

GURU BIPIN SINGH

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v.

SH. CHONGTHAM MANIHAR SINGH AND ANR.

OCTOBER 11, 1996.

[G.N. RAY AND B.L. HANSARIA, JJ.]

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Penal Code, 1860 : Sections 420, 465, 468 and 500—Seeking initiation of Criminal Proceedings—Earlier a Complaint had been filed, which had ended in compromise with tendering of apology—Repetition of same offence alleged—Whether fresh cause of action accrued—Held, no legally admissible evidence available—Commission of forgery under Section 463 has to be there—Making of any false document or a part thereof must—In absence of forgery the allegation under Section 420 would fail—Section 468 intimately connected with Sections 420 and 465.

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Evidence Act : Section 33—Proviso—Reliance sought to be placed on certain statement recorded in the first complaint—Held, the same is inadmissible in law inasmuch as the requirements have not been complied with.

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Constitution of India, 1950 : Article 136—Normally invoked only where there is mis-carriage of justice—Could also be invoked where continuance of proceedings would merely be waste of court's time as no useful purpose would be served.

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A complaint had been filed in early 1966 under Section 500 IPC against the appellant. It, however ended in compromise in 1968. The appellant had tendered an apology and it was accepted. The complaint pertained to the book titled "Govinda Sangeet Lila Vilasa" which was published by the appellant in 1964 for which he had been awarded Sangeet Natak Academy Award. The award was in token of the learned presentation of the subject.

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The publication of his article by the appellant in "Dances of Manipur the classical tradition" in 1989 led to the filing of a fresh complaint on the ground that a fresh cause of action had accrued inasmuch as the appellant repeated the same offence which was the subject matter of the earlier complaint. This compendium contained an article by the appellant titled "Theory : the textual tradition" in which it had been again stated by the

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A appellant that the said book (Govinda Sangeet Leela Vilasa) had been written by King Bhagyachandra in 18th Century, a part of whose manuscript had been published at page 101. So, the appellant had reiterated his stand that the first book, which was the subject matter of 1966 complaint, is based on King, Bhagyachandra's write-up. The allegation was that Bhagyachandra being illiterate could not have written the manuscript, and the appellant in order to give credence to his book falsely represented to the readers that the same is based on manuscript written by the King.

C The Chief Judicial Magistrate, took cognizance of the complaint against the appellant under Sections 465 and 468 read with Section 420 IPC and ordered issuance of warrant of arrest against him. Appellant approached the High Court, seeking quashing of the criminal proceedings. The High Court having dismissed the revision petition, this Court has been approached under Article 136 of the Constitution.

D It was contended for the appellant that the proceeding was an abuse of the process of the Court and deserves to be quashed because of there being no legally admissible evidence against him and also because no offence had been made out. The complaint had become stale inasmuch as relating to the selfsame matter a complaint had been filed earlier under Section 500 IPC, which ended in a compromise. To re-agitate the same matter again was not for any bonafide purpose, but because of jealousy against the appellant as he was awarded by the Sangeet Natak Academy for his work, which was also published by him. It was also contended that in the earlier case an apology had been tendered by the appellant, which was accepted.

F On behalf of the respondent it was contended that a fresh cause of action had accrued inasmuch as the appellant repeated the same offence in his article published subsequently, in which it had been again wrongly stated by the appellant that the said book had been written by King Bhagyachandra.

G Allowing the appeal, this Court

HELD : 1.1. For making a false document, the person concerned has to make, sign, seal or execute the same. The appellant had not made, H signed, sealed or executed the alleged manuscript inasmuch as the allega-

tion is that the appellant had passed on some writing as representing the same to be in the hand of King Bhagyachandra. [616-D] A

1.2. It is not the allegation that the appellant had himself written the manuscript and represented it to be that of King Bhagyachandra. Despite this being the position, the requirement of Section 464 would be satisfied in view of what had been stated in Explanation 2 to Section 464. So, far the Explanation to get attracted "making of a false document" is essential; and it is this aspect which is missing in the present case. So, the allegations made in the complaint, even if true, do not make out the case of forgery. [616-F, 617-B] B

2. If forgery be not there, allegation under Section 420 would fail because the allegation is that by "forging the said book" deception was caused and members of the public were induced to purchase the same. So, forgery is the principal allegation, cheating being a consequential offence. If forgery goes, cheating cannot stand. So, the complaint does not make out a case under any of the three Sections, namely, 420, 465 and 468. Section 468 is intimately connected with Sections 420 and 465. [617-B-C] C D

3. As regards, there being no legally admissible evidence to support the case, there are three pieces of evidence upon which reliance had been sought to be placed principally. The first statement is inadmissible in law inasmuch as the requirements of the proviso to Section 33 of the Evidence Act are not satisfied. As to the second statement, it is what in legal parlance is known as "written hearsay". The third statement, though admissible, does not advance the case of the complainant as it has not been admitted that the manuscript was not of King Bhagyachandra. [617-D-H, 618-A] E

4. As no case has been made out in the complaint, continuance of the proceedings would merely be waste of Court's time and no useful purpose would be served in allowing to proceedings to continue, this Court felt inclined to draw on the power under Article 136 of the Constitution. [618-C] F

5. However, it would behove of the appellant to make a public statement that the manuscript was not in the hand of King Bhagyachandra and he undertakes not to state so in future, because such a statement has hurt the feelings of the people, who have great regard and respect for late King Bhagyachandra to whom something was imputed by the appellant without basis. [618-D-E] G H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1805 of 1996.

From the Judgment and Order dated 12.8.94 of the Assam High Court in CrI.A.No.1 of 1991.

B Ram Jethmalani, P.H. Parekh and Ms. Indu Verma for the Appellant.

Dr. Shankar Ghosh, S.K. Bhattacharya, L.K. Paonam and S. Janani for the Respondents.

C The Judgment of the Court was delivered by

HANSARIA. J. Leave granted.

D The Chief Judicial Magistrate, Imphal, took cognizance of a complaint against the appellant under sections 465 and 468 read with section 420 IPC; and ordered on 20.12.90 to issue warrant of arrest against him. He approached the Gauhati High Court, Imphal Bench, seeking quashing of the criminal proceedings. The High Court having dismissed the revision petition, this Court has been approached under Article 136 of the Constitution.

E 2. Shri Jethmalani, appearing for the appellant has contended that the proceeding is an abuse of the process of the court and deserves to be quashed because of there being no legally admissible evidence against the appellant and also because no offence has been made out even if the allegations made against the appellant in the complaint be accepted as true.

F 3. The abuse of process argument is advanced, *inter alia*, on the ground that the complaint is stale inasmuch as relating to the self-same matter a complaint had been filed in early 1966 under section 500 IPC, which became subject matter of Complaint Case No.13/66, which, however, ended in compromise in 1968. According to the learned counsel, to re-agitate the same matter in 1990 is not for any bonafide purpose but because of jealousy against the appellant for his having been awarded Sangeet Natak Akademy Award for the book titled "Govinda Sangeet Lila Vilasa" which was published by the appellant in 1964. The award was in token of the learned presentation of the subject. The abuse argument is also advanced because in the earlier case an apology had been tendered by the

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appellant which had come to be accepted; and so, the present complaint is only to harass him. A

4. Dr. Ghosh, appearing for the respondent, has urged that a fresh cause of action accrued, which led to the filing of the present complaint, inasmuch as the appellant repeated the same offence in his article published in "Dances of Manipur; the classical tradition", which saw light in 1989. This compendium contains an article by the appellant titled "Theory : the textual tradition" in which it has been again stated by the appellant that the former book (Govinda Sangeet Leela Vilasa) had been written by King Bhagyachandra in 18th century, a part of whose manuscript has been published at page 101. So, according to the learned counsel, the appellant has reiterated his stand that the first book, which was the subject matter of 1966 complaint, is based on King Bhagyachandra's write-up. The allegation is that Bhagyachandra being illiterate could not have written the manuscript; and the appellant in order to give credence to his book falsely represented to the readers that the same is based on manuscript written by the King. B
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5. On the aforesaid facts, we would not accept the contention of Shri Jethmalani that a stale matter is being reagitated of jealousy. We, therefore, do not find in the present case any abuse of the process of the court, as urged by the counsel. E

6. We may now examine the contention that the allegations made in the complaint, even if true, do not make out a case under the aforesaid penal sections. The basic allegation is that the appellant had forged the first book by stating that it was based on the manuscript of the King thereby deceiving the Government to get it published for which purpose assistance of Rs.2,500 was given and which also induced many members of the public to buy the same believing it as genuine thereby depriving them of their money. Shri Jethmalani has urged that for an offence under section 465, the same has to be "forgery" as defined in section 463, whose first ingredient is making of "any false document or a part of a document". A person is said to make a false document as per section 464, F
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First - who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was H

A made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

B Secondly - x x x x x x x x

Thirdly - x x x x x x x x

C Explanation 2 :- 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.

D 7. It is urged by Shri Jethmalani that for making a false document, the person concerned has to make, sign, seal or execute the same. It is submitted that in the present case, even as per the complaint, the appellant had not made, signed, sealed, or executed the alleged manuscript inasmuch as the allegation is that the appellant had passed on some writing as representing the same to be in the hand of the King. In the initial statement the complainant had stated that the appellant relied upon the fabricated book named above "showing the same as genuine and claiming it as written by late Maharaja Bhagyachandra..."

F 8. This shows that the allegation is that the appellant had represented some writing to be of the Maharaja, though in fact it was not so. It is not the allegation that the appellant had himself written the manuscript and represented it to be that of Maharaja. According to Dr. Ghosh, despite this being the position, requirement of 464 would be satisfied in view of what has been stated in Explanation 2 to section 464. A perusal of that Explanation shows that for it to get attracted "making of a false document" is essential; and it is this aspect which is missing in the present case, according to Shri Jethmalani. There is apparently force in the submission of Shri Jethmalani because, as already pointed out, it is not the allegation that it is the appellant who had made, signed, sealed or executed the writing in question. This apart, when we desired Dr. Ghosh to bring to our notice as to which writing of King Bhagyachandra was represented to belong to him, we were referred to a printed book titled "Rajarshi H Bhagyachandra Govinda Sangeet Leela Vilasa". This book, however, is a

Manipuri translation by one Pt. Braj Behari Sharma. We do not have the original. A

9. In view of all the above, we agree with Shri Jethmalani that the allegations made in the complaint, even if true, do not make out the case of forgery. Now, if forgery be not there, allegation under section 420 would fail because the allegation in para 5 of the complaint is that by "forging the said book" deception was caused and members of the public were induced to purchase the same. So, forgery is the principal allegation; cheating being a consequential offence. If forgery goes, cheating cannot stand. So, the complaint does not make out a case under any of the three sections, namely, 420, 465 and 468. It may be pointed out that 468 is intimately connected with 420 and 465. B C

10. Having come to the aforesaid conclusion, it is really not necessary to deal with still another submission of Shri Jethmalani that there is no legally admissible evidence to support the case of the complainant. For the sake of completeness, it may, however, be pointed out that this submission has been advanced, because in the complaint reliance has been sought to be placed principally on three pieces of evidence: (1) statement of one Madan Gopal Sharma (since deceased) which was recorded in the first complaint, and which has been enclosed as Annexure C/1; (2) a reply of one Pt. Sh. Joginder Nath Bhattacharya (also dead by now), which is enclosed as Annexure C/2; and (3) a statement of the appellant dated 8.10.66 which was made when the first complaint was filed, which is Annexure C/3. As to the first, submission of Shri Jethmalani is that the same is inadmissible in law inasmuch as the requirements of the proviso to section 33 of the Evidence Act are not satisfied. This appears to be so. As to Annexure C/2, the contention is that the same is, what in legal parlance known as "written hearsay". As to the Annexure C/3, the submission is that though the same is admissible, that proves nothing. A perusal of that statement shows that appellant stated therein that he had found the manuscript of Rajarshi and he had edited the same, for which purpose he took the help of a Sanskrit scholar for correcting grammatical pitfalls and spellings. He then brought out a modified version of the book and destroyed the original as he thought that it might cause confusion if two manuscripts were kept. The statement ended by begging pardon as the appellant felt repentant for such short sightedness. This shows that Shri Jethmalani is right in contending that the statement does not advance the D E F G H

A case of the complaint as it has not been admitted that the manuscript was not of Rajarshi Bhagyachandra.

11. The aforesaid being the legal position, we would allow the appeal by quashing the complaint. It may be mentioned that after having heard learned counsel for the parties at length, we have not felt inclined to accept the submission of Dr. Ghosh that this Court having been approached under Article 136 of the Constitution, we may not permit invocation of this power, which is used in cases where there is miscarriage of justice. We having found that no case has been made out in the complaint, continuance of the proceedings would merely be waste of court's time, as no useful purpose would be served in allowing the proceedings to continue. It is because of this that we have felt inclined to draw on our power under Article 136.

12. Before parting, we desire to state that it would behove the appellant to make a public statement, as was his offer during the abortive compromise talk, that the manuscript was not in the hand of Rajarshi Bhagyachandra and he undertakes not to state so in future. We have felt the need for such a statement because it seems to us that the claim about the manuscript being in the hand of Raja Bhagyachandra has hurt the feelings of the people of Manipur, who have great regard and respect for late King Bhagyachandra, to whom something was imputed, apparently with motive, by the appellant without basis.

S.S

Appeal allowed.