

**(1867) 12 CAL CK 0003**

**Calcutta High Court**

**Case No:** None

The Queen

APPELLANT

Vs

Shifait Ali

RESPONDENT

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**Date of Decision:** Dec. 14, 1867

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### **Judgement**

Loch, J.

Shifait Ali, Ilahi Baksh, and Mani Shah were apprehended in the act of writing the draft of a petition bearing the name of Dilawar Shah, charging Raja Lilanand Sing with the murder of a fakir, with the object, as alleged by the complainant, of extorting money from the Raja. They were committed for trial:--Shifait Ali on a charge of forgery u/s 469 of the Indian Penal Code, and the other two on a charge of abetment. The fact of the parties being concerned in concocting and writing the petition appears to be established, and the only question before us is the law point, whether any offence recognized by the Penal Code has been committed or not. The Sessions Judge holds that no offence has been committed; 1st because it did not appear that there is such a person as Dilawar Shah; 2nd, that the draft in question had never been presented in Court or shown to any person, and consequently no one had been harmed by it; and he, therefore, acquitted the prisoners without calling upon them for a defence. An appeal has been preferred by the Raja from this order, and the Court was asked to interfere under the precedent given in Gora Chand Gope (5 W.R., Cr., 45); and the record was, accordingly, sent for.

2. It is necessary, before determining whether an offence has been committed, to refer to certain sections of the Indian Penal Code. The offence of forgery is thus defined in Section 463: "Whoever makes any false document with intent to cause damage to cause any person, or to cause any person to part with property, or with intent to commit fraud, commits forgery." A person is said to make a false document, who dishonestly or fraudulently makes a document, with the intention of causing it to be believed that such document was made by, or by the authority of a person by whom or by whose authority he knows that it was not made; and, in the second explanation to Section 464, it is stated that the making of a false document

in the name of a fictitious person intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

3. Section 29 of the Penal Code describes a document in the following terms: "The word "document" denotes any matter expressed or described upon any substance, by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter. "Dishonestly," according to Section 24, is thus defined: "Whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another, is said to act dishonestly."

4. Now it is clear from the definition of forgery in Section 463, that the simple making of a false document constitutes the offence of forgery; and that it is not necessary, as apparently supposed by the Judge, that it should be issued or made known to the injury of a person's reputation before the offence is completed, or the offender liable to punishment. The publication of such a document forms no part of the offence, and the Judge is, therefore, wrong in holding that no offence had been committed, because the petition had not been presented in Court, or shown to any person. He is equally wrong in considering that no offence had been committed, because it was uncertain whether such a person, as Dilawar Shah, was in existence; for as shown by the second explanation to Section 464, it is clear that a false document may be made in the name of a fictitious person.

5. It cannot be questioned that the document has been made dishonestly, i.e., with the intention of causing wrongful gain to the makers by extorting money from the Raja, and wrongful loss to the Raja who was falsely charged with committing murder. And if the draft petition be a document, as defined in Section 29 of the Penal Code, it is evident that the prisoners were rightly charged with the offence of forgery. Now the gist of that definition lies in the last few words, "intended to be used or which may be used as evidence of that matter." The matter expressed in this paper is the fact of a murder alleged to have been committed by the Raja through his servants. Is this paper evidence of that matter? Could it, as it stands, be used as evidence against him to support the charge of murder which it sets forth? It certainly is not evidence as it stands. The paper is the mere narration of an alleged fact, and there is no one to swear to the truth of its contents. But what was the intention with which the petition was prepared, for that has also to be considered. There can, I think, be little doubt that the person who prepared the petition believed that it might be used as evidence of intention; and this being the case, the petition does become a document within the meaning of Section 29 of the Penal Code; and as it contains statements injurious to the character of Raja Lilanand Sing, and can have been prepared with no other intent than to cause injury to him, and the statements contained therein are alleged to be false, the parties concerned were

rightly committed to the Sessions on a charge of forgery. The Judge has acquitted the prisoners erroneously on a point of law; and, therefore, under the ruling of the Full Bench in the case of Gora Chand Gope (5 W.R. Cr., 45), I think the order of acquittal should be set aside, and the Judge required to apprehend the prisoners, and to pass the proper sentence upon them as guilty of the offence of forgery under the Section 463 and Section 469.

Glover, J.

6. There can be no doubt, I think, on the admitted facts of this case, that there was an offence committed u/s 469 of the Penal Code, if the written paper found in possession of the accused can be styled a "document" in the sense of Section 29. By that section, a document is any matter expressed by writing, figures, or marks "intended to be used, or which may be used, as evidence of that matter." Now the writing in question could not have been used as evidence of the alleged murder; and therefore, the case turns on the meaning of the words "intended to be used."

7. It appears to me that the accused, in concocting the anonymous petition against the Raja Lilanand Sing, to the address of the Magistrate of the district, intended that petition to be used as evidence, that a certain fakir had been beaten and killed by the Raja's orders. I do not think that it affects the case, that the petition could not have been so used; it is enough that the accused thought it could, and made their arrangements accordingly. It was not necessary, moreover (see explanation to Section 29), that the evidence was intended to be used in a Court of Justice.

8. Further, the last illustration to Section 29 describes any authority containing "instructions "to be a document. Now this petition gave information to the Magistrate of the commission of a murder, and may therefore be said to be an "instruction" on which the Magistrate would most probably have taken action.

9. On all the other points raised, I concur entirely in the opinion expressed by Mr. Justice Loch. The Sessions judge's reasons for discharging the accused are manifestly insufficient. I think, therefore, that the Judge below should be directed to try the case with reference to the words of the section above quoted.