
AIR 1925 Cal 192

Calcutta High Court

Case No: None

Imdad Mia and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: March 27, 1924

Acts Referred:

- Penal Code, 1860 (IPC) - Section 467

Citation: AIR 1925 Cal 192

Judgement

1. This is an appeal by two persons, Mazher Ahmed and Imdad Mia. They were both tried before a jury for an offence u/s 467 of the Indian Penal Code. The jury unanimously found them guilty and the Judge agreeing with the verdict of the Jury sentenced them to undergo rigorous imprisonment for a period of six months. The facts are shortly as follows: One Ali Mia brought a rent suit against one Makbul Ali on the 21st of May 1920, and Ali Mia obtained an ex parte decree in that rent suit. He realized the decretal amount by attachment on the 4th of July 1920. Makbul Ali applied to set aside the ex parte decree. This was done. The suit was re-heard and was dismissed on the 13th of May 1921. On the 23rd of March 1922, Makbul Ali applied for a refund of the amount of the ex parte decree which had been realized by execution. Ali Mia put in a petition objecting to the application on the 10th of June 1922. He alleged that the money had in fact been repaid by him to Makbul Ali and in support of his contention he filed with his petition what purported to be a receipt for the money. The receipt was found to be a forgery and hence these proceedings.

2. The accused Mazher Ahmed was the writer of the receipt and Imdad signed Makbul's name on the receipt. There is no doubt that the receipt was never signed by Makbul and we are satisfied that Imdad did not affix Makbul's name to the receipt at Makbul's request. Clearly, he was lightly convicted and we dismiss the appeal so far as Imdad is concerned.

3. So far as Mazher Ahmed is concerned upon the evidence, he wrote the body of the receipt but not the date and there is no evidence to show that he knew that it had been signed. He stated that he wrote the receipt at the request of Makbul. This is clearly untrue. But we do not think that upon the materials a conviction u/s 467 can follow so far as he is concerned. As we have already stated there is no proof that he was present when the receipt was in fact executed or that he helped any person to use it. He might have been charged under the provisions of Section 467 read with Section 109. But this was not the charge that he had to meet and having regard to the decision in the case reported as *Empress v. Riasat Ali* [1881] 7 Cal. 352 we think that he cannot be convicted of an offence u/s 467 in the absence of evidence that he was present at the execution of the receipt or that he helped any person to use it.

4. In the circumstances, the appeal succeeds so far as Mazher Ahmed is concerned and we set aside the conviction and sentence passed upon him. The bail bond is cancelled.