

## APPELLATE CRIMINAL.

*Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.*

## KING-EMPEROR

v.

C. SRINIVASAN (PETITIONER), ACCUSED.\*

*Indian Penal Code—Act XLV of 1860, ss. 417, 511, 468—Attempting to cheat and forgery—Application to University for duplicate certificate by person not entitled—Offence.*

S. held a Matriculation certificate which had been issued to him by a University. C. had failed to pass the Matriculation Examination. The Registrar of the University received a letter purporting to be signed by S., stating that his certificate had been lost and requesting that a duplicate might be issued. Enclosed with the letter was what purported to be a certificate by the head-master of a local school, corroborating the statement as to the loss and supporting the application for the issue of a duplicate. This document had not, in fact, been written by the head-master, and S. had not in fact lost his Matriculation certificate. C. was charged with cheating and forgery to commit cheating. The Deputy Magistrate found, on the evidence, that the writer of the application for a duplicate certificate was the accused, and convicted and sentenced the accused on both charges. The Sessions Judge, on appeal, altered the offences to those of attempting to cheat and forgery to commit cheating and reduced the sentence. Subject to these modifications he dismissed the appeal. On a revision petition being filed in the High Court:

*Held*, that the charge of cheating must fail, inasmuch as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University which he represented. Nor was it shown that the accused, in applying for the duplicate certificate, had any intention of causing wrongful gain to himself or wrongful loss to the University, to whom he had paid a fee greater than the cost price of the certificate. The charge of forgery also failed, for, assuming that accused had fabricated the head-master's certificate it was not shown that he had done so fraudulently or dishonestly and with intent to cause damage or injury to the public or to any one. The question before the court was not as to his intended use of the certificate subsequently. Even if he had such an intention this mere preparation did not amount to an attempt to commit an offence within the meaning of section 511 of the Indian Penal Code.

CHARGES of cheating and forgery to commit cheating under sections 420 and 468, Indian Penal Code. In 1900, one S.

\* Criminal Revision Petition No. 438 of 1901 under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of R. D. Broadfoot, Sessions Judge of South Arcot, in Criminal Appeal No. 75 of 1901 presented against the finding and sentence of M. Azizuddin, Deputy Magistrate of Cuddalore, in Calendar Case No. 74 of 1901.

Srinivasan went up for the Matriculation Examination held by the University of Madras, and passed. Accused, whose name was C. Srinivasan, went up for the same examination and failed. Subsequently the Registrar received the following letter :—

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“MAYAVARAM, 27—2—1901.

TO THE REGISTRAR OF THE UNIVERSITY OF MADRAS. Most Respected Sir, I was a candidate for the Matriculation Examination held in December 1899 and I passed in it and I was placed in the first class (Supplement to *Fort St. George Gazette*, April 3, 1900, first class, 24th rank, 1st page in the list of passed candidates. Register No. 3140). On 2nd February when my house was plundered by thieves I lost my Matriculation certificate together with certain records (bonds) worth Rs. 500. Therefore, I am now in want of a certificate. Hitherto I have produced a certificate (identification) from the head of the institution where I received my instruction. I am a poor boy and I have to enter into some department. Therefore I humbly beg of you to be kind enough to send my certificate. I beg to remain, Sir, Yours obediently,

S. SREENIVASAN,

c/of Krishna Reddi, Near Sayergate,  
Napier's Road, Kanganakuppam  
(via.) Cuddalore.”

This letter enclosed the following certificate :—

“MAYAVARAM, 27—2—1901.

MUNICIPAL HIGH SCHOOL, MAYAVARAM. This is to certify that S. Sreenivasan was a student of this institution and passed the Matriculation Examination held in December 1899 in the first class. I hear from his guardian that, when his house was plundered on the 2nd February, he lost his Matriculation certificate with some other records. His conduct is very satisfactory. His request may be granted. S. NARAYANASAMI.”

This was filed as B-2.

The person whose signature this certificate purported to bear was the head-master of the school at Mayavaram. The Registrar of the University, in reply to the application, informed the writer that a duplicate certificate would be issued on payment of Rs. 3, that being the fee chargeable. This sum was paid to the local treasury and a receipt for the amount was forwarded to the Registrar, who then issued the duplicate certificate. Instead,

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however, of sending it direct to the applicant, he addressed it to the head-master of the school at Mayavaram, together with the certificate purporting to be signed by that person. It was then discovered that the supposed certificate had not in fact been written or signed by the head-master, and it was also ascertained that S. Sreenivasan, the successful candidate had not, in fact, lost his certificate. This was reported to the Registrar, who then caused a letter to be sent by registered post to the address given by the applicant, and at the same time gave notice to the authorities in that locality, as the result of which, a police constable in plain clothes was sent to watch who should take the registered letter. Accused took it, and was subsequently arrested and charged. For the defence, it was not denied that the supposed certificate was not what it purported to be, or that some one had attempted to obtain a duplicate certificate from the Registrar of the University; but the accused denied that he had done so and endeavoured to show that when the registered letter was offered to him he had said that it could not be for him. His case was that it had been forced on him by the post peon and the disguised constable. The Deputy Magistrate found that the application to the Registrar had been written by the accused, found him guilty of the offences charged, and sentenced him to two years' rigorous imprisonment. The Sessions Judge, on appeal, altered the offences to those of attempting to cheat, under sections 417 and 511, Indian Penal Code, and forgery to commit cheating, under section 468, and reduced the sentence to one year's rigorous imprisonment. Subject to those modifications he dismissed the appeal.

The accused preferred this Criminal Revision petition.

Mr. *John Adam* and *T. Rangaramanuja Chariar* for petitioner.

The Public Prosecutor in support of the conviction.

JUDGMENT.—The charge of cheating must fail inasmuch as there is no proof that the deception practised by the petitioner on the Registrar of the Madras University caused harm or damage to him or to the University which he represents. If the real S. Sreenivasan had practised a similar deception for obtaining a duplicate certificate it could not be argued that he would be guilty of cheating unless damage or harm was caused to the person deceived.

There is also nothing to show that the petitioner acted dishonestly in obtaining the duplicate certificate, that is, that he had

any intention of causing wrongful gain to himself or wrongful loss to the University. On the other hand he paid three Rupees in cash for the certificate which certainly seems to be greatly in excess of its cost price. Then as to the charge of forgery,—assuming that the petitioner fabricated the document B-2, there is no evidence, for the reasons already stated, that he did so fraudulently or dishonestly and with intent to cause damage or injury to the public or to any one. The question before us is not whether he intended to use the certificate subsequently in order to obtain some temporal advantage by pretending that he had passed the Matriculation Examination. Had he had such intention this mere preparation towards such object would not amount to an attempt to commit an offence within the meaning of section 511 of the Penal Code.

We must therefore reverse the conviction, acquit the prisoner, and direct that he be set at liberty.

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*Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.*

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v.

GOPALASAMY AND SEVEN OTHERS, ACCUSED.\*

1902.  
January 28.

*Indian Penal Code—Act XLV of 1860, s. 424—Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in absence of such proof—Illegality.*

Where a distraint is made under the Rent Recovery Act for arrears of rent, there is no presumption that it is legally made, and if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint. In the absence of such proof, persons who have resisted the distraint or have removed their property to avoid it, cannot be convicted of an offence, inasmuch as they had a right of private defence of their property unless the distraint was legal.

CHARGES of rioting, resisting the taking of property by the lawful authority of a public servant, and voluntarily causing hurt, under

\* Criminal Revision Petition No. 431 of 1901, under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of Lionel Vibert, Joint Magistrate of Tanjore, in Criminal Appeal No. 46 of 1901 presented against the finding and sentence of the Second-class Magistrate of Kodavasal in Calendar Case No. 159 of 1901.