

1919.

Present: Shaw J.

THE KING *v.* BABA SINGHO *et al.*

2 to 5—*D.C. Negombo, 3,273.*

Fraudulently obtaining decree—Penal Code, s. 207—Forgery disclosed in evidence—Power of Attorney-General to commit case to District Court on charge under s. 207 ignoring forgery.

It is within the discretion of the Attorney-General to direct to what Court a case shall be committed, and for what offence he shall be indicted. It is only in some extreme cases that the Court of Appeal should interfere with the discretion so given to him and direct a trial in a different Court.

Where the evidence showed that the accused was guilty of forgery which was not triable by a District Court, the Appeal Court refused to direct a new trial before the Supreme Court.

THE facts appear from the judgment.

Bawa, K. C., for accused, appellants.

Grenier, C.C., for the Crown.

February 4, 1919. SHAW J.—

In this case the first and second accused have been convicted, under section 207 of the Penal Code, for fraudulently obtaining a decree against two women named Babi Nona and Alice Nona for a sum not due. The third and fourth accused have been convicted

of aiding and abetting the offence. The first and second accused have been sentenced to one year's imprisonment, and the third and fourth to six months' imprisonment. The evidence put forward on behalf of the prosecution is to the effect that the second accused at one time kept the woman Babi Nona as his mistress, and she left him some years ago, and obtained an order for maintenance against him, and was living with her mother, Alice Nona, and remaining in possession of a property which the second accused had given to her prior to the maintenance proceedings. She had also sometime ago taken some abortive proceedings against the second accused for robbery. It is suggested that the acts which the second accused has been guilty of—the subject of the present case—were inspired by anger at his former mistress and at her conduct towards him. The story told relating to the present proceedings is that the second accused, in company with the first accused, who is his servant, went to a Mr. Abeyratne, Proctor of the Supreme Court, Negombo, and gave him instructions to take proceedings in the Court of Requests against Babi Nona and Alice Nona on a promissory note alleged to have been given by them to the first accused. The first accused signed a proxy appointing Mr. Abeyratne as his proctor in the ordinary form, authorizing him, amongst other things, to proceed to judgment against the defendants. After some difficulty in effecting service, the process server appears to have affixed the summons to the premises where he understood the defendants lived. Before the case came on in Court the second accused is said to have come to Mr. Abeyratne's office, together with the third and fourth accused, who were mistresses of his servant, the first accused. These two women are said to have personated the defendants in the Court of Requests case, Babi Nona and Alice Nona, and to have expressed to Mr. Abeyratne their willingness to submit to judgment. Thereupon Mr. Abeyratne, believing their story, attended with them in Court, and the two women, when the case was called, stepped forward and consented to judgment, pretending to the Court that they were the defendants in the case. The second accused was present at the time. Some time after, in consequence of Mr. Abeyratne finding difficulty in getting his fees, he commenced proceedings under section 219 of the Code for the examination of the judgment-debtors. It was then alleged by Babi Nona and Alice Nona that they knew nothing whatsoever about the case, that they had never seen the promissory note, that they had not attended at Mr. Abeyratne's office or the Court, and that the whole thing was a fraud upon them got up by the second accused. The District Judge has heard the case, and he has written a very careful judgment upon the facts proved before him. He has accepted the evidence of the proctor, Mr. Abeyratne, and there seems to be no reason whatsoever to cast any doubt upon that gentleman's evidence, or upon his identification

1919.

SHAW J.

*The King v.
Baba Singh*

1919.

SHAW J.

*The King v.
Baba Singho*

of the women who appeared before him and in Court, and it is perfectly clear, in my opinion, that Babi Nona and Alice Nona had no knowledge of these proceedings, and did not consent to the judgment which was obtained against them by the accused.

It is suggested, on behalf of the first accused, that he did not, in fact, obtain the decree for a sum not due, because all he did was to instruct the proctor to take proceedings, and that he was not present when the case came on in Court, and took no further steps personally towards obtaining the decree; but the Judge has found, and there appears to me to be ample evidence to support his finding, that Babi Nona and Alice Nona never, in fact, signed this promissory note at all. Therefore, at the time that he instructed the proctor, he knew that he was instructing him in a fraudulent and dishonest claim, and the proxy authorized the judgment, which was obtained by his proctor on the instructions given to him. The first accused, therefore, appears to me to have directly obtained the decree, and to have obtained it fraudulently. The second accused, who appears to be the prime mover of the transaction, appealed on two main grounds, apart from the facts: First, that he ought not to have been convicted as principal, but as abettor only; and secondly, that he ought not to have been convicted of an offence against section 207, when the principal offence that he is shown by the evidence to have committed is the offence of forgery of valuable security, which was not triable before the District Court. With regard to the first objection, as I have mentioned, section 107 of the Penal Code says that an abettor who is present when the offence is committed shall be deemed to have committed the act or offence. He is, therefore, in my opinion, liable as principal, but even if this were not so, it is a matter of no importance in the present case, because the conviction for abetment of this offence would justify the sentence of one year which has been imposed upon the second accused. With regard to the other objection, it is within the discretion of the Attorney-General to direct to what Court a case shall be committed and what offence he shall be indicted for, and it appears to me that it should only be in some extreme case that the Court of Appeal should interfere with the discretion so given to him and direct a trial in a different Court. It also seems to me that such a course should be taken only in still more exceptional cases when an accused has been tried and convicted, and raises the objection only when the trial on the first indictment has been decided against him. The present case does not appear to me to be one where the accused has suffered any injustice in not being tried for the graver offence that the evidence appears to show that they have committed. I feel satisfied that the Judge has come to a right conclusion on the evidence, and that the accused have been properly convicted.

Affirmed.