

POPALY
v.
OFFICIAL
ASSIGNEE,
MADRAS.

by suit to enforce his claim. The subject-matter of Mrs. Popaly's examination, however, is not a matter arising under section 36, sub-section 4 or sub-section 5. It is a question of title which falls outside the scope of these sub-sections. I am accordingly of opinion that the objection raised to the Insolvency Court's power to decide it is ill-founded and that the appeal fails.

G.R.

APPELLATE CRIMINAL.

Before Mr. Justice King.

IN RE VELAYUDHAM PILLAI AND ANOTHER
(ACCUSED), APPELLANTS.*

1937,
April 6.

*Indian Penal Code (Act XLV of 1860), ss. 28, 232, 235 and 243
—Coins made to resemble genuine coins—Maker's intention to foist a false case—Counterfeit coins, if, within the definition of the Indian Penal Code.*

If coins are made to resemble genuine coins and the intention of the makers is merely to use them in order to foist a false case upon their enemies, those coins do not come within the definition of counterfeit coins given in the Indian Penal Code.

APPEAL against the judgment dated 11th November 1936 of the Additional Sessions Judge of the Court of Session of the Coimbatore Division in Case No. 130 of the Calendar for 1936.

V. L. Ethiraj (with him *A. S. Sivakaminathan*) for appellants.
—The conviction of the appellants is illegal. Section 28 of the Indian Penal Code defines "counterfeit coins". The intention required thereunder is "to practise deception or knowing it to be likely that deception will thereby be practised". According to the prosecution case, the coins here were made with the

* Criminal Appeal No. 666 of 1936.

intention of foisting a false case upon P.W. 6. Such intention is not practising deception. It is just the reverse. By giving false information against P.W. 6, into whose house the first accused got the coins introduced he wanted that the police officers should be the first persons to see the coins and not be deceived by them, for, if the police were deceived, the purpose of making the complaint against P.W. 6 would be defeated. Hence the coins in this case are not "counterfeit coins" as defined in section 28, Indian Penal Code, and the conviction of the accused cannot stand. It may be that they could be prosecuted for other offences, viz., under section 211, Indian Penal Code, for foisting a false case upon P.W. 6, or under section 195 of the Penal Code for fabricating false evidence against him. But they are not guilty under the sections charged for the manufacture of "counterfeit coins" as defined in the Indian Penal Code. Further, it was not even suggested by the prosecution that the accused had put these coins into circulation. When they made the coins it was never their intention to cause loss to the currency-owning public or to infringe the monopoly of the mint. In view of that, even if the accused are deemed to be guilty, the offences committed are only technical and the accused should be acquitted.

Parakat Govinda Menon for Public Prosecutor (*L. H. Bewes*) for the Crown.—The coins in this case resembled genuine coins. People are likely to be deceived thereby. In those circumstances, the presumption to be drawn is that the accused intended "to practise deception"; *vide* Explanation 2 to section 28, Indian Penal Code. The first accused asked the second accused to make for him counterfeit coins. The second accused made them. There is no direct evidence to show what the accused said when they were discussing their plot. It does not appear that either at the time when the first accused asked the second accused to make the counterfeit coins, or at the time when the second accused made the counterfeit coins they had any other purpose in view. The presumption to be drawn in those circumstances under Explanation 2 to section 28, Indian Penal Code, is that they intended to practise deception. This is strengthened by the fact that some counterfeit coins were also found in the cash box of the first accused. That could only be to use them. No doubt some of the counterfeit coins were used to foist a false case on P.W. 6. But that was not the intention when the first

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accused caused them to be made or when the second accused made them. So the coins in this case are "counterfeit coins" as defined in section 28, Indian Penal Code, and the conviction of the accused is legal.

V. L. Ethiraj replied.

JUDGMENT.

The two appellants have been convicted in this case by the learned Additional Sessions Judge of Coimbatore of various charges connected with the manufacture of what, according to the prosecution, are counterfeit King-Emperor's coins during May 1936. The facts found by the learned Judge and, in view of the legal argument to which I shall refer later, not seriously challenged in the appeal before me, were that the first appellant instructed the second appellant to make for him a number of two-anna pieces and that when these pieces were manufactured he made most of them up into a bundle which he gave to P.W. 3, his servant, with instructions that P.W. 3 should surreptitiously introduce them into the shop of P.W. 6 with whom he had lately conceived various grounds of enmity. P.W. 3 accordingly took the bundle and placed it in P.W. 6's shop. Information was then given to the police to the effect that if they searched P.W. 6's shop and house they would discover that he had counterfeit coins in his possession. A search was accordingly made and the bundle was duly discovered. It is on these facts that the two appellants were charged. There were four charges against them. The first was against the first accused that some days before 24th May 1936 he had abetted the counterfeiting of King-Emperor's two-anna coins by the second accused and therefore he had committed an offence punishable under sections 109

and 232, Indian Penal Code. The second charge was that the second accused had actually counterfeited those coins and committed an offence under section 232, Indian Penal Code. The third charge was that the first accused had on 24th May 1936 been in possession of certain materials knowing or having reason to believe that they were intended to be used for the purpose of counterfeiting coins, an offence punishable under section 235, Indian Penal Code. And fourthly, the first accused was charged with being at about the same time and place in possession of counterfeit coins fraudulently or with intent that fraud might be committed, an offence punishable under section 243, Indian Penal Code. I ought at this stage to add that in addition to the counterfeit coins discovered by the police in P.W. 6's shop a few more coins said to be similar in design to those were also discovered in a cash box in the first accused's house.

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The argument that has been pressed before me in appeal is a very ingenious one which does not seem to have occurred either to the learned Additional Sessions Judge or to any of the parties at the trial. It is this, that if coins are made to resemble genuine coins and the intention of the makers is merely to use them in order to foist a false case upon their enemies, those coins do not come within the definition of "counterfeit coins" given in the Indian Penal Code. I think there can be no doubt that this argument must be accepted. The definition of "counterfeit" is to be found in section 28, Indian Penal Code :

"A person is said to 'counterfeit' who causes one thing to resemble another thing, intending by means of that

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The important words for our present purpose in that definition are "intending by means of that resemblance to practise deception". Now if the intention of a person who makes or causes coins to be made is to use them in order to commit some other offence such as giving false information against an enemy, that intention *prima facie* is not to practise such deception. If we examine the situation in the present case we find that it was exactly the reverse of that intention. It was obviously the intention of the first accused that the police officers should be the first to see these counterfeit coins and that they should not be deceived by their appearance because if they were deceived then the whole purpose of making the complaint to the police against P.W. 6 would be frustrated. It is clear therefore that if the object of the manufacturer was to carry out this nefarious scheme of foisting a false case on P.W. 6, these coins are not counterfeit because they do not fall within the definition of section 28. Of course there is no direct evidence in this case that the first accused and the second accused were heard talking over the details of their plot. It is conceivable, theoretically, that all that the first accused did was to go to the second accused and ask him to make counterfeit coins without disclosing to him the reason why he wanted them. But, on the other hand, it is quite clear from the way in which the case has been treated and discussed in the judgment of the learned Additional Sessions Judge, and clear also from the actual four charges which

have been framed in this case that the prosecution case was this, that the manufacture was for the deliberate purpose of foisting a false case on P.W. 6. There is nothing at all to suggest in this case that either the first accused or the second accused had attempted or intended to attempt to put these coins into circulation. And although some little difficulty is introduced into the case by the fact that certain coins were found not only in P.W. 6's shop but also in the first accused's cash box, that difficulty ought not to outweigh the fact that in the case as a whole stress was laid by the prosecution on the fact that both these coins and the others must have been recently made by the second accused, and no kind of suggestion was made that either of the accused wished at any time to put these coins into circulation.

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I am therefore of opinion that what has happened in this case is that the prosecution has misconceived entirely the sections under which the accused ought to have been prosecuted. The real complaint of the Crown or of Society against these accused was not that they made a number of coins to look like genuine two-anna coins but that they dishonourably attempted to bring an innocent man, P.W. 6, to trouble by means of the coins which they made. They ought certainly to have been prosecuted for the real offences which on the evidence, if believed, they must have committed, viz., falsely causing criminal proceedings to be instituted against P.W. 6 under section 211, Indian Penal Code, or fabricating false evidence against him under section 195, Indian Penal Code. I do not know why no attempt was

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made to prosecute the two appellants or at any rate the first appellant under these sections. It is obvious that the appellants are not persons who are manufacturing coins with the intention of infringing the monopoly of the mint or of causing loss to the currency-owning public. As I have already said more than once, there is nothing in the case to show that they intended any of these coins ever to be put into circulation. Therefore, even if they could be rightly held to be guilty under the sections under which they have been charged, their offences would in one sense of the word be only technical offences under those sections. However, I have held that the coins which were seized in this case and which are the subject-matter of the charges are not counterfeit coins, because it was the clear prosecution case that the intention of the appellants in manufacturing them was merely to make use of them in order to assist them in filing a false charge.

The result is that the appellants must be found not guilty and acquitted and their bail bonds cancelled.

V.V.C.
