

**(1960) 09 KL CK 0022**

**High Court Of Kerala**

**Case No:** Criminal R. P. No. 192 of 1960

Abramayi

APPELLANT

Vs

Joseph

RESPONDENT

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**Date of Decision:** Sept. 27, 1960

**Acts Referred:**

- Evidence Act, 1872 - Section 3
- Penal Code, 1860 (IPC) - Section 192, 193, 201

**Citation:** (1960) KLJ 1307

**Hon'ble Judges:** P. T. Raman Nayar, J

**Bench:** Single Bench

**Advocate:** S. Bhoothalinga Iyer, for the Appellant; P. K. Krishnankutty Menon, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Raman Nayar, J.

On 6--11--1958 the accused in this case executed a document (a certified copy of which is Ext. P5) purporting to be a lease deed in favor of the Jewish Synagogue of Ernakulam. In this document he said that he had applied to the Synagogue for permission to put up a workshop on some land belonging to the Synagogue, that on 19--10--1958 the Synagogue had granted him the necessary permission and had agreed to lease him the property for the purpose, and that he was executing the document in pursuance of that agreement. The accused himself presented the document for registration, and it was registered on 11--11--1958. Then, on 26--11--1958, the accused applied by Ext. P.2 to the Executive Authority of the Ernakulam Municipality for permission to construct a workshop on the land in question; and, although no provision of law is referred to in the application, it is clear that the application was u/s 195 of the Cochin Municipal Act (XVIII of 1113). The

application was rejected on the score that the land being a burial ground was not suitable for the purpose, and it would appear from Ext. P.4 that the Synagogue objected to the grant of permission on the ground that the lease deed was a false document and that it had never given the accused permission to build on its land. On 19--12--1958 the Manager of the Synagogue lodged a complaint against the accused with the District Magistrate, Ernakulam, for an offence punishable under the second part of section 193 of the Indian Penal Code. (The section actually mentioned in the complaint was, however, the definition section. Section 192). The learned Magistrate discharged the accused u/s 253(1) of the Criminal Procedure Code holding that the proceeding before the Executive Authority being neither a judicial nor a quasi-judicial proceeding, the making of the document in question did not amount to the fabrication of false evidence as defined by section 192, I. P. C. The complainant went in revision to the Sessions Court, Ernakulam and the learned Sessions Judge having dismissed the petition, taking the same view of the case as the District Magistrate, the complainant has come up here. Section 192, I. P. C. runs as follows :

192. Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence.

I am by no means certain that the courts below were right in the view that the section insists on the proceeding being a judicial or quasi-judicial proceeding, and that it does not apply where the proceeding is non-judicial. For, it speaks of a judicial proceeding or a proceeding taken by law before a public servant as such. It is thus clear that the section contemplates also a proceeding which is not judicial provided that the proceeding is one taken by law before a public servant as such. "Taken by law", only means, "taken under the provisions of any law", and since the application in the present case is a proceeding taken before a public servant (the Executive Authority is undoubtedly a public servant) in his capacity as such under the provisions of a statute, there can be little doubt that the requirement of, "a proceeding taken by law before a public servant as such" is satisfied. I do not know for what reason the courts below came to the view that the proceeding should be judicial in nature. If they arrived at it from the words, "taken by law", those words, as I have already explained, cannot mean that. For, a proceeding can be taken under the provisions of a "law before a public servant acting otherwise than judicially or quasi-judicially. If they came to the conclusion because there must be the intention that the false statement may appear in evidence, it seems to me that here again they are wrong, for, it is obvious that the word, "evidence" is used in the section, not

in the sense in which it is defined in section 3 of the Evidence Act as confined to something adduced before a court, but in the ordinary sense in which the word is used in law, namely, according to the Concise Oxford Dictionary, "information (given personally or drawn from documents, etc.) tending to establish fact". The word is by no means confined to something adduced before a judicial or a quasi-judicial authority. There can be evidence adduced before any person, not the less before a public servant.

2. I am told that since the section, in terms, contemplates an authority who is to form an opinion on the evidence, it necessarily implies that he must be exercising a judicial or a quasi-judicial function. I am afraid that this is too wide a view to take of what is judicial in nature. A public servant, acting as such, in a purely ministerial capacity, indeed, even a private person, has often to form an opinion upon the evidence before him, and I would certainly not go so far as to deny to public servants exercising a purely executive function, the capacity to form an opinion upon evidence. Indeed if that were the sole test, I would say that the proceeding we are now considering, a proceeding in which, on the facts ascertained by him, the Executive Authority has to decide whether he should give or withhold permission, (in other words whether any of the grounds for rejection mentioned in section 201 of the Cochin Municipal Act exist), is a quasi-judicial proceeding. In *re Mir Ekrar Ali* (I. L. R. VI Calcutta 482), *In re Juggun Lall* (VII Calcutta Law Reports 356) and *Mohesh Chandra v Emperor* (A. I. R. 1918 Calcutta 61) furnish instances where the offence was found to have been committed though the proceedings were purely ministerial, and the second of these cases lays down, what indeed is apparent from the wording of sections 192 and 193, I. P. C., that the proceeding need not be judicial.

3. I am nevertheless in agreement with the courts below that the ingredients necessary for the offence are not made out. Only my reason is different. The complaint is vague as to the proceeding in which, according to it, the accused intended that the false statement should appear in evidence. But the case before me, as in the courts below, is that the accused intended to use the document in question in the proceeding initiated by him before the Executive Authority for permission to build on the land. Now, it does not appear either from section 195 of the Cochin Municipal Act or so far as has been brought to my notice, from any of the rules made under the Act, that it is within the competence of the Executive Authority to investigate whether an applicant for permission has the right to build on the land in question. In fact, section 201 would appear to preclude him from doing so excepting where the land is Government or Municipal land. Therefore, even if it be that the accused intended that the lease deed should appear in evidence before the Executive Authority, the truth or otherwise of the alleged lease being not material to the result of the proceeding, there could have been no intention on the part of the accused that the false statement in the deed--assuming that it is false--may cause any person to entertain an erroneous opinion touching a point material to the result of the proceeding. And such an intention is an essential element of the offence. I

dismiss the petition.