

## REVISIONAL CRIMINAL.

*Before Mr. Justice Gokul Prasad.*

EMPEROR v. ABDUL GHAFUR.\*

1920  
September, 8

*Act No. XLV of 1860 (Indian Penal Code), sections 465, 471—Forgery—“ Dishonestly ”—Forging a receipt for a debt which had been written off by the creditor for the purpose of obtaining a certificate of solvency and indirectly in order to secure a contract—Wrongful gain or loss.*

A, in order that he might obtain the annulment of an order adjudicating him an insolvent, and thereafter that he might be in a position to tender for municipal contracts, produced before the receiver in insolvency a document which purported to be a receipt from a creditor for payment of debt which the creditor had in fact written off as irrecoverable. *Held* that in respect of the use of this receipt A was properly convicted under section 465 read with section 471 of the Indian Penal Code. *Queen-Empress v. Muhammad Saeed Khan*, (1) and *Queen-Empress v. Soshi Bhushan* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu Saila Nath Mukerji, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

GOKUL PRASAD, J.:—The facts which have given rise to this revision are as follows:—

The accused Abdul Ghafur was declared an insolvent by the District Judge of Allahabad. He wanted to take some contract from the Municipal Board and found that his application would not be considered until he obtained an order to the effect that he was solvent. He thereupon went to the official receiver, who told him that he could not give him a certificate of solvency until he, the accused, proved to his satisfaction that all the outstanding debts against him had been paid up. There was an amount of Rs. 73-12-0 due from accused on account of arrears of rent to the cantonment authorities. This had been written off as bad debt, the official receiver having had no funds in hand to pay it. The accused then went away and returned a few days later with a receipt showing that the aforesaid amount had been paid up. An application was then put in by the accused, accompanied by the said receipt and other receipts, for

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\* Criminal Revision No. 450 of 1920, from an order of Mau Mohan Sanyal, Sessions Judge of Mirzapur, dated the 14th of June, 1920.

(1) (1898) I. L. R., 21 All., 118.

(2) (1898) I. L. R., 16 All., 210

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the purpose of being declared solvent and annulment of the adjudication order. The suspicions of the District Judge were aroused about the genuineness of this receipt and he directed the prosecution of the accused under section 476 of the Code of Criminal Procedure. The accused has been tried and convicted under section 465/471 of the Indian Penal Code for fraudulently using as genuine the receipt aforesaid, knowing it to be forged. He was sentenced to one year's rigorous imprisonment. He appealed and the conviction and sentence have been upheld. He comes in revision to this Court. It is contended on his behalf that it has not been shown that the forged receipt was used dishonestly or fraudulently as defined by the Indian Penal Code. None of the findings of fact of the court below has been challenged before me. It is admitted that the receipt is a forged one and the whole argument has proceeded on the assumption that it is so. Babu *Saibu Nath Mukerji*, for the applicant, has addressed a very long and elaborate argument, but, put in short, it comes to this that the accused only wanted to be declared solvent, there was no injury to the public or any person intended, there was no dishonest intention, the accused was not entering into a contract with the District Judge and there was no intention to commit fraud. A large number of cases have been cited:—*Queen-Empress v. Sheo Dayal* (1), *Queen-Empress v. Girdhari Lal* (2), *Queen-Empress v. Haradhan alias Rakhal Dass Ghosh* (3), *Jan Mahomed v. Queen-Empress* (4), *Queen-Empress v. Soshi Bhushan* (5), *Queen-Empress v. Muhammad Saeed Khan* (6), *Kotamraju Venkatrayadu v. Emperor* (7), *Emperor v. Ali Hasan* (8). I do not think it necessary to discuss every one of these rulings in detail. The case put briefly comes to this, that the accused by means of a forged receipt wanted to obtain an order declaring him to be solvent, so as to enable him to apply for a contract to the Municipality. He was, because of his insolvency, under a disability and in order to get it removed he intended to obtain

(1) (1885) I. L. R., 7 All., 459.

(5) (1893) I. L. R., 15 All., 210.

(2) (1886) I. L. R., 8 All., 653.

(6) (1898) I. L. R., 21 All., 113.

(3) (1899) I. L. R., 19 Cal., 380.

(7) (1905) I. L. R., 28 Mad., 90.

(4) (1884) I. L. R., 10 Cal., 534.

(8) (1906) I. L. R., 28 All., 358.

an order from the Court by practising deceit on the Court, an order which the Court would never have passed if the real facts had come to its knowledge ; or, in other words, he intended to obtain a wrongful gain to himself, i.e., the profits from the contract with the Municipality ; vide section 23 of the Indian Penal Code. It is unnecessary for the purposes of the present case to enter into a consideration whether such wrongful gain would have of necessity entailed wrongful loss to another person, although it might be said that the person who would have suffered wrongful loss might have been a rival applicant for the contract who might have failed because of the success of the applicant's petition for the contract. I deem it unnecessary to pursue this matter further, having regard to the express wording of section 24 of the Indian Penal Code, which runs as follows :—“ Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly.” Therefore the case falls under section 464 of the Indian Penal Code. It was a forgery because the intention which the accused had was to support his claim to be declared a solvent person ; vide *Kotamraju Venkutravadu v. Emperor* (1). In the case of *Queen-Empress v. Muhammad Saeed Khan* (2) referred to above, BANERJI, J., says, at page 115 :—“ Where, therefore, there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud, and if a document is fabricated with such intent, it is a forgery. This was held by this Court in *Queen-Empress v. Soshi Bhushan* (3). A somewhat wider interpretation has been placed on the word ‘ fraud ’ by the Bombay High Court in *Queen Empress v. Vithal Narayan* (4), which was followed by the Calcutta High Court in *Lolit Mahan Sarkar v. The Queen-Empress* (5) In the case in the Bombay High Court the learned Judges accepted the interpretation of LE BLANC, J., in *Haycraft v. Creasy* (6) that ‘ by fraud is meant an intention to deceive ; whether it be from any expectation of advantage to the party himself or from ill-will towards the other is immaterial.’ ” So that in this case, looked

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(1) (1905) I L. R., 28 Mad., 90 (98).

(4) (1886) I.L.R., 13 Bom., 515 (Foot-note).

(2) (1898) I. L. R., 21 All., 113.

(5) (1894) I. L. R., 22 Calc., 313.

(3) (1893) I. L. R., 15 All., 210.

(6) (1801) 2 East, 92.

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at from any point of view the accused is guilty of the offence of using as genuine a forged document knowing it to be such, and has been rightly convicted. A good deal has been said to me about the sentence passed on the accused and it has been brought to my notice that he is the only adult male member of the family who earns the family bread and that the forgery was such a clumsy one that it could never have deceived any one and that having regard to the circumstances of the whole case, the sentence passed is unduly severe. The idea of the accused was not to cheat the cantonment authorities who had already written off the amount of the tax but it was to get the stain removed from his character which unfitted him from taking contracts and thus earning an honest living. Under these circumstances I think the sentence should be reduced to one of six months' rigorous imprisonment and I so direct. In other respects the application is dismissed.

*Sentence reduced.*

## PRIVY COUNCIL.

BAIJNATH PRASAD SINGH AND OTHERS (DEFENDANTS) v. TEJ BALI SINGH, SINCE DECEASED (PLAINTIFF).\*

[On appeal from the High Court at Allahabad.]

*Hindu law—Succession—Impartible estate—Mitakshara—Joint ancestral estate—Survivorship.*

The successor to an impartible estate which is ancestral property of a joint Hindu family governed by the Mitakshara is designated by survivorship, subject to the custom of impartibility; the eldest member of the senior branch of the family, therefore, succeeds in preference to the direct lineal senior descendant of the common ancestor if the latter is more remote in degree.

*Katama Natchiar v. The Rajah of Shivagunga* (1), *Naraganti Achamagaru v. Venkatachalapati Nayanivaru* (2), *Raja Rup Singh v. Ravi Baieni* (3) and *The Udayarpalayam Case* (4) approved and followed.

*Neelkisto Deb Burmons v. Beerchunder Thakoor* (5) and *Sartaj Kuari v. Deoraj Kuari* (6) explained and distinguished.

\* *Present*:—Lord DUNEDIN, Lord PHILLIMORE, Mr. AMBER ALL, and Sir LAWRENCE JENKINS.

- (1) (1863) 9 Moo., I. A., 543. (4) (1905) I. L. R., 28 Mad., 503; L. R., 32 I. A., 261.  
 (2) (1891) I. L. R., 4 Mad., 250. (5) (1869) 12 Moo., I. A., 53;  
 (3) (1884) I. L. R., 7 All., 1; (6) (1868) I. L. R., 10 All., 272; L. R., 11 I. A., 149. 15 I. A., 51.

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February, 7.