

Patna High Court

Jai Narain Singh vs State on 16 September, 1955

Equivalent citations: AIR 1956 Pat 354, 1955 (3) BLJR 641, 1956 CriLJ 1091

Author: Misra

Bench: Misra, Sahai

JUDGMENT Misra, J.

1. The appellant Jainarain Singh has been convicted under Section 471, Indian Penal Code, and sentenced to undergo rigorous imprisonment for a period of five years by the Assistant Sessions Judge, Muzaffarpur. The appellant was prosecuted on a complaint filed by the Registrar of this Court on the orders passed by a Division Bench. The complaint was lodged in the court of the District Magistrate, Muzaffarpur, and bears date the 19th of March, 1952.

The case against the appellant as disclosed in the petition of complaint was that the appellant was defendant in a partition suit pending in the Court of the Additional Subordinate Judge Muzaffarpur, in which a preliminary decree was passed and against which a first appeal and cross objection were preferred in this Court. The appellant made a prayer for stay of further proceedings in the suit and this Court, however, stayed only the signing of the final decree, and as such partition proceedings were going on as usual and a pleader commissioner was appointed by the learned Additional Subordinate Judge for that purpose.

The parties, however, came to an amicable settlement in regard to the properties to be partitioned and, accordingly, a petition of compromise was drafted to be filed in the Court of the learned Additional Subordinate Judge. The petition of compromise was actually filed in the Court at Muzaffarpur. The compromise, however, could not be recorded as the records of the case were in the High Court in connection with the first appeal, being First Appeal No. 504 of 1947, preferred against the preliminary decree.

On the 13th December, 1949, the appellant had obtained a certified copy of the original compromise petition and the plaintiff Muneshwar Prasad Sahi also obtained a copy of the compromise petition on the 16th December 1949. It was discovered some time later that the original compromise petition was missing from the Court and that copies obtained by Muneshwar Pd. Sahi and appellant Jainarain Singh did not tally with each other in all respects.

The plaintiff Muneshwar Pd. Sahi maintained that his copy was the true copy of the original, whereas the appellant maintained that the copy obtained by him was the correct copy. It is stated that in the copy relied upon by the appellant there were clauses which were favourable to him and which did not find place in the copy relied upon by the plaintiff Muneshwar Pd. Sahi. The matter in dispute between the parties was brought to the notice of the learned Additional Subordinate Judge before whom the appellant challenged the copy of the plaintiff as incorrect and also questioned the validity of the compromise arrived at between them.

2. The learned Additional Subordinate Judge started an enquiry both with regard to the validity of the compromise and also with regard to which of the certified copy was genuine. The appellant at

first did not take part in the proceeding and the learned Additional Subordinate Judge, accordingly, after holding a summary enquiry, came to the conclusion that the copy filed by the plaintiff was genuine, and also ordered the compromise petition to be reconstituted on the basis of the copy put in by the plaintiff.

The appellant, however, subsequently appeared and made a prayer for re-opening the question and, accordingly, a regular proceeding under Order 23, Rule 3, Code of Civil Procedure, was started. In that proceeding the copy filed by the plaintiff Muneshwar Prasad Sahi was marked as Exhibit 7(a) and the copy filed by the appellant was marked exhibit A.

On a comparison of the two copies, the learned Additional Subordinate Judge marked out the passages in respect of which the two documents differed and these passages were marked as exhibits B to B(6). He came to the conclusion that entries exhibits B to B(6) in exhibit A were forgeries and he reaffirmed his conclusion that the compromise petition should be reconstituted in accordance with the plaintiff's copy which was marked as exhibit 7(a).

The reconstructed copy was marked exhibit 7. The compromise was accordingly recorded in terms of exhibit 7. The learned Additional Subordinate Judge felt that the loss of the document which was a petition of compromise and the forgeries in exhibit A made out a prima facie case for proceeding against the appellant Jainarain Singh under Section 476, Code of Criminal Procedure, for having made interpolations in exhibit A, and the prosecution was accordingly ordered in terms of Sections 193, 467 and 471, Indian Penal Code.

The appellant filed Criminal Miscellaneous Appeal No. 82 of 1950 of the Court of the Sessions Judge, Muzaffarpur under Section 476B, Code of Criminal Procedure, against the order of the learned Additional Subordinate Judge, directing a complaint to be filed against the appellant. The appellant also filed Miscellaneous Appeal No. 172 of 1950 in this Court against the order of the learned Additional Subordinate Judge dated the 27th March, 1950, recording the compromise on the basis of the reconstituted compromise petition. He also filed a Civil Revision application in this Court against the order for reconstruction of the petition of compromise.

3. On the 6th September, 1950 and the 9th October, 1950, Jainarain Singh applied for and obtained certified copies from the High Court of the three exhibits, exhibit 7 the reconstituted compromise petition, exhibit 7 (a) the copy filed by the plaintiff and exhibit A the copy filed by the appellant in the proceeding under Order 23 Rule 3, Code of Civil Procedure. It may be stated, however, that after the appellant obtained copies of these documents, exhibit 7 was missing from the records of the case.

Exhibit A was left on the record in a mutilated form inasmuch as several sheets which contained the entries exhibits B to B(6), which were found by the learned Additional Subordinate Judge to be interpolations, also disappeared leaving only the last three pages. Exhibit 7(a), however, was left on the record with some interpolations. Further, the appellant Jainarain Singh filed a petition in the court of the learned Sessions Judge in Criminal Misc. Appeal No. 82 of 1950, referred to above, saying that he filed the copies of three documents, namely, copy of the reconstituted compromise

petition, copy of the certified copy obtained by him and copy of the certified copy obtained by the plaintiff, that is to say, copies of exhibits 7, A and 7(a) and that originals of these documents might be called for from the High Court.

The respondent Muneshwar Pd. Sahi of Misc. Appeal No. 172 of 1950 filed a petition before the Registrar on the 6th September 1951, stating that certain documents were found missing from the record and that in some of them interpolations were made at the instance of the appellant Jainarain Singh. He alleged further in the petition that this was discovered in the lower Court when the records were received there from the High Court in connection with some other matter. The Registrar by his order dated the 7th September, 1951, directed the Deputy Registrar to hold enquiry and to make a report.

The Deputy Registrar examined the relevant witnesses and documents and found that in fact the copies held by the appellant Jainarain Singh were not genuine and that a prima facie case was made out that the three copies held by him were copies of forged documents of which Jainarain Singh was fully aware. The Deputy Registrar accordingly recommended the prosecution of the appellant Jainarain Singh for making forgeries or, at least, for using forged documents in evidence, because it appeared that by that time the appellant had filed these documents in the Court of the Sessions Judge of Muzaffarpur.

A Division Bench accordingly took up the consideration of this question and ordered that a complaint should be filed against Jainarain Singh and directed the Registrar to do so. It was in compliance with this order that the Registrar of this Court filed a complaint against the appellant in the Court of the District Magistrate, Muzaffarpur, under Section 471, Indian Penal Code, and the appellant was accordingly put up on trial.

4. The appellant pleaded not guilty and endeavoured to fasten the guilt for the loss of the documents on the respondent Muneshwar Pd. Sahi. He also took certain technical pleas to the effect that the mere filing of a certified copy of a forged document was no offence and that, in any case, he had no knowledge at any time before the documents were filed on his behalf that they contained copies of forged entries as well.

5. The learned Assistant Sessions Judge, however, came to the conclusion that the circumstances clearly indicated that the copies filed by the appellant before the Sessions Judge in Criminal Misc. Appeal No. 82 of 1950 were copies of forged documents and that the appellant knew that the copies held by him were copies of forged documents and he knowingly filed the documents in the Court of the learned Sessions Judge, and this act of his brought him within the mischief of Section 471, Indian Penal Code and as such convicted and sentenced him as I have already mentioned.

6. Learned counsel for the appellant contended, in the first place, that the conviction of the appellant is unsustainable because there is no evidence to show that the copies filed by him were copies of forged documents and, further, that if the copies are the true copies even of forged documents, the appellant cannot be convicted under Section 471, Indian Penal Code. The charge against the appellant runs thus:

"That you, on or about the 15th day of February 1951 at Muzaffarpur, in the court of the Sessions Judge, in Misc. Criminal Appeal No. 82/ 50, 'Jai Narayan Singh v. State', fraudulently and dishonestly filed and used as genuine the certified copies marked Exs. X1 and X2 in the said appeal, which you knew or had reason to believe at the time you filed and used them to be forged documents and thereby committed an offence punishable under Section 471 of the Indian Penal Code, and within the cognisance of the Court of Session and I hereby direct that you be tried by the said Court on the said charge".

It may be stated that exhibit X is the certified copy obtained by the appellant of the certified copy obtained by the plaintiff Muneshwar Pd. Sahi from the High Court which is marked exhibit 13 in the present Sessions trial, I have already referred to the fact that this document is still on the record of the High Court. The copy of the High Court was marked exhibit 1. Exhibit X is thus a copy of exhibit 7(a) as it was marked before the learned Additional Subordinate Judge in a proceeding under Order 23 Rule 3, Code of Civil Procedure.

Exhibit XI of the charge corresponds to exhibit 13 (B) of the Sessions trial and is a certified copy obtained by the accused from the High Court of the document purported to have been filed by him as compromise petition and it was marked exhibit A by the learned Additional Subordinate Judge. Several pages of exhibit A, however, are missing from the file in the High Court leaving only the last three pages. Exhibit X2 of the charge corresponds to exhibit 13(a) of the Sessions trial and is a certified copy of the compromise petition as it was reconstructed by the learned Additional Subordinate Judge and was marked exhibit 7 by him in the above proceeding under Order 23 Rule 3, Code of Civil Procedure. It may be stated that this document is missing.

Exhibit 8 which was the original draft of the compromise petition and was admitted in evidence by the learned Additional Subordinate Judge was also missing from the High Court file except the last page of it, leaving however three small pieces of paper to show that the pages were torn away. The first point to determine, therefore, is whether the copies exhibits 13, 13(b) and 13(a) obtained by the appellant Jalnarain Singh and filed by him in the Court of the learned Sessions Judge, Muzaffarpur, are genuine copies of the, documents exhibits 7(a), A and 7 of the Court of the learned Additional Subordinate Judge respectively.

Learned counsel for the appellant has made no serious attempt to support this petition, and in fact it is manifest that although the relevant pages exhibit A and exhibit 7 in toto are missing, luckily exhibit 1 of the Sessions Court is still on the record. Exhibit 1 contains clear interpolations in different ink and P. W. 7 Ajodhya Prasad, Assistant, English Department of the High Court, admitted that the portion encircled in red in exhibit 7 (a) was in entirely different ink at the time and as such it was held to have been interpolated at a subsequent stage.

The learned Assistant Sessions Judge rightly held that the forgery was palpable. We have looked into the document and I have no doubt in my mind that the portion marked in red pencil in exhibit 7(a), corresponding to exhibit 1 of the Sessions trial, is a subsequent interpolation and exhibit 13 (same as exhibit X), which purports to be a copy of exhibit 7 (a) obtained by the plaintiff, is a copy of the document exhibit 7(a) with the subsequent interpolation.

Exhibit 13 (a) purporting to be a certified copy of the re-constructed petition (exhibit 7) also contains the interpolation although the appellant knew quite well that exhibit 7 as reconstructed by the learned Additional Subordinate Judge did not contain the portion with regard to the payment of the huge amount of money by plaintiff to the appellant.

Exhibit 13 (a) yet purporting to be a copy of exhibit 7 does contain reference to the payment of these amounts to him by the plaintiff Muneshwar Pd. Sahi was held by the learned Additional Subordinate Judge to be a forgery, and it was in this respect that exhibit 7 differed from exhibit A, the copy of the compromise petition filed by the defendant before the learned Additional Subordinate Judge. It can thus be safely inferred that exhibits 13 and 13(a) are not true copies of exhibits 7 (a) and 7 as they stood before the learned Additional Subordinate Judge. It is difficult to be definite with regard to exhibit 13 (b) inasmuch as part of exhibit A of which it purports to be a copy is missing.

Mr. Baldeva Sahay, therefore, rightly did not stress the point that exhibits 13 and 13(a) must be held to be copies of exhibits 7 (a) and 7. The point, however, made by him was that it must be held that exhibits 13 and 13(a) are true copies granted to the appellant from the High Court. If there was any interpolation or forgery in respect of these two documents and if a part was missing from exhibit A, it could not be said that the appellant was responsible for such interpolation.

If the High Court issued these three documents as certified copies of the documents on record in the High Court, and if the appellant filed them in the Court of the Sessions Judge, it cannot be held that the appellant used forged documents knowing them to be forged or having reason to believe that they were forged. In my opinion, there is no substance in this contention in view of the circumstances of the present case.

The exact nature of the terms of compromise arrived at between the plaintiff and defendant in the partition suit was the subject matter of a detailed enquiry by the learned Additional Subordinate Judge and he had reconstituted the compromise petition after taking evidence and in fact had ordered the prosecution of the appellant for having filed exhibit A as a forged document. It is difficult, therefore, to believe that the appellant was not aware of the terms of the compromise, find it is still more difficult to believe that he did not know that exhibit 7 was reconstructed by the learned Additional Subordinate Judge in terms of exhibit 7 (a) filed by the plaintiff which he had held to be the genuine compromise between the parties.

As it is, however, even exhibits 13, 13 (b) and 13(a) do not tally 'inter se' and as such the learned trial Judge rightly held that the appellant was fully aware of the fact that exhibits 13 and 13(a), and possibly even exhibit 13(b), were not exact copies of the documents exhibits 7(a), 7 and A. Knowing them, thus to be copies of forged documents if he filed them in the Court of the Sessions Judge, it cannot be held that he filed the copies in a bona fide manner as the High Court has issued these copies as certified copies of the documents on record in the High Court.

7. Mr. Baldeva Sahay, however, contended further that filing of copies of forged documents is not the same thing as using the forged documents as such. Learned counsel relied in support of this contention on the decisions in the case of 'Ambika Prasad Singh v. Emperor', 35 Cal 820 (A) and in

the case of 'Krishna Govinda Pal v. Emperor', 1917 Cal 676 (AIR V4) (B). Those decisions however are clearly distinguishable and in fact the point has been the subject matter of consideration in a number of cases including the case of 'Emperor v. Mulai Singh', 28 All 402 (C), 'Hayatkhan v. Emperor', 1932 Sind 90 (AIR V19) (D), 'Girdhari Lal v. Emperor', 1925 Oudh 413 (AIR V12) (E), 'Muthiah Chhetty v. Emperor', 22 Mad LJ 181 (F) and In re 'Gopalakrishna Haggade', 11 Cri LJ 401 (Mad) (G).

It is no doubt true that their Lordships of the Calcutta High Court laid down that mere filing of a copy of a forged document may not amount to user of the forged document but where copy is filed by a party with the knowledge that it is the copy of a forged document, it has been held that filing with such knowledge will amount to user within the meaning of Section 471, Indian Penal Code. The Allahabad High Court in the above case of 88 All 402 (C) which was the case of user of the copies of forged khasras by the appellant, made the following observation on the point:

"It was further argued on appellant's behalf that there was nothing to show that he knew or had reason to believe that the khasras were forgeries. In my opinion the evidence on the record is sufficient to show that he must have known that the khasra entries were forged....It follows from this finding that his use of the khasras was a dishonest use".

In the case of 1917 Cal 676 (AIR V4) (B) it was observed:

"The copy itself is certainly not a forged document and the conditions in which it has been held that the user of a copy amounts to an offence in the cases of 'Queen v. Nujurri All', 6 WR Cr 41 (H) and 28 All 402 (C) are clearly distinguishable from this case, inasmuch as they were cases where the offender used the copy knowing or having reason to believe that the entries in the original documents were forgeries, and intending to use them for fraudulent purposes".

In the case of 35 Cal 820 (A) the document was merely filed and as soon as it was denounced as forged, no attempt was made to tender it in evidence. No question of filing of a copy was involved in the case. The decision in 11 Cri LJ 401 (Mad) (G) is too brief a judgment and although it has been held there in that the copy of a document alleged to be false does not come within the definition of a false document, no reasons have been assigned for coming to that conclusion.

The case of 22 Mad LJ 181 (P) was one where the filing was by a witness in answer to the summons of the Court under Section 162 of the Evidence Act and such production was held not to be used within the meaning of Section 471, Penal Code. The principle that filing of a copy with the knowledge that it is copy of a forged document comes within the mischief of Section 471, Penal Code, was also laid down in the case of 6 WR Cr 41 (H) as referred to in 1917 Cal 676 (AIR V4) (B).

Learned Counsel, for the appellant urged that none of the decisions which held that the filing of a copy of a forged document which is not itself forged is user as contemplated under Section 471, Penal Code, is sound as that section refers to the use of a forged document, and where the copy used is not forged, it does not come within the definition of a forged document provided in Sections 463 and 464, Penal Code.

To me it appears that these decisions are well-grounded as when a person files a copy, he is using in substance the original itself if the filing is with the knowledge that the copy is the copy of a forged document. In the result it must be held that the filing of the certified copies with the knowledge that they are copies of forged documents would amount to user of the document.

8. Learned Counsel for the appellant, however, contended that even if the position be conceded that filing of a copy of a forged document with the knowledge that it is the copy of a forged document may constitute user in the present case, at least, the charge was so framed that the appellant cannot be convicted of using a copy of a forged document. It is correct no doubt to say that the charge states that the appellant fraudulently and dishonestly filed and used as genuine the certified copies which he knew or had reason to believe at the time he filed and used them to be forged documents.

It is no doubt true also that the certified copies in fact have not been established to be forged documents and, for all one knows, these may have been issued by the High Court after the documents on record of which they purport to be copies had already been tampered with, and as such the certified copies themselves cannot be held to be forged documents.

Learned Counsel urged that the decision in 28 All 402 (C) is distinguishable on that ground inasmuch the charge in that case stated that the accused while filing copies in fact had used forged documents so that the charge was comprehensive enough to include the use of the copy as the use of the original forged document itself.

In my opinion however, the distinction is not one of substance. The charge framed in the case is sufficiently clear to give an indication to the appellant as to what he was required to meet in the case against him. It is stated that he used certified copies which even though themselves were not forged documents were not true copies of the documents of which they purported to be true copies. In my opinion, therefore, the present case is not distinguishable from the decision in the 28 All 402 (C) on account of any difference in the wording of the charge in the present case. In the case of 6 WR Gr 41 (H) also, a copy of a forged document was filed and it was held:

"It may be that in the description of the offence in the charge, there was some little inaccuracy or ambiguity, but it cannot be supposed that by this the prisoner was prejudiced. He quite knew the issue he had to defend, namely, that he used upon the proceedings before the principal Sudder Amin a document which he knew to be forged, and we have no doubt that the facts proved amount to such thing".

9. Learned Counsel for the appellant contended, in the next place, that the complaint in the present case having been filed under the orders of the High Court is void, because the user, if any, was in the court of the learned Sessions Judge of Muzaffarpur, and not of the High Court.

Learned Standing Counsel, however, drew our attention to Section 476A, Cr. P. C., which confers such power on the High Court as well, because the Court of the learned Sessions Judge is subordinate to the High Court and as such the High Court is competent to institute, a complaint under Section 476, Cr. P. C. against the appellant. This argument is, therefore, devoid of merit and

must be rejected.

10. Learned Counsel for the appellant, however, raised a further question with regard to the meaning of user in the context of this case. He drew our attention to the fact that the documents exhibits 13, 13 (a) and 13 (b) were not filed by the appellant in the Court of the learned Sessions Judge as part of the record of the case. As a matter of fact, when Jainarain Singh filed his appeal, the learned Sessions Judge wrote to the High Court for sending down the relevant documents to enable him to dispose of the appeal.

The High Court, however, would not send down records and the learned Sessions Judge, accordingly, suggested that the parties in any case might file whatever documents they had in their possession. It was in compliance with the wishes of the Court that the appellant filed exhibits 13, 13(a) and 13(b). Where, therefore, copies are filed by a party in any judicial proceeding at the request of the Court as documents which they have in their possession, it does not amount to user by the party.

The position is stronger still from the point of view of the accused person where the document sought to be made the basis of a charge under Section 471, Penal Code, has been put in the appellate Court, I am unable to see from order-sheet of the learned Sessions Judge (exhibit 17/1) that any such request was made by the learned Sessions Judge. Order No. 13 dated 15-2-1951, however, runs thus;

"The appellant files a fresh power. He files a petition with copies of certain papers and prays that their originals may be called from the High Court. The respondent also files a petition praying to call for the original compromise petition from the High Court. Enquire from the High Court whether the papers can be spared and put up on March 9 for hearing".

Order No. 14 dated 9-3-1951, shows the following:

"It appears that wrong exhibit No. 7 and part of Exhibit A have been sent. It appears that the depositions of witnesses examined in the lower Court will also be required at the hearing. Return the papers received with a request to send the entire record and put up on March 28 for hearing".

Order No. 15 dated 28-3-1951 states:

"Wait for the record from the High Court and put up on April 12 for hearing".

It seems from the above, however, that the appellant filed the documents exhibits 13, 13(a) and 13(b) with a petition that the originals of these documents might be called for from the High Court. In the circumstances, it may well be argued, as was pressed by Mr. Baldeva Sahay, that the appellant did not file these documents to be acted upon by the Court but that the substance of his prayer of 15-2-1951 was that the originals might be called for from the High Court.



The learned Sessions Judge, therefore, would have to act upon the originals and not upon the certified copies. The learned Sessions Judge had no occasion to consider the prayer of the appellant as he stated that he would wait for the record of the High Court. In the circumstances the tiling of the documents by the appellant would not amount to user by him of these documents in the appellate Court.

Learned Standing Counsel, however, contended that mere filing of a document in a Court is enough for the purpose of bringing the act within the meaning of user, and it is immaterial that the Court has not turned its attention to a consideration of the document. In support of the contention he relied upon a decision of this Court in the case of 'Baju Jha v. Emperor', 1929 Pat 60 (AIR V 16) (I). That, however, was a case in which the forged document was put forward as a genuine document in course of the trial itself by the accused persons to support their defence of actual possession.

It is no doubt true that the Court did not act upon it, taut Courtney-Terrell, C. J. relying upon a number of decisions and with reference to the expression used in Section 195(1), Cr. P. C., came to the conclusion that use of the words "produced or given in evidence" would indicate that production and giving in evidence were disjunctive. The learned Chief Justice observed: -

"The word 'or' which intervenes between the word 'produced' and the words 'given in evidence' shows that it is disjunctive and that the procedure is applicable not only in cases where the document has been given in evidence but also in cases where it has been produced and the ambit of the word 'produced' is very wide as was shown in the case of Gulabchand Rupaji v. Emperor, 1925 Bom. 467 (AIR V 12) (J) where it was held that a document presented to the Court as a compromise but rejected on the ground that it was time-barred was nevertheless 'produced' within the meaning of this clause of Section 195. It was also held in Emperor v. Bansi Sheikh, 1924 Cal. 718 (AIR V 11) (K); that a document is to be considered as produced if filed in support of a pleading even though not taken into account by the Court."

It is thus clear that in the above case the document was definitely produced in support of the case of the accused persons. The position in 1924 Cal. 718 (AIR V 11) (K), was that certain documents were produced along with the pleading in terms of Order 13 Rules 1, 2, and 3, Civil P. C. It should therefore, be taken to be user within the meaning of the section. It was also argued in that case that where documents were filed in a Civil appeal under Order 41 R 27, Civil P. C., unless the Court accepted the document in evidence it would not amount to user.

The Division Bench of the Calcutta High Court negatived the argument and held that if a person puts forward a document as supporting him in any manner, whether that document is acted upon by the Court or used in evidence is immaterial for the purposes of constituting user of the document by the party within the meaning of Section 471, Penal Code.

The facts of that case were, however, that a kebalā which was held to be forged document was set up in defence by the accused as supporting his title and in the memorandum of appeal he took as one of his grounds of appeal that the Munsif ought to have accepted his document which he had tendered in his Court, and on that allegation, he filed the two documents one of which was the subject matter

of the prosecution. The pleader who filed the document on behalf of the accused also gave evidence that the document had been made over to him by the accused for filing in Court. Those circumstances are absent in the present case.

Even if Mr. Baldeva Sahay's argument is not accepted with reference to the order-sheet that documents were produced in compliance with the wishes of the Court (although I do not propose to decide that such production of a forged document would necessarily be innocent), in any case, the petition filed by the appellant to the effect that the documents were being filed not as evidence to be acted upon by the Court, but for the purposes of calling for the originals from the High Court, was not in fact disposed of by the learned Sessions Judge and his request to the High Court for sending the necessary documents in the ordinary course was not complied with.

In the circumstances, it cannot be successfully contended that the appellant produced the documents in question or used them within the meaning of Section 471, Penal Code, or in terms of Section 195 (1) clause (c), Cr. P. C.

I have strong suspicion in my mind that the move was a clever device on the part of the appellant because he knew that the originals to be sent for from the High Court were not available and as such the Court might think it advisable to act upon the copies produced by him in the Court and he might thus succeed in the appeal and the order for prosecution by the learned Additional Subordinate Judge might be set aside by the learned Sessions Judge.

That, however, does not enable me to get rid of the difficulty that the appellant had filed the documents with a petition that the originals might be called for and as such it could not be urged that he had used these documents in support of his case. No copy of the grounds of appeal filed by him before the learned Sessions Judge also is on the record of this case and it is difficult to say what were the actual grounds set up by him.

These features distinguish the present case from all other cases which have been referred to above and in which it was held that mere filing of the documents would amount to producing the document in Court and would constitute user within the meaning of Section 471, Penal Code. In the result, however reprehensible the conduct of the appellant might be, it is difficult to uphold his conviction on the charge of user of the document by him.

11. The appeal must accordingly be allowed and the conviction and sentence passed upon the appellant must be set aside. The appellant is acquitted of the charge under Section 471, Penal Code, of which he was found guilty.

Sahai, J.

12. I agree with the order proposed but I desire to make some observations.

13. Exhibits 13, 13(a) and 13(b) have not been proved to be forged copies. They are alleged to be copies of documents in which forged interpolations are said to have been made. I am inclined to

agree with my learned brother that user of genuine certified copies of documents which are forged within the knowledge of the person who uses the certified copies would amount to an offence under Section 471, Penal Code. A perusal of Sections 61, 62 and 63, Evidence Act, supports this view. Section 61 lays down that the contents of documents may be proved either by primary or by secondary evidence.

Section 62 provides that "primary evidence" means the production of the document itself for the inspection of the Court. Section 63 gives details of what would amount to secondary evidence. Certified copies are mentioned as being secondary, evidence of the original documents. When, therefore, a person puts in evidence certified copies of certain documents, he clearly does so in order to prove the contents of the original documents.

That being so, he uses the original documents themselves by filing the certified copies. I do not consider it necessary however, to give my final decision on this point because the appeal can be disposed of on another point.

14. My learned brother has not been able to accept the argument that the defect in the charge framed in this case is substantial. I am of opinion, however, that the defect is material. The charge states that the appellant used as genuine the certified copies (Exs. X, XI and X2, equivalent respectively to Exs. 13, 13(b) and 13(a) of the Sessions Court) which he knew or had reason to believe to be forged documents. This is entirely, Incorrect because, as I have already mentioned, these documents have not been proved to be forged but the originals of these documents have been proved to be forged.

The charge, as framed, cannot therefore, be said to be sufficient notice to the appellant to defend himself against an allegation that the originals of the certified copies are forged. I do not, however, wish, to discuss this point any further because I agree with my learned brother that the appellant's act of filing these certified copies (Exs. 13, 13(a) and 13(b)) in the District Judge's court in Miscellaneous Appeal No. 82 of 1950 cannot amount to user within the meaning of Section 471, Penal Code In the circumstances of this case.

15. Section 471 provides for punishment of a person who "fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document". Section 195(1) (c), Cr. P. C., lays down, among other things, that no Court shall take cognizance of an offence under Section 471, Penal Code, without a complaint in writing by a Court in which the forged document in question is produced or given in evidence. This shows that a person may be said to have used a document even though he has merely produced it in a Court but it is clear that the offence will be complete only when he produces the document for using it. All cases of production of forged documents by a person will not, therefore, amount to their user within the meaning of Section 471, Penal Code.

As my learned brother has shown, the appellant filed Exhibits 13, 13 (a) and 13 (b) before the District Judge and, while filing them, made a prayer that the originals be called for from the High Court. We may suspect that this was a clever, ruse of the appellant because he knew that the

originals would not be forthcoming.

But we are unable to hold that he wanted the District Judge to take these documents into consideration as proving the contents of their originals.

Thus, he cannot be said to have used these documents or to have used their originals by the mere act of producing them before the District Judge.

I need not repeat the other reasons which my, learned brother has given on this point. In these circumstances, I agree that the appeal should be allowed.