

ABEYSINGHE
v.
ATTORNEY-GENERAL

COURT OF APPEAL
ISMAIL, J.,
JAYASINGHE, J.
CA 207/93
HC COLOMBO 5064/92
FEBRUARY 18, 1998.

Fraudulent and dishonest use of documents used to support an application under Article 126 of the Constitution – S. 459 and S. 457 Penal Code – Application withdrawn – Indicted.

Five documents were tendered as being genuine documents to be used in support of an application under Article 126. The petitioners were permitted to withdraw the application, but the Supreme Court observed that most of these documents are fabrications, which have been produced to officers in the Education Department and in the proceedings before the Supreme Court. The accused-appellant thereafter was indicted under s. 457 and 459 Penal Code and found guilty by the High Court.

Held:

1. The accused-appellant who was not residing at the address furnished by him at 5th Lane, Kollupitiya, fraudulently attempted to show that he had resided there continuously by having false documents prepared and submitted along with his application for the admission of his son to Royal College. He had intended thereby to obtain a residence qualification for his son to qualify for admission to 1st year class. Having failed in this attempt the accused-appellant then attempted 3 years later to rely on these same documents which he knew to be false to support a F. R. application and to obtain an order for the admission of his child to the 3rd year class at Royal College.
2. The trial judge has upon an evaluation of the evidence at the trial found the accused guilty of all charges.

APPEAL from the judgment of the High Court of Colombo.

R. I. Obeysekera, P.C with *Chinthaka Mendis* and *Dinith Pathiraja* for the accused-appellant.

S. Samaranyake, State Counsel for the Attorney-General.

Cur. adv. vult.

March 16, 1998

ISMAIL, J.

The five charges contained in the indictment dated 15th January, 1992, against the accused-appellant were in relation to the fraudulent and dishonest use of the following documents:

1. Deed of Transfer No. 5329.
2. Monthly statement of the electricity account issued by the Ceylon Electricity Board for the month of December, 1981, on A/C No. 27442762.
3. Insurance Policy No. 31/57761 issued by the Insurance Corporation of Sri Lanka.
4. Statement of account for water consumption for the month of February, 1987, on Account No. 10/02/81842 issued by the Water Resources and Drainage Board.
5. Bank statement in respect of Account No. 24 issued by the Torrington branch of the Bank of Ceylon.

The aforesaid documents were tendered as being genuine documents to Sanath Gamini Prasanna Jayatilleke, Attorney-at-Law, to be used in support of the application, subsequently filed in the Supreme Court under Article 126 of the Constitution bearing S.C application No. 26/90, knowing or having reason to believe the same to be forged documents. They were offences each punishable under section 459 read with section 457 of the Penal Code.

The documents referred to above were all issued in the name of the accused-appellant as K. T. N. De A. Abeyasinghe. His address was given as No. 26/B, 5th Lane, Kollupitiya, Colombo 3.

The accused-appellant who is the Chief Quality Controller attached to the Tannery of the Leather Corporation was the 2nd petitioner to the aforesaid application in the Supreme Court bearing No. 26/90. The action was a sequel to his son being denied admission to enter Royal College as a student in the first year class in 1988. The petitioners sought, *inter-alia*, a determination that there has been an infringement and violation of their fundamental rights. The wife of the accused-appellant was the 3rd petitioner and their minor son was the 1st petitioner. The undated petition filed in the aforesaid application appears to have been accepted in the Registry of the Supreme Court on 3.7.90. The proxy has been filed by Prasantha de Silva, Attorney-at Law. The petition was supported by an affidavit of the accused-appellant affirmed on 3.7.90 at Colombo before P. Y. Fernando, JP of No. 7, Seevali Road, Mt. Lavinia. The averments in the petition were also supported by an affidavit dated 2.7.90 of his wife, the 3rd petitioner, affirmed before Don Henry, JP. She was then the Vice President of the Pasdun-Rata College of Education in Kalutara at which a course is conducted for students to obtain a Diploma in Education.

The petitioners claimed to have been in continuous residence at premises bearing No. 26/B, 5th Lane, Kollupitiya, Colombo 3, since 2nd May, 1981. It was situated about a quarter mile away from the entrance to Royal College. It appears that had the petitioners proved that they were continuously resident at this address for the stipulated period the child would definitely have had the necessary residence qualification to be admitted as a student to Royal College.

It appears from the averments in the petition that the accused-appellant had submitted an application dated 24th May, 1987, for admission of his son, the 1st petitioner, to the 1st year class in 1988 at Royal College. He was expected to furnish proof that he had been in continuous residence at the address furnished by him at 5th Lane, Kollupitiya, from 1st January, 1985 or earlier. The petitioners were required to attend an interview before a Board at which the documents

pertaining to and in proof of his residence were examined. The 1st petitioner was then selected for admission. His name appeared in the list dated 31st August, 1987 of students who were admitted to Royal College. He was the fourth on the list in category A. However, the petitioners were later informed that the selection of the 1st petitioner as a student for admission had been cancelled by an order of the Regional Director of Education and they were also informed that they were entitled to submit an appeal against the said decision. Having lodged an appeal forthwith, the accused-appellant met the Regional Director of Education who informed him that two of his officials who visited the premises in question had met one A. A. Ariyatilleke who informed them that no persons with the name Abeysinghe lived in those premises. The accused-appellant then informed the Regional Director that the petitioners lived in premises bearing No. 26/B and not at premises bearing No. 26/8 and that his officials had misread the assessment number furnished by him. The petitioners were then summoned before an Appeal Board on 23rd December, 1987 and the documents produced by the petitioners in proof of their residence were again examined by the Board. However, the Principal finally informed the petitioners that he had been instructed by Director of Education to inform them that the 1st petitioner has not been selected for admission to Royal College.

Subsequent attempts by the parents to admit the 1st petitioner to Royal College had failed and at the time of the filing of the aforesaid Fundamental Rights application in the Supreme Court in July, 1990, the 1st petitioner was 7 years and 9 months old and it was contended that the child should be in the third year class in school. The accused-appellant pleaded in his affidavit filed in support of his application that his sole object was to ensure that his child gets the best education available "in the proper manner without recourse to horse deals, political interference, bribery, etc". He averred in paragraph 2 of his affidavit that he has been resident at the premises bearing No. 26/B, 5th Lane, Kollupitiya, from 2nd May, 1981.

The accused-appellant filed by way of reply a further affidavit prepared in May, 1991, in the aforesaid application. He submitted annexed to it a certificate from the postal authorities dated 23.7.87 to the effect that letters have been delivered to him at this address from

May, 1981. He further explained that premises No. 26, 5th Lane, Kollupitiya is "a large palatial house (Walauwe) with numerous out houses" and that its owner had sold 10 of them as distinct portions. He also stated that A. A. Piyatillake had obtained a separate assessment for premises No. 26/8 and in paragraph 9 of the said affidavit, the accused-appellant maintained that members of the Board had visited the house in which Piyatilleke resides which is No. 26/8 and not 26/B in which he resided and that this was the cause for the reasons set out in detail in his petition supported by affidavits and documents he sought a declaration from the Supreme Court that there has been an infringement and a violation of his fundamental rights. He also claimed damages and prayed for an order that the 1st petitioner be admitted to the 3rd year class at Royal College.

The application S.C No. 26/90 appears to have been taken up for hearing in the Supreme Court on 18.6.1991. Subsequently Mr. Sanath Jayatilleke who appeared as Counsel for the petitioners tendered a motion dated 6th September, 1991, to the Supreme Court annexing to it an affidavit from the accused-appellant dated 5th August, 1991. The counsel for the petitioners moved to withdraw the aforesaid application and he tendered an apology to Court for the "obvious inconvenience to the court, its staff, the respondents and the counsel". The accused-appellant explained in this affidavit (P10) that he had decided to have his child educated at Royal College and he had set out in paragraphs 7 to 11 & 16 as reproduced below the steps that he took to achieve his purpose.

- "7. I moved around Royal College and gathered that the easiest way was through a Grama Sevaka who made all necessary arrangements for this purpose.
8. Accordingly, I attended the office of the said Grama Sevaka at Lauries Road, Bambalapitiya and explained my plight. He demanded a large sum of money. . . As I was a corporation servant he came down to Rs. 20,000/-. A few days later I paid him an advance of Rs. 12,000/-.
9. He inquired from whether I had an "address" in the area and when I confessed that I had none he took me to Piyatillake

referred to in my original papers, introduced me to him and requested him to give me any letters that would arrive at his residence.

10. Thereafter he gave me the relevant documents in instalments and in the process collected the sum due to him in instalments.
11. For the purpose of the application to Royal College, he gave me a certificate of residence which he signed in my presence.
16. I tender an unqualified apology to this Court for placing before this Court the documents referred to".

Clearly then, the accused-appellant who was not residing at the address furnished by him at 5th Lane, Kollupitiya, fraudulently attempted to show that he had resided there continuously by having false documents prepared and submitted along with his application for the admission of his son to Royal College. He had intended thereby to obtain a residence qualification for his son to qualify for admission to the first year class. Having failed in his attempt to get admission for his son by tendering these documents, the accused-appellant has then attempted three years later to rely on the same documents which he knew to be false to support a fundamental rights application in the Supreme Court and to obtain an order for the admission of his child to the third year class at Royal College.

The circumstances in which the application No. 26/90 came to be withdrawn by the petitioners have been set out by the Supreme Court in its order dated 9.9.91.

"Mr. Jayatillake moves to withdraw this application for the reasons set out in his affidavit dated 5th August, 1991.

When this application was taken up for hearing on 18th June, 1991; the Court noticed several suspicious features in regard to the several documents produced by the petitioner in proof of his residence and other matters in connection with the application for the admission of his child to Royal College. After consulting his client Mr. Jayatillake indicated that his client wished to proceed

with the application. This Court accordingly directed several public officers to be present in Court to give evidence in regard to the genuineness of various documents tendered with the petition. Some of these witnesses are present in Court today. However in his affidavit dated 5th August, 1991, tendered on 6th September, 1991, the 2nd petitioner, the father of the child has stated that he paid a sum of Rs. 12,000/- as an advance to the Grama Sevaka at Lauries Road, Bambalapitiya and that this Grama Sevaka produced many of these documents whose genuineness is in question. According to him, the Grama Sevaka introduced the 2nd petitioner to one Piyatillake to provide an 'address' within the two kilometres limit. It would therefore appear that the 2nd petitioner admits that most of these documents are fabrications, which have been produced to officers of the Education Department and in these proceedings in this Court. Serious offences under the Penal Code and other laws appear to have been committed. . ."

The petitioners were finally permitted to withdraw the SC application No. 26/90. Thereafter the accused-appellant was by an indictment dated 15.1.1992 charged with committing the offences referred to above and was tried before the High Court sitting in Colombo. The trial commenced on 11.5.92. The prosecution called several witnesses to prove the charges set out in the indictment. Despite the averments in his affidavit filed in the Supreme Court offering an apology for tendering admittedly false documents in support of his claim to residence at this false address, the accused-appellant contested the case presented by the prosecution. The Registrar of the Supreme Court, Mr. A. L. Bandula Kumara Atapattu, gave evidence and produced the relevant documents filed in the said Supreme Court Application No. 26/90. B. G. Endoris, JP, before whom the affidavit (P10) of the accused-appellant was signed and which was filed in the Supreme Court for the purpose of withdrawing the aforesaid application also gave evidence. The Attorney-at-Law who filed the proxy of the petitioners in the said application in the Supreme Court and the counsel who appeared for the petitioners including the accused-appellant were also witnesses.

The Additional Registrar of Lands Mr. Kalatuwage Wijeratne stated that the deed of transfer No. 5329 said to have been attested by one D. Athahir, Attorney-at-Law and Notary Public, has not been even

tendered for registration at the Land Registry. According to this deed it was sought to establish that the premises No. 26/B, 5th Lane, Kollupitiya, containing in extent 11 perches has been purchased by the accused-appellant on 2.5.1981 for a consideration of Rs. 800,000 from one K. D. Perera of No. 223, Deans Road, Maradana. Similarly, the prosecution led the evidence of an accountant from the Ceylon Electricity Board and the evidence of officers from the National Water Supply and Drainage Board, the Insurance Corporation, and the Torrington Branch of the Bank of Ceylon to prove that the monthly statements and the Insurance policy referred to in the charges were false documents. The case for the prosecution was finally concluded on 24.11.92 leading in evidence the documents marked P1 to P11. The accused-appellant made a detailed dock statement on 1.12.92. It had no bearing on the charges against him and it did not affect the case for the prosecution. He repeatedly claimed that an injustice had been caused to him by denying his child's admission to this school for a period of three and half years. The trial judge has upon an evaluation of the evidence at the trial and for the reasons set out in her judgment dated 18.1.93 found the accused guilty of all the charges in the indictment.

The accused was sentenced to a term of 2 years' rigorous imprisonment on each count and the said term of imprisonment was ordered to run concurrently.

At the hearing of this appeal learned counsel for the accused-appellant did not seek to challenge the conviction. We therefore affirm the conviction of the accused-appellant on each of the charges.

Learned counsel pleaded in mitigation of sentence and drew the attention of Court to the several circumstances that led to the accused-appellant being ultimately found guilty of the charges against him. We have given our most anxious consideration to the submissions of counsel. Having taken into consideration all the circumstances of this case we see no reason to interfere with the sentence.

The conviction and sentence are therefore affirmed.

JAYASINGHE, J. – I agree.

Appeal dismissed.