

## Reg. v. Gaganram Malji.

1869  
June 24.*Forgery—Using forged document—Charge—Indian Penal Code, Secs. 466, 467 and 471.*

The prisoner was charged under Sec. 471 of the Indian Penal Code with fraudulently using as genuine a forged document, and having been tried before a Session Judge and Jury, was convicted of that offence.

The Session Judge, considering the forged document to be of the nature of those specified in Sec. 467, sentence the prisoner to 10 years transportation.

On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in Sec. 467, and that, that not having been done, the trial by Jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be retried.

The prisoner, under Sec. 471 of the Indian Penal Code, was tried before Frances Lloyd, Session Judge of Puna, and a jury, on the charge of using as genuine a forged document and being found guilty, was sentenced to be transported for ten years.

From the conviction and sentenced to the prisoner appealed and on the 24th June 1869 the appeal was heard by WARDEN and GIBBS, JJ.

*Macpherson* (with him *Pandurang Balibhadra*) for the appellant:—The accused being charged under Sec. 471 of the Indian Penal Code with using as genuine a forged document, could not be tried by a jury, as Sec. 465, which prescribes the punishment for forging or using as genuine documents not being of the nature of those specified in Secs. 466 and 467, lays down the maximum of imprisonment as two years. The notification of Government dated 31st October 1866, authorising trials by jury at Puna is as follows:—“The Honourable the Governor in Council is pleased, under the provisions of Sec. 322 of the Criminal Procedure Code, to order that, from the 1st of January 1867 the trial by the Court of Session at Puna, of all offences for which, under Ch. XVIII. (*of offences relating to documents or trade or property marks*), the punishment awardable is death, transportation for life, or transportation or imprisonment for a period extending to ten years or upwards, and

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also of all abetments of or attempts to commit any of the offences above described, shall be by jury in the Puna District."

The Session Judge attempts to give jurisdiction to the jury by treating the document in this case as a valuable security, the using or forgery of which is, under Sec. 467, punishable with transportation for life, or imprisonment extending to a period of ten years. This, I submit, he cannot do. If he thought the document was a valuable security he should have specifically laid a charge, under Sec. 467, so that the accused might have an opportunity of adducting evidence to show that it was not a document of that nature.

*Dhirjlal Mathuradas* for the Crown:—The construction of a document is a point of law for the decision of the Judge alone. The document in question was considered by the Judge to purport to be a valuable security, the charge of using which is triable by jury.

PER CURIAM:—In this case the prisoner was charged, under Sec. 471 of the Indian Penal Code, simply with using a forged instrument. He was convicted under the same section; and then the Session Judge, because he considered the document forged, was of the special nature of those mentioned in Sec. 467, and not a simple document, as in Sec. 465, passed a sentence upon the prisoner of ten years' transportation.

We consider that the proceedings of the Session Judge must be set aside, as the charge should have been distinctly for using a forged document of the nature of those set forth in Sec. 467; otherwise, the Session Judge had no jurisdiction to try the case with a jury. Besides, there was no mention made in the charge to the jury of the nature of the document. We are, therefore, constrained to annul the proceedings, and direct that the prisoner be retried, either on the charge of using a forged document of the nature of those mentioned in Sec. 467, or on such other charge as the Magistrate may deem right.

*Conviction and sentence annulled.*