

(1923) 01 CAL CK 0056

Calcutta High Court

Case No: None

Kali Singh and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Jan. 10, 1923

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 195(4)
- Penal Code, 1860 (IPC) - Section 120B

Citation: 75 Ind. Cas. 533

Hon'ble Judges: Suhrawardy, J; Newbould, J

Bench: Division Bench

Judgement

1. This is an appeal by two persons who have been convicted of Various offences in connection with a fraudulent suit brought in the Munsif's Court. The main facts found are that the appellant, Kali Singh, filed a suit against one Pasindh Roy of Kanaila, in the United Provinces, in the Court of the Munsif of Rampurhat, in the District of Birbhum, in this Province. This suit was based on a hand-note which has been found to have been a forgery, and to have been fo ged by the second accused, Deb Nath Roy. Kali Singh was charged with having fraudulently used as genuine a forged document purporting to be a valuable security, punishable u/s 471 of the Penal Code, and also with laving been a member of a criminal conspiracy for the purpose of fraudulently and dishonestly making a false claim punishable u/s 209, read with Section 120B, of the Penal Code. Deb Nath was charged with forging a valuable security punishable u/s 467 of the Penal Code, with abetment of the offence of fraudulently using a forged document punishable u/s 471, read with Section 109, and also with joining in the conspiracy punishable u/s 120B with Section 209 of the Penal Code. The appellants were convicted on all these charges. Each of these accused is sentenced to three years" rigorous imprisonment on the principal charge, u/s 471 of the Penal Code in the case of Kali Singh, and u/s 467 of the Penal Code in the case of Deb Nath. Each of the accused was further sentenced to one

year's rigorous imprisonment on the conspiracy charge, and Deb Nath was also sentenced to the additional period of one year's rigorous imprisonment on the conviction of abetment of using a forged document.

2. The first point urged on behalf of the appellants is that the trial is bad for want of proper sanction. Under the proviso of Section 196-A of the Code of Criminal Procedure a sanction under that section for prosecution for criminal conspiracy to commit a non-cognizable offence is not necessary in the present case, since the provisions of Sub-section (3) of Section 195 are applicable. But it is contended that there has been no proper sanction u/s 195. It is said that the sanction is contrary to the provisions of Sub-section (4) of that section as the order of sanction does not give the necessary particulars. The order of sanction was passed on a petition (Exhibit 3) presented by the Deputy Inspector-General of Police, and the effective part of the order is that the application be allowed. If this order be read with the application all the details required by Sub-section (4) have been supplied. We think that the petition and the order should be read together. This was the view taken in the case of *Dulloo Singh v. Deputy Inspector General of Police, C.I.D., Bengal* 65 Ind. Cas. 570 : 49 C. 551 : 23 Cri. L.J. 138 : AIR (1922) (C.) 412, and we think it is the right view. It is contended that this decision is opposed to earlier decisions on this point. But we cannot find in any of those that have been cited anything which contradicts the view that the order of sanction and the petition asking for sanction should be read together. All the rulings to which our attention was directed were to the effect that the omission to give the particulars required by Sub-section (4) of Section 195 renders the sanction a bad sanction. But they did not deal with the point which arises in this case. It would appear in an earlier case, *Baperam Surma v. Gouri Nath Dutt* 29 C. 474 : 10 Ind. Sec. (N.S.) 320 that the learned Judges in discharging the Rule referred to the record of the case, and it would seem that their order was based on a consideration of the petition with the order, though this is not clearly stated in the report. In another case on the Original Side of this Court reference was certainly made to the application in order to interpret the order granting sanction since the words used by the learned Judge, when passing the order, were only "very well." This case is *Thaddeus v. Janaki Nath Saha* 21 Ind. Cas. 172 : 40 C. 423 : 14 Cr. L.J. 572. We, therefore, have no hesitation in following the recent ruling referred to above, and in holding that there is no flaw in the sanction u/s 195 of the Criminal Procedure Code.

3. The learned Sessions Judge appears to have put the facts clearly before the Jury. The only misdirection in that charge, which is suggested, is as to the legality of the conviction of Deb Nath u/s 471, read with 109, of the Penal Code, and we find it hard to see what act of abetment of using the forged document was done by him other than the acts which are covered by his conviction under the other sections. We have also some doubt as to the legality of separate sentences for all the offences of which the accused were convicted. The learned Deputy Legal Remembrancer, however, states that he does not press for upholding that part of the order which directs that

the separate sentences passed should run consecutively. We, therefore, do not think it necessary to deal at length with these points as regards the sentence.

4. In the result, we uphold the convictions of the appellants, and modify the sentences to this extent that, while upholding the terms of each sentence passed under the respective sections against each of the appellants, we direct that these sentences do run concurrently and not consecutively.