

be a provision which would amount to an agreement not relating to the suit.

1933

SARU
SHYAM
LAL
v.
SHYAM
LAL

We accordingly allow the appeal and setting aside the decree of the court below dismiss the suit with costs throughout.

APPELLATE CRIMINAL

Before Mr. Justice King and Mr. Justice Iqbal Ahmad
EMPEROR v. RAGHO RAM*

1933
April, 26

Indian Penal Code, section 477A—Falsification of register with intent to conceal previous embezzlement—“Intent to defraud”—“Dishonestly”—Indian Penal Code, sections 23, 24.

The word “dishonestly” does not occur in section 477A of the Indian Penal Code, and all that is necessary to bring a person within the purview of that section is that he should have altered or falsified any book or paper etc. wilfully and with intent to defraud.

The terms “fraud” and “defraud” are not defined in the Indian Penal Code, but it is clear that if the intention with which a false document is made is to conceal a fraudulent or dishonest act which had been previously committed, the intention cannot be other than an intention to defraud. The concealment of an already committed fraud is a fraud.

A document that is made with the intention of concealing a dishonest act already committed is made “dishonestly” within the meaning of section 24, read with section 23, of the Indian Penal Code as it facilitates the retention of the wrongful gain already made.

Making a false document with a view to prevent persons already defrauded from ascertaining that misappropriations had been committed, and thus to enable the person who committed the misappropriations to retain the wrongful gain which he had secured, amounts to the commission of a fraud and brings the case under section 477A of the Indian Penal Code.

* Criminal Appeal No. 501 of 1932, by the Local Government from an order of R. K. Mitter, Sessions Judge of Jaunpur, dated the 9th April, 1932.

1933

EMPEROR
v.
RAGHO
RAM

Shuja-ud-din Ahmad v. Emperor (1), *Empress of India v. Jivanand* (2), *Queen-Empress v. Girdhari Lal* (3), *Queen v. Lal Gumul* (4) and *Queen v. Jageshur Pershad* (5), dissented from.

The Assistant Government Advocate (Dr. M. Wali-ullah), for the Crown.

Mr. Gopalji Mehrotra, for the accused.

KING and IQBAL AHMAD, JJ. :—This is an appeal by the Local Government against the acquittal of Ragho Ram, respondent, of charges of falsification of accounts under section 477A of the Indian Penal Code.

Ragho Ram was the goods clerk in charge of the goods office at Jaunpur, E. I. Railway station. He misappropriated various sums of money that were paid by consignees of goods on account of the freight of consignments. He was accordingly prosecuted under section 409 of the Indian Penal Code for having committed criminal breach of trust with respect to three items and the learned Assistant Sessions Judge convicted him and sentenced him to rigorous imprisonment for three years and also to a fine of Rs.500. The conviction and sentence were on appeal upheld by the learned Sessions Judge. Ragho Ram filed an application in revision in this Court against the appellate order of the learned Sessions Judge and we have today dismissed that application.

Ragho Ram was separately tried under section 477A of the Indian Penal Code for having fraudulently falsified the delivery book with a view to cover the defalcations made by him. The evidence shows that when a consignment of goods was sent from any station to Jaunpur, an invoice was sent to Jaunpur containing details of the consignment, and this invoice was copied into the left hand page of the delivery book in the goods office and after the delivery of the goods to the consignee the right

(1) (1922) 20 A. L. J., 662.

(2) (1882) I. L. R., 5 All., 221.

(3) (1886) I. L. R., 8 All., 653.

(4) (1870) 2 N.-W. P. H. C. R., 11.

(5) (1873) 6 N.-W.-P. H. C. R., 56.

1933

EMPEROR
v.
RAGHO
RAM

hand page of the delivery book was also filled in. Sometimes through mistake it so happened that an invoice was copied in twice over in different places on the invoice side of the delivery book, and when the goods arrived and delivery was effected the relevant entry on the delivery side of the register was made as against one of the invoice entries. In such cases the second invoice entry remained without any entries being made on the delivery side, and when the mistake of the double entry of the invoice was detected a note used to be made against the second invoice entry on the delivery side, that the consignment had been twice accounted for and a reference used to be made to the page and number of the first invoice entry. The method adopted by Ragho Ram for misappropriating the freight paid to him was as follows: In cases where two consignments of similar goods were received, he misappropriated the freight of one consignment and altered the details on the invoice side of the entry relating to that consignment in such a manner as to make it appear that the consignment was the same as another consignment whose freight was duly credited, and an entry used to be made by him on the delivery side against the invoice relating to the consignment, the freight of which had been misappropriated by him, that it had been twice accounted for.

The learned Assistant Sessions Judge held that it was satisfactorily proved that Ragho Ram falsified the delivery book, and accordingly convicted him under section 477A of the Indian Penal Code and sentenced him to rigorous imprisonment for a term of three years as well as to a fine of Rs.500 and, in default of payment of fine, to six months' simple imprisonment. But as Ragho Ram had been sentenced to the same period of imprisonment in the case under section 409 of the Indian Penal Code he ordered the sentences of imprisonment in both the cases to run concurrently. The learned Sessions Judge on appeal agreed to the finding of the learned Assistant Sessions Judge that the false entries in

1933

EMPEROR
v.
RAGHO
RAM

question were made by Ragho Ram, but relying on the decision of this Court in *Shuja-ud-din Ahmad v. Emperor* (1), held that as Ragho Ram falsified the delivery book not with the intention of causing any wrongful gain or wrongful loss, or defrauding any one, but with the intention of screening his past guilt, he could not legally be convicted under section 477A of the Indian Penal Code. He accordingly acquitted Ragho Ram.

In the reported case one Shuja-ud-din who was a liquidation clerk was tried under section 408 of the Indian Penal Code for having committed criminal breach of trust with respect to various sums of money received by him in the course of his duty from different persons, which sums he ought to have deposited in the bank, and was also separately tried under section 477A of the Indian Penal Code for making false entries in the accounts maintained by him in the discharge of the duties entrusted to him as liquidation clerk. He was convicted under both the sections by the learned Sessions Judge, but on appeal a learned Judge of this Court acquitted him of the charge under section 477A of the Indian Penal Code, on the ground that the object with which the false entries were made by Shuja-ud-din "was not to defraud any one by making the false entries but it was in the main to save himself from the consequences of defalcations". In support of this view the learned Judge relied on the decisions of this Court in *Empress of India v. Jivanand* (2) and *Queen-Empress v. Girdhari Lal* (3). In those cases it was held by this Court that when a clerk, who had committed criminal breach of trust, subsequently made false entries in an account book, with the intention of concealing the criminal breach of trust committed by him, he could not be convicted of the offence of forgery under section 465 of the Indian Penal Code. In the case of *Empress of India v. Jivanand* (2) the learned Judge, after referring

(1) (1922) 20 A. L. J., 632.

(2) (1882) I. L. R., 5 All., 221.

(3) (1883) I. L. R., 8 All., 653.

1933

EMPEROR
2.
RAGHO
RAM

to the definition of "forgery" in section 463 of the Indian Penal Code, observed that in order to constitute the offence of forgery a "dishonest" or "fraudulent" intent is absolutely essential. He then referred to the definition of the word "dishonestly" in section 24 and of the word "fraudulently" in section 25 of the Indian Penal Code and formulated the question for decision in the following words: "Did the prisoner intend to cause wrongful loss or wrongful gain to any person, or did he intend to defraud any one?" He answered the question in the negative on the ground that "It is clear that intention, *ex necessitate rei*, relates to some future occurrence and not to the past. It cannot be said, when wrongful loss or wrongful gain has already been caused, or a person has already defrauded, anything can be subsequently done which could be dictated with the intention to cause that which has already occurred." The case of *Empress of India v. Jivanand* (1) was followed in the decision in *Queen-Empress v. Girdhari Lal* (2) referred to above. These cases are undoubtedly authorities for the proposition that if a person, with the intention to conceal a fraud which had been previously committed by him, makes or alters a document he cannot be said to have acted "dishonestly" within the meaning of section 24 or to have acted "fraudulently" within the meaning of section 25 of the Indian Penal Code. To the same effect are the decisions of this Court in *Queen v. Lal Gumul* (3) and *Queen v. Jageshur Pershad* (4).

We are unable to agree to the decisions of this Court to which reference has been made above. It is true that in order to constitute the offence of forgery as defined by section 463 of the Indian Penal Code it is essential that a "false document" should have been made as explained by section 464 of the Indian Penal Code. In other words, an act which is said to constitute forgery

(1) (1832) I. L. R., 5 All., 221.

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

(3) (1870) 2 N. W. P., H. C. R., 11.

(4) (1873) 6 N. W. P., H. C. R., 56.

1933

EMPEROR
V.
RAGHO
RAM

must amount to making a false document within the meaning of section 464 and as in section 464 the words "dishonestly or fraudulently" occur, a document cannot be a "false document" unless it is prepared with a dishonest or fraudulent intent.

Section 23 of the Code defines "wrongful gain", "wrongful loss" and "gaining wrongfully; losing wrongfully". The next section 24 provides that "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another is said to do that thing dishonestly." Section 25 provides that "person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise." It is manifest therefore that in order to constitute the offence of forgery a document should have been made either with the intention of causing wrongful gain or wrongful loss or with intent to defraud some person. But there is nothing in the Code to justify the assumption that the intention to cause wrongful gain or wrongful loss, or the intent to defraud, contemplated by sections 24 and 25 of the Code has reference to some future occurrence and not to the past. If the intention with which a false document is made is to conceal a fraudulent or dishonest act which had been previously committed, we fail to appreciate how that intention could be other than an intention to commit fraud. The concealment of an already committed fraud is a fraud.

The terms "fraud" and "defraud" are not defined in the Code. Sir James FitzJames Stephen in his *History of the Criminal Law of England*, volume II, page 121, observes that "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,

1933

 EMPEROR
 v.
 RAGHO
 RAM

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." "This intent", he adds, "is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage . . . A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which could not have been had if the truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to some one else, and if so, there was fraud." Where, therefore, there is an intention to obtain an advantage by deceit there is fraud and if a document is fabricated with such intent, it is forgery. A man who deliberately makes a false document in order to conceal a fraud already committed by him is undoubtedly acting with intent to commit fraud, as by making the false document he intends the party concerned to believe that no fraud had been committed. It requires no argument to demonstrate that steps taken and devices adopted with a view to prevent persons already defrauded from ascertaining that fraud had been perpetrated on them, and thus to enable the person who practised the fraud to retain the illicit gain which he secured by the fraud, amount to the commission of a fraud. An act that is calculated to conceal fraud already committed and to make the party defrauded believe that no fraud had been committed is a fraudulent act and the person responsible for the act acts fraudulently within the meaning of section 25 of the Code. Further, it is provided by section 23 of the Code that "A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully." A document that is made with the intention of concealing a dishonest act already committed is made "dishonestly" within the meaning of

1933

EMPEROR
v.
RAGHO
RAM

section 24 as it facilitates the retention of the wrongful gain already made. We hold, therefore, that if a document is prepared with the intention of concealing a fraud that had already been committed, and thus to enable the person who had made "wrongful gain" to retain the property that he had acquired by unlawful means, it amounts to a false document and the person making the document is guilty of forgery. The view that we take is in consonance with the decision of the Madras High Court in *Queen-Empress v. Sabapati* (1), the decisions of the Calcutta High Court in *Lolit Mohan Sarkar v. Queen-Empress* (2) and *Emperor v. Rash Behari Das* (3) and the decision of the Bombay High Court in *Emperor v. Balkrishna Waman* (4).

The respondent before us was charged under section 477A of the Indian Penal Code. That section was introduced in the Code for the first time by Act III of 1895. It is worthy of note that the word "dishonestly" does not occur in that section and all that is necessary to bring an accused person within the purview of that section is that he should have altered or falsified etc. any book, paper etc. "wilfully and with intent to defraud". It cannot be doubted for a moment that the falsification of the delivery book by the respondent was with a view to conceal the misappropriations made by him and thus to enable him to retain the amount misappropriated by him. It follows, therefore, that he by the falsification of accounts intended to and did derive an advantage for some time which he could not have derived if the books had not been falsified. There is, therefore, no escape from the conclusion that the falsification of the delivery book by the respondent was with intent to defraud and he was rightly convicted under section 477A of the Indian Penal Code by the learned Assistant Sessions Judge.

(1) (1888) I. L. R., 11 Mad., 411.

(3) (1908) I. L. R., 35 Cal., 450.

(2) (1894) I. L. R., 22 Cal., 313.

(4) (1913) I. L. R., 37 Bom., 666.

We accordingly allow this appeal, set aside the order of acquittal passed by the learned Sessions Judge and restore the order passed by the learned Assistant Sessions Judge. The accused shall be deemed to have been serving the sentence of imprisonment passed on him in the present case concurrently with the sentence of imprisonment passed on him on the 29th of January, 1932, in sessions case No. 32 of 1931.

1933

EMPEROR
v.
RAGHO
RAM

FULL BENCH

*Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice
Sir Lal Gopal Mukerji and Mr. Justice King*

1933
April, 27

SRI KRISHNA CHANDRA (PLAINTIFF) v. MAHABIR
PRASAD AND OTHERS (DEFENDANTS)*

Court Fees Act (VII of 1870), schedule II, article 17(ii)—Suit for a declaration that a certain decree is not binding on the plaintiff and is void and ineffectual—Cancellation not specifically prayed for—“Any other relief which may be just”—Whether consequential relief—Specific Relief Act (I of 1877), sections 39, 42.

The plaintiff prayed for a declaration that a certain decree was not binding upon him and was altogether void and ineffectual; he also added the usual prayer that any other relief which in the opinion of the court might be deemed just might also be granted. *Held* that inasmuch as the plaintiff merely asked for a declaration that the previous decree was not binding on him and was altogether void and ineffectual, his suit was one for obtaining a declaratory decree only and fell under article 17(iii) of the second schedule of the Court Fees Act and the court fee payable was rupees ten only. As regards the other relief it was *held* that such a relief is unnecessarily added in most plaints and is not intended to mean anything more than reminding the court of its power to grant other reliefs even though not specifically asked for. The words of this relief were too vague and indefinite and no specific relief was referred to therein, and it could not be regarded as one which required the demand of an additional court fee or as one which, when coupled with the declaratory relief, changed the nature of the relief claimed in the suit.

*First Appeal No. 21 of 1930, from a decree of Krishna Das, Subordinate Judge of Ghazipur, dated the 15th of October, 1929.