

**(1908) 07 CAL CK 0021**

**Calcutta High Court**

**Case No:** No. 339 of 1908

Ram Prosad Maity

APPELLANT

Vs

The Emperor

RESPONDENT

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**Date of Decision:** July 14, 1908

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### **Judgement**

1. The present Appellant has been convicted under sec. 471 of the Indian Penal Code of fraudulently and dishonestly using as genuine a forged document knowing it to be forged and has been sentenced to rigorous imprisonment for one year under that section. Both the assessors were of opinion that the Appellant was not guilty, but the Sessions Judge disagreeing with them found the Appellant to be guilty and convicted him and sentenced him as already stated.

2. The document in respect of which the offence is said to have been committed is a receipt for certain papers which the Appellant is said to have produced before the Manager of the estate of Gopendra Nandan Das Mohapatra after that estate had been taken over by the Collector under the Court of Wards. The receipt purported to be a receipt given to the Appellant by the proprietor of the estate, Gopendra Nandan Das Mohapatra, for certain papers which the present Appellant had to deliver over as Amin or Tahsildar of the estate.

3. It appears that after the Court of Wards had taken over the estate there was some delay on the part of the Appellant in complying with the request of the Manager to hand over the papers and that in the end the accused put in the receipt which is alleged to be false. To prove that the receipt was a forged receipt, the evidence of the proprietor, Gopendra Nandan Das Mohapatra, taken before the Magistrate, was put in and received in the Sessions Court. That witness certainly denied that he had given any receipt for any papers to the Appellant, but his denial is considerably discounted by the fact that in the end of the evidence he said that his memory had become somewhat dim owing to old age and illness and that "he would not be able to give in detail an account of what he did on the day before yesterday." No other witness was produced to prove definitely that the receipt which the present

Appellant produced was not a genuine receipt which he had received from the proprietor. The receipt, as we have already stated, was for certain papers which it was alleged the accused had failed to deposit in the office of the estate and which he had failed to deliver over to the Manager on demand. The Manager after receiving the receipt from the Appellant and apparently after taking the statement of the proprietor came to the conclusion that the receipt was a false receipt and he took the sanction of the Collector on behalf of the Court of Wards to prosecute the present Appellant for forgery and for using as genuine the forged document. After, however, the sanction of the Collector had been given to the prosecution of the Appellant, a search for the papers appears to have been made in the office of the estate and from the judgment of the learned Sessions Judge it appears that some of the documents, referred to in the receipt produced by the present Appellant, were found in the office. The Manager appears to have said that after he had heard that certain documents had been discovered, he stopped the search and did not think it necessary to ascertain whether in fact the other documents referred to in the receipt had been made over to the office. The learned Sessions Judge appears to hold that on the facts found the offence of using fraudulently and dishonestly as genuine a forged document was proved. We are unable to take that view. In this case in order to support the charge against the Appellant the prosecution had to prove in the first instance that the document, (the receipt) was a forged document and not merely that it was a false document. It was therefore necessary for the prosecution to prove that the Appellant had made the document or that the document had been made by somebody else with one of the intentions stated in sec. 463, I.P.C. So far as we can gather from the judgment of the lower Court no attempt was made to prove that the receipt, if false, was made with any of the intentions stated in, that section.

4. Further, in order to support the charge under sec. 471, I.P.C., it was essential for the prosecution to prove that the user of the receipt was fraudulent or dishonest. In this case the prosecution does not appear to have made any substantial attempt to prove that in using the document, supposing it to be a false document, the accused had any fraudulent or dishonest intention. The evidence for the prosecution, we have already mentioned, fails to prove that the papers referred to in the receipt had not been all received in the office of the estate and that being so, the prosecution have in the first instance failed to prove any dishonest or fraudulent object for which the Appellant is said to have made use of the document. If in fact all the papers referred to in the receipt had been deposited by the Appellant in the Office of the estate and if afterwards he prepared a false receipt acknowledging on the part of the landlord or proprietor the receipt of those documents, that would not amount to forgery nor would the use of that document amount to fraudulently or dishonestly using a forged document as it would be clear that the documents having in fact been deposited in the office the Appellant could have had no fraudulent or dishonest intention.

5. In this case we are of opinion that the prosecution have failed to prove the facts necessary to support the conviction against the accused. We therefore set aside the conviction and sentence and acquit him and direct that he be discharged.