

(1962) 01 AHC CK 0003

Allahabad High Court

Case No: Govt. Appeal No's. 10 and 11 of 1961

State of U.P.

APPELLANT

Vs

Joti Prasad

RESPONDENT

Date of Decision: Jan. 30, 1962

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 161, 162, 423
- Penal Code, 1860 (IPC) - Section 24, 25, 420, 464, 468

Citation: AIR 1962 All 582 : (1962) 32 AWR 507

Hon'ble Judges: J.N. Takru, J; J.D. Sharma, J

Bench: Division Bench

Advocate: Government Advocate, for the Appellant; P.C. Chaturvedi and C.S. Saran, for the Respondent

Final Decision: Dismissed

Judgement

Sharma, J.

These are two connected appeals by the State against the orders of acquittal in sessions trials Nos. 6 and 6-A of 1959 by the learned Assistant Sessions Judge, Agra.

2. The Committing Magistrate had made one order of commitment in respect of the offences under Sections 420 and 468, I. P. C. In the court of session the case was divided into two trials: S. T. No. 6 of 1959 relating to the offences u/s 420 and S. T. No. 6-A of 1959 relating to the offences u/s 468, I. P. C. Almost the same documents had been exhibited in the two trials. Reference in the judgment will be made to the exhibit marks of S. T. No. 6-A of 1959.

3. The respondent Joti Prasad a resident of Mala Bhairon, P.S. Chatta, Agra, had been running two institutions, known as (1) Nikhil Bharat Varsha Vidwat Parishad Vidyapith, and (2) National Medical College. The object of the two institutions as mentioned in the Niamavali Ex. Ka-83 was to work for the progress and spread of study of Sanskrit and Hindi literature and Ayurveda etc. and to conduct oral and

written tests of students in Sanskrit and Hindi literature, Ayurveda, Homoeopathy, Music and Unani medicines by well-known learned persons of the State Universities and to award suitable certificates and diplomas. Rule 24 of the Niamavali says:

"In special cases (which shall mostly depend on circumstances) honorary degrees may be conferred on experienced, learned and literary persons and those having knowledge of Ayurveda etc.

For obtaining such honorary degrees, an applicant shall have to

(a) furnish certificates showing his qualifications from two respectable persons of his place (gazetted officers, principals, registered Vaidyas, or learned citizens);

(b) give proof of their qualifications before the Superintendent of the nearest centre, if so required by the authorities of the Vidyapith.

(c) Such applications shall be considered on receipt of the report of the Superintendent of the centre or the Examiner appointed by the Vidyapith.

(d) If, due to any particular reason, the application is not granted even after that, the fee shall in every case be refunded."

A number of persons received certificates of Vaidya Bhushan and in Homoeopathy known as H. L. M. S. The three such recipients of certificates were Radhey Lal aged 24 years, MahendraPal, aged 23 years, and Ghanshyam Singh, aged 20 years, residents of village Mukhialt, district Muzaffarnagar. Radhey Lal was assigned roll No. 19 of the examination and received the certificate Ex. Ka-34 of Vaidya Bhushan of the year 1951 in a registered V.P.P. cover for Rs. 26/-. Mahendrapal was assigned roll No. 15A and received the certificate Ex. Ka-37 of Vaidya Bhushan of 1951 in the registered V.P.P. cover Ex. Ka-39 for Rs. 26/-, and Ghanshyam Singh was assigned roll No. 19 and received the certificate Ex, Ka-40 of the year 1954 in a registered V.P.P. Ex. Ka-41 for Rs. 26/-.

4. None of these recipients of certificate had appeared at any examination and they had asked for the certificate in 1956.

5. The case for the prosecution, in brief, was: the two institutions mentioned above were bogus and did not exist and no examinations were in fact conducted by the accused, who, through Raja Ram P.W. and the Niamavali Ex. Ka-83 made a false representation that the two institutions were registered and recognised by the Government, and on the faith of the false representation Radhey Lal Mahendrapal and Ghanshyam Singh paid certain amounts to Raja Ram which were sent by him to the accused and paid Rs. 26/- each for the different V.P.Ps. The accused thereby committed offences u/s 420, I. P. C. It was further alleged that the certificates were forged, and thereby the accused committed offences u/s 468, I. P. C.

6. The accused pleaded not guilty and denied that the two institutions were bogus, or that he forged the certificates or cheated Radhey Lal, Mahendrapal and

Ghanshyam Singh. It was further stated by the accused that the certificates were granted in accordance with Rule 24 of the Niamavali and according to the wishes of the recipients of certificate and on the basis of the particulars furnished by them and the recommendations of their I Gurus and other persons of status and experience on the admission forms.

7. The trial court formulated the following propositions :

(1) That the three institutions of the accused, viz., All India Vidwat Parishad Vidyapith, Nikhil Bharat Varshiya Vidwat Parishad Vidyapith and National Homoeo Medical College in the names of which the accused has been admittedly issuing certificates to various persons are bogus institutions and they do not exist at all.

(2) That the aforesaid institutions are neither registered by the Government of India nor are they recognised by the State.

(3) That the accused made false entries (in the certificates) and false certificates marked Exs. Ka-34 (of Radhey Lal Sharma), Ka-37 (of Mahendrapal) and Ka-40 (of Ghanshyam Singh).

(4) That the aforesaid false entries and certificates were made by the accused to deceive "these persons, viz., Radhey Lal Sharma, Mahendrapal and Ghanshyam Singh, and to induce" them to part with money by making them believe that these institutions were "registered by Government and were recognised by State.

(5) That the above inducement made by the accused was false, dishonest and fraudulent.

(6) That the accused intended to defraud Radhey Lal, Mahendrapal and Ghanshyam Singh by his above inducement and by issuing forged certificates to them and thus he intended to cause injury and loss to them."

The findings recorded by the Assistant Sessions Judge are:

"(i) The institutions were not bogus and did exist since 1933.

(ii) The institutions were registered but not recognised by the Government.

(iii) The certificates Exs. Ka-34, Ka-37 and Ka40 had been wrongly and falsely prepared by the accused regarding the dates, ages, examinations, subjects and divisions.

(iv) The prosecution had failed to prove that the false entries and wrong particulars in the certificates were made by the accused either to deceive Radhey Lal, Mahendrapal and Ghanshyam Singh and others or to induce them to part with money or that the accused had obtained any advantage for himself by practising deception on any of them.

(v) There was no representation, either direct or indirect, by the accused through the Niamavali Ex. Ka-83 to Radhey Lal, Mahendrapal and Ghanshyam Singh that his institutions were registered and recognised by the State before they obtained their respective certificates.

(vi) It was not proved that the accused entered wrong particulars in the certificates Exs. Ka-34, Ka-37 and Ka-40 with any dishonest or fraudulent intention or in order to deceive and defraud Radhey Lal, Mahendrapal and Ghanshyam Singh.

8. In view of the above findings the accused was acquitted in both the sessions trials.

9. At the outset we may refer to the latest decision of the Supreme Court in [Sanwat Singh and Others Vs. State of Rajasthan](#), , in which the law applicable to an appeal against acquittal was reviewed. It was held:

" (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup and Others vs. King Emperor afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of Supreme Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently" cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

Reference may also be made to [Harbans Singh and Another Vs. State of Punjab](#), , in which it has been observed :

"As has already been pointed out less emphasis is being given in the more recent pronouncements of this Court on "compelling reasons". But on close analysis it is clear that the principles laid down by the Court in this matter have remained the same. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference."

10. On behalf of the prosecution Visheshwar Nath (P.W. 36) and Mahesh Chandra Sharma (P.W. 42) were examined to prove that the institutions known as All India Vidwat Parishad Examiners" Board and National Medical or Homeo Medical College, Agra, did not in fact exist. [His Lordship then discussed the evidence and proceeded].

11. The trial court also relied upon the fact that the Institutions were registered as indicated by Exs. Ka-32 and Kha-1 and Kha-2 and that certificates had been granted

since before 1940 and the rules and regulations had been published in the Ayurveda Bhaskar Exs. 1 and 2 of April and December, 1947. On paper the institutions could be said to exist but the real question was whether they existed in fact. The learned Assistant Sessions Judge took only a superficial view and a close examination of the evidence and circumstances leaves no doubt that the institutions were bogus and did not exist

12. The accused admitted that no examinations of Radhey Lal, Mahendrapal and Ghanshyam Singh and other recipients of the certificates were conducted, and the particulars of age etc. in the certificates were false. It is noteworthy that roll numbers were assigned and divisions given. True, that had been done since long, but it only shows that the accused could successfully dupe the people. Registration was of names only and as is clear from the evidence of P. Mukherji (P.W. 12), anybody could get the names registered in the office of the Registrar of Assurances, Calcutta. Obviously that is no proof of the existence of the institutions.

13. [His Lordship then discussed the evidence and proceeded]. Therefore, in view of all the evidence and circumstances it is impossible to hold that the institutions were real and not absolutely bogus.

14. The question whether the accused had committed an offence u/s 420, I. P. C. does not depend upon whether or not the institutions were bogus as the recipients knew that they were not to appear at any examinations. Indeed, the non-passing of an examination was the main consideration motivating them to pay for the certificates. Wrong mention of age and roll number was also immaterial. The prosecution case was that the accused made to Radhey Lal, Mahendrapal and Ghanshyam Singh a fraudulent representation through Raja Ram (P.W. 35) and the Niamavali Ex. Ka-83 that the institutions were registered and recognised by the Government. The accused denied that he had represented directly or indirectly that the institutions were recognised by the Government

15. A fraudulent representation may be made directly or indirectly. It is not the prosecution case that the accused made any representation himself. Indeed, he never came into contact with Radhey Lal, Mahendrapal and Ghanshyam Singh and not even Raja Ram. [The Judgment then discussed the evidence on the point and proceeded].

16. It is thus clear that Raja Ram was acting as an agent for the accused and therefore a fraudulent representation by him would be by and on behalf the accused.

(His Lordship then discussed the evidence in Paras 17 and 18 and proceeded).

19. The evidence of Radhey Lal was disbelieved also on the ground that he did not state u/s 161, Cr. P. C. that he had seen the Niamavali with Raja Ram. Radhey Lal stated that if the investigating officer had not asked him he may not have stated

that he had seen Niamavali with Raja Ram. We see no adequate ground to disbelieve Radhey Lal. A statement u/s 161, Cr. P. C. is generally brief and the investigating officer not having a complete picture of the occurrence asks a witness only what he considers necessary at that stage. An omission of such a nature is not a contradiction u/s 162, Cr. P. C. It was held in [Tahsildar Singh and Another Vs. The State of Uttar Pradesh](#), that the contradiction u/s 162, should be between what a witness asserted in the witness box and what he stated before the police officer and not between what he said he had stated before the police officer and what he actually stated before him. It was further held that the doctrine of recital by necessary implication, the concept of the negative or positive aspect of the same recital and the principle of inherent repugnancy may in one sense rest on omission but by construction the said omission must be deemed to be part of the statement in writing. Such omissions are not really omissions strictly so-called and the statement must be deemed to contain them by implication. It is difficult to say that the particular omission can by implication be deemed to be a part of the statement u/s 161, Cr. P. C.

20. The evidence of Mahendrapal was disbelieved on the ground that he did not state before the Committing Magistrate that he had seen the Niamavali. He too had stated that if he had been questioned in the court of the Committing Magistrate he might have replied to that effect. The statement of Ghanshyam Singh did not suffer from any such infirmity.

21. On a consideration of the evidence and circumstances we are of the opinion that Raja Ram did show the Niamavali to Radhey Lal, Mahendrapal and Ghanshyam Singh.

22. The contention on behalf of the accused is that the Niamavali does not say that the institutions were recognised by the Government. The accused knew that the institutions were not recognised by the Government, and yet unless it was made to appear that the institutions were recognised by the Government he could acquire no business and therefore he had been very circumspect in introducing that in the Niamavali. This occurs only in the heading which reads:

^g;ksxh fgUnh lkfgR; lEesy iz;kx Hkkjr /keZ egkeUMy] dk"kh] fu- Hkk- vk;qosZn fo|kihB ngyh ds leku xouZesUV ls jftLVMZ laLFkk] jktdh; ekU; fofo/k fofo|ky;s LfK fo}tuk+ r**-

A translation of the above is as follows:

"An institution registered by the Government like Sahyogi Hindi Sahitya Sammelan, Prayag, Bharat Dharma Mahamandal, Kashi, All India Ayurveda Vidyapith, Delhi, recognised by the Government and the men of learning of various Universities.

An attempt has been made to explain away the expression "Rajkiye manya". It was urged that this qualified the words "Vividh vishwa vidyalasth" but this is not correct

as there is a comma after "Rajkiye manya" showing that "Rajkiye manya" and "Vividh vishwa vidyalasth" are disjunctive clauses. We have therefore no doubt that the words "Rajkiye manya" mean and were understood to mean "recognised by Government". Evidently this was a fraudulent representation. It was on the basis of this representation that Radhey Lal, Mahendrapal and Ghanshyam Singh were each induced to part with Rs. 26/- at least, paid for the V.PPs, The accused therefore committed an offence u/s 420, I. P. C. and the order acquitting him of that offence is not maintainable.

23. A large number of persons appear to have been duped by the accused during the long period he was running the bogus institutions. He exploited fully their craze for degrees and certificates. What a sad commentary it is on the worth of certificates entitling persons without any qualifications to practise the profession of medicine and to play with the lives of people.

24. The charge against the accused in Sessions Trial No. 6-A was that he had forged the three certificates received by Radhey Lal, Mahendrapal and Ghanshyam Singh and therefore committed offences u/s 468, I.P.C. Section 468 says:

"Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

The two ingredients of an offence u/s 468, I.P.C. are (1) the document is forged, and (2) the intention of forging was that it would be used for cheating.

25. The contention on behalf of the accused is that the certificates were not forged and there was no intention on his part to use them for cheating.

Section 463 defines forgery as

"Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 464, I. P. C., First, which is relevant says:

"A person Is said to make a false document -

"First.--Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, or sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed,

sealed or executed;....."

It is urged by .the learned counsel for the State that as the certificates were ante-dated and were thus made at a time at which the accused knew they were not made they were forged. The definition of forgery in Section 463 is rather wide and includes any document forged with intent to cause damage or injury to the public but a false document has been defined in a more restricted sense for Section 464. A document made at a time at which the maker knows that it was not made will be false only if it was made dishonestly or fraudulently vis-a-vis the person affected by it. "Dishonestly", as defined in Section 24, means:

"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":

and "fraudulently" in Section 25 I.P.C. means:

"A person is said to do a thing fraudulently if he does that thing with intend to defraud but not otherwise",

If any wrongful gain or wrongful loss is not caused then a thing is not done dishonestly. Similarly, if a person is not defrauded then a thing is not done fraudulently. There can be no doubt that the accused did not make wrongful gain or cause wrongful loss to Radhey Lal, Mahendrapal and Ghansham Singh by ante-dating the certificates Nor was ante-dating done with an intent to defraud them, In a way the ante-dating was to their advantage. It was held in Kali Prasad Banarjee v. Emperor AIR 1915 Cal 786 (2), that the mere signing a telegram in another"s name where it is not shown to have been done with intent to injure him and where it does not actually injure him does not constitute the offence of forgery even though the signature may have been made without the authority of such person. The Madras High Court held in Manika Asari, v. Emperor 16 Cri LJ 246: AIR 1915 Mad 826 that where the accused made an alteration in a document intending thereby to secure a certain plot of land to which he bona fide believed himself to be entitled and of which he was in possession at the time, his act did not constitute the offence of forgery as no wrongful result was intended or could have arisen. The facts of Aparti Charan Ray v. Emperor 31 Cri LJ 1126: AIR 1930 Pat 271 were rather interesting. A husband who had been given general permission by his wife to "file papers in court on her behalf forged her signature in a plaint to save a suit from becoming barred by limitation and filed it in court on the last day of limitation. It was held by the Patna High Court that the husband, was not guilty at-forgery as there was no intention to defraud anybody though his act was an improper one. This Court held in [Chandulal Vs. Emperor](#), ; that the fabrication of false document is criminal only when certain intentions can be attributed to the person who fabricates it. It will appear that a false document an popularly understood is not the same as a false document In law. The certificates in question were no doubt false documents in the popular sense as all the material fact contained therein, namely, age, roll

number, division etc. were false, but the certificates would be false documents in law only if they were made dishonestly and fraudulently vis-a-vis Radhey Lal, Mahendrapal and Ghanshyam Singh As it was not so the certificates were not false document i u/s 464 I.P.C.

25a. It was pointed out that the certificates Exs. Ka-34, and Ka-37 were ante-dated by the accused to circumvent the provisions of the Indian Medicine Act, 1939. Section 55 of that Act provides that any person other than an association or institution recognised or authorised by the Board under this Act shall not confer, grant or issue or hold itself as entitled to confer, grant or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified or otherwise entitled to practise Ayurvedic or Unani system of medicines. Sub-clause (2) of the above section provides for punishment for those who contravene the above provision with imprisonment not exceeding six months or with fine which may extend to Rs. 500/- or with both. But a document ante-dated to defeat the provisions of an Act does not in the absence of proof that this was done dishonestly or fraudulently regarding the persons affected by it is not making a false document u/s 464 I.P.C.

26. We, therefore, hold that the accused did not commit an offence u/s 468 I.P.C.

27. In the result we allow appeal No. 11 of 1961 (arising out of Sessions Trial No. 6 of 1959) and set aside the order acquitting the respondent and convict and sentence him to two years" rigorous imprisonment u/s 420 I.P.C. We dismiss appeal No. 10 of 1961 (arising out of Sessions Trial No. 6A of 1959). The respondent shall be taken into custody forthwith and undergo the sentence passed by us.