prosecution was proved in every detail, the offence of cheating the Post Master was not committed; that the money orders were admittedly for the accused by whatever name he chose to call himself; that the Post Master could not have refused to pay them; that there was no known Robert S. Wilson, except the accused, and that the senders of the money orders intended the money to be paid to him. With reference to the charge of forgery, the Judge remarked it is not forgery to call yourself Robert Wilson, to have money orders in that name sent to you, and in that name to give directions about cashing them.

We consider that the Judge is clearly in error in holding that if the facts stated above were proved at the trial, they would amount neither to the offence of cheating nor to that of forgery as defined by the Penal Code. The accused knew that Robert S. Wilson was a fictitious person, that he had no clerk by the name

QUEEN-
EMPERESS
PERA RAJU.

of Seshagiri Rau, and that he was also a fictitious person, and with this knowledge he intentionally produced generally a false belief by his advertisements and hand bills that Robert S. Wilson was a person actually in existence, that he was a Master of Arts, that he wrote a book on English idioms, that it was ready to be despatched, and that the price might be sent to him and not to the accused Pera Raju. By causing such false belief he induced those who remitted the price by money orders to do so in the expectation that it would reach the hands of Robert S. Wilson through the Post office, and that in return the said Robert S. Wilson would send each of them a copy of the publication on English idioms, a publication which as alleged for the Crown the accused knew had no existence. It is clear, therefore, assuming for the purposes of this appeal the facts were as stated for the prosecution, they would sustain a charge of cheating those who remitted the money orders. Though the charge framed by the Magistrate did not refer to the deception practised on those who sent the money orders, yet it was open to the Judge to have amended it if the evidence before the Magistrate had tended to establish it.

As to the charge of cheating the Post Master, the Judge is mistaken in considering that the Post Master was bound to pay the value of the money orders to the accused Pera Raju. On the facts stated, the accused must be taken to have caused a false belief that Robert S. Wilson was a real person, that he had a clerk by the name of Seshagiri Rau, and that the accused was that individual. It appears further that but for such false belief the Post Master would not have paid the accused the value of the money orders. As those who remitted the money orders intended them for Robert S. Wilson, a person whom they believed to be a real and not an imaginary person, the Post Master was not bound to pay their value to the accused for the obvious reason that there was no such person as was designated by the remitters, and that it was not competent to him to pay it to any other unless it appeared (which is not the case) that the remitters gave credit to the accused Pera Raju as one known to them and not to Robert S. Wilson supposed to be alive. The deception practised on the Post Master seems to be a dishonest continuance to consummate the fraud practised on the public. The fallacy in the Judge's reasoning lies in overlooking the rule that in determining whether a person was actually deceived or not regard should be had to the

facts as they were made to appear to him and erroneously accepted by him and not simply to the actual facts known to the accused, but not known either to the persons who remitted the money orders or to the Post Master.

QUEEN-
EMPRESS
v.
PERA RAJU.

As to the charge of forgery it is wholly immaterial whether the name forged is that of a fictitious person who never existed or of a real person. It is as much a forgery in the one case as in the other provided the fictitious name is assumed for the purpose of fraud in the particular case under trial. Section 464, explanation 2 of the Indian Penal Code, provides that the making of a false document in the name of a fictitious person intending it to be believed that the document was made by a real person may amount to forgery (see also the illustration to the explanation). There is, however, no doubt that an intention to defraud is an essential ingredient; but it is sufficient to show that there was an intention to defraud generally. Whether there was an intention to defraud or not is a question of fact to be determined with reference to the special circumstances of each case. It is true that in *The Queen v. Martin*(1) it was held that though a document was signed in a fictitious name, yet such signing did not amount to forgery, as it appeared that credit was wholly given to the accused in that case as a known individual without any regard to the assumed name or to any assumed relation to a third person. But the facts as stated by the Judge tend to show that there is a wholly different case. There is apparently no pretence for saying that Pera Raju, the accused, was known to and accepted by either those who sent the money orders or the Post Master as the author or publisher of the work on English idioms, and that the money orders were intended for him.

We are therefore of opinion that the acquittal of the accused must be set aside, and a retrial ordered with reference to the foregoing observations.

(1) 5 Q.B.D., 34.
