

the offences of which the petitioner has been convicted. I therefore see no reason to interfere.

Application dismissed.

Before Mr. Justice Turner.

EMPRESS OF INDIA v. MULA.

Attempt—Fabricating False Evidence—Act XLV of 1860 (Penal Code), ss. 193, 511.

M instigated *Z* to personate *C* and to purchase in *C*'s name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed *C*'s name on such paper as the purchaser of it. *M* acted with the intention that such endorsement might be used against *C* in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that *M* was properly convicted of abetting the commission of such offence. *Queen v. Ramsaran Chowbey* (1) distinguished and observed on.

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. On the 24th August, 1878, the petitioner was convicted by Mr. J. Kennedy, Officiating Magistrate of the district of Sháhjahánpur, of attempting to fabricate false evidence. On appeal by the petitioner to the Officiating Sessions Judge, Mr. W. Duthoit, that officer, on the 18th September, 1878, being of opinion that the offence of fabricating false evidence had been actually committed, and that the petitioner had abetted such offence, altered the conviction accordingly. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *L. Dillon*, for the petitioner, contended that the offence of fabricating false evidence had not been completed. He referred to *Queen v. Ramsaran Chowbey* (1).

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

TURNER, J.—The petitioner Mula is a money-lender in Sháhjahánpur, with whom Chattar Singh, *thakur*, had had dealings, but prior to the date of the occurrence which led to the present charge Chattar had discharged his debt to the petitioner. In a suit instituted by Mula against Netha and Dhaunkal, Chattar gave evidence on behalf of the defendants, and thereupon Mula threatened him he

(1) H. C. R., N.-W. P., 1872, p. 46. As to other facts which it was held would justify a conviction for an attempt to fabricate false evidence, see *Queen v. Nunda*, H. C. R., N.-W. P., 1872, p. 133.

As to an attempt to commit bigamy, see *Queen v. Peterson*, I. L. R., 1 All. 316. As to an attempt to commit mischief by fire, see *Queen v. Dayal Bawri*, 3 B. L. R., A. Cr. 55.

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would make him pay Rs. 50. On the 28th July Zabar, a debtor of Mula, applied to Mathura Prasad for a stamp of the value of four annas. He gave his name as Chattar Singh, *thakur*, and the name of Chattar Singh's father, and also Chattar Singh's address. These details were, in accordance with the usual practice, endorsed on the back of the stamp. As Zabar was leaving the stamp-vendor's shop, it occurred to the stamp-vendor again to question him as to his name. He then made a mistake and gave a different name as the name of Chattar Singh's father. The suspicions of the stamp-vendor being excited, he further questioned Zabar, who then stated he had purchased the stamp at the request of Mula, who had given him four annas for that purpose. The stamp-vendor very properly took Zabar to the police-station and reported what had occurred. It is shown by other evidence, which the Courts below have accepted as reliable, that Mula gave four annas to Zabar and requested him to purchase a stamp; that he left his place of business and accompanied Zabar on his way to the stamp-vendor's; that he remained near the stamp-vendor's shop when Zabar entered it, and ran away on perceiving that Zabar was detained. With this corroboration the Magistrate and the Sessions Judge have accepted as reliable the statement of Zabar that he was induced by Mula to personate Chattar Singh, and to procure the stamp in Chattar Singh's name. The Magistrate held that on the facts proved Mula was guilty of the offence of attempting to fabricate false evidence for the purpose of using it in judicial proceedings. The Sessions Judge more correctly held that the facts afforded proof that the fabrication was complete, and that the petitioner was liable to conviction for abetment of the offence alleged rather than of an attempt to commit it, and amended the conviction accordingly. In this Court it is argued that, although the petitioner may have made preparations to commit the offence, yet the offence had not actually been completed, and in support of this contention the petitioner's pleader has referred to *Queen v. Ramsaran Chowbey* (1), in which case it was held that under similar circumstances the accused could not be convicted of forgery.

It appears to me that the cases may be distinguished. The endorsement of the stamp-vendor forms no part of the document

(1) H. C. R., N.-W. P., 1872, p. 46.

which it may be assumed it was the intention of the person who procured the endorsement to make on the face of the stamp-paper. The offence of forgery had therefore not proceeded beyond the stage of preparation, but in the case now before the Court there had been an actual fabrication: something had been done. It is true that no judicial proceeding had been instituted, but the petitioner's pleader is unable to suggest any other object for which the false endorsement should have been procured. The petitioner had undoubtedly threatened Chattar Singh that he would make him pay Rs. 50. He could not have carried out his threat without the intervention of the Court. The object of the endorsement made by the vendor of a stamp is to afford proof of the person to whom it is sold, and in suits brought on documents written on stamp-paper it is the usual course, when the execution of the document is denied, to advert to the endorsement and to the stamp-vendor's memory assisted by the endorsement as evidence of the person to whom the stamp was sold, and therefore as evidence of the probability that the document was made by the person by whom the paper was procured. I do not say that in the case cited the accused should have been discharged. Had the point been taken the Court might have held the accused guilty of the offence of which the petitioner has been convicted, but I am of opinion that in the case before the Court the evidence for the prosecution warranted the inference that the petitioner procured the false endorsement for the purpose of thereafter using it in a judicial proceeding, and consequently that the conviction is not open to the objection taken to it. I affirm it, and dismiss the application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Turner and Mr. Justice Spankie.

THE COURT OF WARDS ON BEHALF OF THE RAJA OF KANIT (PLAINTIFF) v.

GAYA PRASAD AND OTHERS (DEFENDANTS).*

Substitution or addition of new Appellant or Respondent—Act XV of 1877 (Limitation Act), s. 22—Appellate Court, Powers of—Sale in Execution of Decree—Act VIII

* Second Appeal, No. 517 of 1878, from a decree of H. A. Harrison, Esq., Judge of Mirzapur, dated the 11th March, 1878, reversing a decree of Mirza Abid Ali Beg, Subordinate Judge of Mirzapur, dated the 27th November, 1877.

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