

APPELLATE CRIMINAL.

1906
January 16.

Before Mr. Justice Richards.

EMPEROR v. ALI HASAN.*

*Act No. XLV of 1860 (Indian Penal Code, section 465)—Forgery—
Definition—Fraudulently.*

One Piari, the wife of Amir, left her husband's house. Amir put in a petition at the police-station asking that a search might be made for the missing woman, and he also employed a pleader, one Ali Zohad, to assist him in discovering the whereabouts of Piari. Ali Hasan, the son of Ali Zohad, and a clerk employed in the office of the District Superintendent of Police, forged two orders purporting to be orders of the District Superintendent of Police, the first intimating that the woman Piari was with one Sibni, the wife of Ghisu, weaver, and that the Sub-Inspector should be directed to hand her over to the petitioner (Amir), and the second directing the Sub-Inspector of Kydganj to hand the woman over to the petitioner. *Held*, that in fabricating these two documents Ali Hasan had acted fraudulently and had committed the offence punishable under section 465 of the Indian Penal Code. *Queen-Empress v. Soshi Bhushan* (1), *Queen-Empress v. Abbas Ali* (2) and *Kotamraja Venkatrayadu v. Emporor* (3) referred to.

MUSAMMAT PIARI left her husband's house in June. The matter was reported to the police and a reward offered. Her husband further employed a pleader, Ali Zohad, father of accused (who was employed at the police office, Allahabad) to assist him.

The case for the prosecution was that the woman had been found by the police and placed in the care of a relative, and the accused in order to help his father to get the woman handed over by the police to her husband forged the following orders, Exhibits A and B.

Exhibit A.—“By order of the Superintendent of Police of Allahabad,—Perused the order No. 107, dated . . . as regards the missing of Musammat Piari. She was, on the report No. 35 entered in the general diary of this station, arrested in the evening on the 9th July, 1905, and is in the custody of Musammat Sibni, wife of Ghisu, weaver. The petitioner has been informed by order. It is therefore ordered that the

* Criminal Appeal No. 852 of 1905.

(1) (1893) I. L. R., 15 All., 210. (2) (1897) I. L. R., 25 Cal., 512.
(3) (1905) I. L. R., 28 Mad., 90.

Sub-Inspector be by an order directed to hand over the woman to the petitioner and search be stopped. Dated 17th July, 1905.”

Exhibit B.—“The Sub-Inspector of Kydganj be directed to hand over to the petitioner the woman, if found. The muharrir concerned do carry out the order to-day. Dated the 18th July, 1905.”

The lower Court (Sessions Judge of Allahabad) convicted the accused under section 465, I. P. C., in regard to each document and sentenced him to eighteen months' rigorous imprisonment for each offence, the sentences to run concurrently.

Messrs. *C. Dillon* and *G. W. Dillon*, for the appellant.

The Officiating Government Pleader (*Babu Lalit Mohan Banerji*), for the Crown.

RICHARDS, J.—Ali Hasan, the appellant in this case, has been convicted of an offence under section 465 of the Indian Penal Code. It appears that the appellant was a literate constable and as such was employed in the police office at Allahabad. His duties were of course chiefly clerical, but he must have had every opportunity of becoming aware of the various orders which were passed in ordinary course at the police station.

It appears from the evidence that Amir, the husband of a woman named Musammat Piari, was anxious to discover her whereabouts. Some time in June the woman had left her husband, and a petition was presented at the police-station asking that a search should be made for her and alleging that she had gone away with some other person and had taken property with her belonging to her husband, and at the same time offering a reward of Rs. 10 if she were found and the property recovered. It also appears that during the course of events Amir employed a pleader to assist him in discovering the whereabouts of Piari. The pleader's name was Ali Zohad, father of accused. The two documents which the appellant is alleged to have forged are set out in the evidence and referred to as exhibits A and B. Exhibit A is as follows:—“By order of the Superintendent of Police of Allahabad. Perused the order No. 107, dated . . . as regards the missing of Musammat Piari. She was on the report No. 35 entered in the general diary of this station arrested in the evening on the 9th July, 1905, and is in the custody of Musammat

1906

EMPEROR
v.
ALI HASAN.

1906

EMPHROE
v.
ALI HASAN.

Sibni, wife of Ghisu, weaver. The petitioner has been informed by order. It is therefore ordered that the Sub-Inspector be by an order directed to hand over the woman to the petitioner and search be stopped. Dated 17th July 1905." Exhibit B is as follows:—"The Sub-Inspector of Kydganj be directed to hand over to the petitioner the woman, if found. The muharrir concerned do carry out the order to-day. Dated the 18th July 1905."

The case for the prosecution is that the appellant, in order to assist his father and to bring the business in which he was engaged to a successful issue, fabricated these two documents, intending that the police officer or officers to whom they were directed would act on them as genuine documents and that the wife, Musammat Piari, would be handed over by the police to her husband.

The defence is two-fold, first, that exhibit A was in fact a copy of an original order which had been passed by the Superintendent of Police some time between the 10th and the 15th July and that it was not fabricated at all, and that the second document merely followed as a matter of course upon the first, and that, even if he were not authorized to issue the second order, no criminal offence was committed and that he committed at most an error of judgment.

I think it is clearly shown by the evidence that for some reason or other Musammat Piari was not willing to go to her husband, that the latter was very anxious to get her into his custody whether she liked to return to him or not, and it was with this object in view that he employed Ali Zohad to present the petitions. Some time prior to the date of the alleged offence the woman had been found by the police and handed over by them into the care of another woman, some relation of her own. On the question of fact I have come to the conclusion that the documents are not genuine. Mr. Douglas Straight in his evidence expressly denies that he ever made any such order as exhibit A. There is no doubt that on the 17th July he expressly refused to make an order of its nature or purport. Mr. Douglas Straight certainly would not have knowingly made an order of that nature, and the only possibility would be that

inadvertently and at the suggestion of some of his subordinates he might have made an order, some time between the 10th and the 15th, that the Musammât should be delivered over to her husband. I have already said that the appellât states expressly that Mr. Straight did make such an order and that exhibit A is a copy of it. He says that the order was made after a report had been made by a Sub-Inspector announcing the discovery of the woman and that she had been placed in the custody of her relative. Neither the report nor this order is forthcoming. Upon cross-examination Mr. Douglas Straight first of all stated that he had no recollection of the report being brought under his notice, but evidently after his memory was refreshed he stated that it was brought under his notice, but he could not say when. Now it is quite clear that exhibit A is not a copy of any order made by the District Superintendent of Police in the true sense of the expression. In the first place it is dated the 17th July, a date on which it is clear no such order was made by the District Superintendent of Police. It is said, however, that this is merely the date of the issue of the copy of the order, but on referring to the rest of the exhibit A it contains a number of other matters, a reference to the perusal of other orders and also a statement that "the petitioner has been informed by an order"—all of which go to show that exhibit A is not in any sense of the word a copy of any order actually made by the District Superintendent of Police. It would occur to me that where an order is issued from the office of the District Superintendent of Police it would in truth and in fact be a real copy of that order, bearing the same date which the order of which it was a copy bore. It is suggested that it may be the practice of the office of the Superintendent of Police of Allahabad that any official issuing an order can take the order actually passed and issue another order in different language and bearing different date, and which is in fact not the order of the District Superintendent of Police but what the person issuing the order conceives to be the purport of it. If such be the practice, it is a very inconvenient practice. But no evidence has been given to show that such a practice exists, and in the absence of such evidence, I will certainly assume that when an order is issued

1906

EMPEROR
v.
ALI HASAN.

1906

EMPEROR
v.
ALI HASAN.

it is a true copy of the order actually passed by the officer. Looking, then, at the document exhibit A, on the face of it it does not appear to be a genuine document. On the 17th July, the same date on which the appellant states that he innocently issued exhibit A, his father was at the office of the District Superintendent of Police presenting the petition which the latter expressly rejected on the grounds that the petitioner should go to the Civil Courts to get back his wife. On the 18th, the next day, the appellant by his own admission issued the order, exhibit B, without any authority save such authority as he would have had if the order of which exhibit A purports to be a copy actually existed. Now the fact that the appellant was employed as a clerk in the office of the police at Alla habad would render it reasonably probable that he would know of the various orders passed by the District Superintendent of Police, but it is still more probable that he would have had learnt the fate of a petition presented by his own father the day before concerning the matter as to which on the 17th he himself had issued exhibit A. Taking all the evidence into consideration, I do not believe the story told by the appellant that Mr. Douglas Straight ever made any such order as the order alleged to have been made by him between the 10th and the 15th July and of which exhibit A is said to be a copy.

The second ground of defence is an entirely legal ground, and has been argued at some length both by the Government pleader and the counsel for the appellant. It is contended on behalf of Ali Hasan that even assuming that he fabricated the two documents, he has not committed forgery. Under section 463 the making of a false document with any of the intents therein mentioned is forgery, and section 464 sets forth when a person is said to make a false document within the meaning of the Code. Reading the sections together, if it can be said that Ali Hasan fraudulently made exhibits "A" and "B" with the intention of causing it to be believed that they were made with the authority of the District Superintendent of Police knowing that they were not made with his authority and intended thereby to commit fraud or that fraud would be committed he is guilty of forgery. I find on the evidence that the

documents are false and that Ali Hasan made the documents with the intention of causing it to be believed that they were made with the authority of the District Superintendent of Police and that he knew they were not made with the authority of the District Superintendent of Police. I find further that he intended to deceive the officer to whom the supposed orders should come for execution, and by these means he intended that Musammât Piari should be illegally handed over to the custody of his father's client. The question is whether on this state of facts he is guilty of forgery.

I think the answer must be in the affirmative. The word "fraudulently" is defined by section 25 as follows:—"A person is said to do a thing 'fraudulently' if he does that thing with intent to defraud, but not otherwise."

There clearly was deceit. The meaning of the word "fraud" is given in Webster's Dictionary as "deception deliberately practised to gain unlawful or unfair advantage." The meaning of "defraud" is also given in the same dictionary as follows:—"to deprive of some right, interest or property by a deceitful device."

The accused by fabricating these two documents not only intended to deceive the police officer into acting upon bogus and invalid orders, but he also sought to prevent Musammât Piari retaining her freedom and going where she pleased. A number of authorities have been cited as to the meaning of the word "fraud" and the expression "intent to defraud" in the Indian Penal Code. In more than one of these cases the words of Sir James FitzJames Stephen in his History of the Criminal Law of England, Vol. II, p. 121, are cited:—"Whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime, two elements at least are essential to the commission of the crime, namely, first, deceit or an intention to deceive, or in some cases mere secrecy, and secondly, either actual injury or possible injury, or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy." In the case now under consideration had the fabricated documents been acted upon the appellant would have derived the advantage that his father's

1906

 EMPEROR
 v.
 ALI HASAN.

1906

EMPEROR
v.
ALI HASAN.

client would have succeeded in his object by means of appellant's deceit—a result which never would have been obtained if it were known that no genuine order for the handing over of the woman had ever been made. On the other hand, the woman would have lost the right she had to remain at liberty to wander as she chose. It would be difficult and it is unnecessary to attempt to measure the gain to the appellant or the loss to the woman.

If, then, Sir James FitzJames Stephen is correct in his view as to the elements which are essential to the commission of a crime in which the words "fraudulently" or "with intent to defraud" occur in the enactment defining the offence such elements are present in the case under consideration.

I do not think that I would serve any useful purpose by reviewing the numerous authorities that have been cited in the course of the arguments. I have given them my best consideration. They cannot all be reconciled. But I do not think that I have disregarded any previous decision binding on me. I am supported in the view I have taken by the full Bench rulings in *Queen-Empress v. Soshi Bhushan* (1), *Queen-Empress v. Abbas Ali* (2), and the majority of the Court in *Kotam-
raja Venkatrayadu v. Emperor* (3). In the cases before the Allahabad and Madras High Courts the charges against the accused were in respect of false certificates presented by students for the purpose of attending lectures or entering the universities.

In the Calcutta case the accused attempted to use a false certificate of competency as an engineer. It would certainly be an alarming state of the law if a man could deliberately fabricate a false order for the purpose of having another person arrested under the supposed authority of a District Superintendent of Police and be guilty of no offence under the Penal Code. The appeal is dismissed. It appears that the accused is on bail: he must surrender and serve out the remainder of his term.

(1) (1893) I. L. R., 15 All., 210. (2) (1897) I. L. R., 25 Calc., 512.
(3) (1905) I. L. R., 28 Mad., 90