

Harish Chandra Vs. Rex

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Court : Allahabad

Decided On : Jun-30-1948

Reported in : 1949CriLJ31

Judge : Seth J.

Appellant : Harish Chandra

Respondent : Rex

Judgement :

ORDER

Seth, J.

1. The applicant, Harish Chandra, has been convicted of an offence under Section 419, Penal Code, on the following facts found by the Additional Sessions Judge of Jaunpur, which have not been disputed before me.

2. The applicant alighted from a train at the Dobhi station on the morning of 20-12-1946. He met Deonath Tewari, the station master of that railway station and represented to him that he was Marketing Inspector, that Lalganj and Deogaon were within his circle and that he could help the station master in getting cloth. He also suggested that he was going that way and would like to hand over the cloth if the station master sent a man with him. Believing these representations the station master called a pointsman, named Ramjee Sharma, and handed over Bs. 100 to

the pointsman with the direction that that sum might be given to the applicant on receipt of cloth. Another person, named Jaggan, who was working as a pointsman in the same railway station, believing in the representations made by the applicant handed over a sum of Rs. 9 to the applicant in order to get cloth. The applicant along with Ramjee Sharma boarded an ekka and reached the Shop of one Raghunandan at Deogaon. The applicant then told Ramjee Sharma that if he also entered the shop of Raghunandan, he would not get the cloth. On this representation he obtained the sum of Rs. 100 from Ramjee Sharma and also obtained a wrist watch from Ramjee Sharma. It is not clear why the wrist watch was handed over by Ramjee Sharma to the applicant. Possibly it was due to some farther representation made by the applicant to Ramjee Sharma and a desire on the part of Ramjee Sharma to get some cloth for himself also. The applicant disappeared with the money and the watch received by him and Ramjee Sharma, in spite of efforts, could not get hold of him.

3. On these facts the applicant was convicted by the trying Magistrate under Sections 419 and 420, Penal Code, both. On appeal his conviction under Section 419, Penal Code, was maintained, but his conviction under Section 420, Penal Code, was set aside on the ground that he had already been convicted under Section 419, Penal Code.

4. It has been contended before me that on the facts stated above an offence under Section 419, Penal Code, has not been made out.

5. Quite apart from the fact that I am of the view that the conduct of the applicant described above constitutes an offence under Section 419, Penal Code, I am of the opinion that this is pre-eminently a case in which the orders passed by the Courts below should not be interfered with in a revision. Even if I have come to the conclusion that the Courts below have erred in law, in any way, in this case I would have declined to exercise the discretion vested in me under Section 439, Criminal P. C, I am, however, satisfied that on the facts stated above, the applicant is guilty of an offence under Section 419, Penal Code. The offence of cheating is defined in Section 415, Penal Code, as follows:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

6. In order to constitute an offence of cheating three elements are required:

(1) There must be deception practised upon a person.

(2) By that deception the person must be induced to do or omit to do something which he would not have done or omitted to do, had he not been deceived.

(3) Such act or omission must cause, or be likely to cause, to the person deceived damage or harm in body, mind, reputation or property.

7. There is no doubt in this case that deception was practised upon the Station Master, Deonath Tewari. There is further no doubt that by reason of this deception Deonath Tewari was induced to hand-over a sum of Rs. 100 to Ramjee Sharma. I am further satisfied that the applicant intended the sum of Rs. 100 to be handed-over to Ramjee Sharma in order to facilitate his design to further deceive Ramjee Sharma and obtain the sum of Rs. 100 from him.

8. In my opinion, therefore, the applicant by deceiving Deonath Tewari, fraudulently induced him to deliver a sum of Rs. 100 to Ramjee Sharma. The learned Counsel for the applicant has urged that this does not constitute an offence under Section 415, Penal Code, because this by itself did not cause any harm to Deonath Tewari in body, mind, reputation or property. It is not necessary to constitute an offence of cheating under Section 416, Penal Code, that the act which the person deceived is induced to do should actually cause harm to him. It is enough that the act which the person deceived has been induced to perform is likely to cause damage or harm to him. In the present case, having regard to all the circumstances, there is no doubt that the parting of Rs. 100 by Deonath Tewari to Ramjee Sharma, who was to accompany the applicant was an act which

was likely to cause damage or harm to Deonath Tewari. This was fully known to and was intended by the applicant. The case would also come within the expression: intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived

Deonath Tewari would not have handed-over the sum of BS. 100 to Ramjee Sharma and would not have asked Ramjee Sharma to accompany the applicant if he had not been deceived. Section 416, Penal Code, defines cheating by personation and provides that a person is said to cheat by personation if he cheats by pretending to be some other person. The applicant has, therefore, committed an offence of cheating by personation.

9. The learned Counsel for the applicant has relied upon a case of the Punjab Chief Court, *Emperor v. Muhammad Shah and Anr.*, 20 CE. L. J. 77 : A.I.R. (6) 1919 Lab. 473, in which it has been held that to constitute an offence of cheating under Section 415, Penal Code, the damage or harm caused, or likely to be caused to the person deceived in mind, body, reputation or property must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom.

10. With great respect to the learned Judges, who have decided this case, I am unable to agree with this interpretation of the section. I have not been able to discover any reason to insert the word 'necessarily' in the section when the Legislature has not done it. In my opinion, to do so would be to violate well settled canons of interpretation.

11. The function of a Court is to interpret the language of a statute. It is not the province of a Court to scan its wisdom or policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words.

12. Modification of the language of a statute is permissible only under exceptional circumstances, such as mentioned in the following quotation:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning.' (Maxwell, on the Interpretation of Statutes, Seventh Edition, page. 198.)

13. The language of Section 415, Penal Code, clearly indicates the intention of the Legislature and does not in any way lead to the conviction that the_ Legislature could Hot possibly have intended what its words signify. As observed by Lord Bramwell in *Cowper Essex v. Acton Local board*, (1889) 14 A. C. 153 (169) : S8 L. J. Q. B. 594) 'The words of a statute never should be added to or substracted from, without almost a necessity,'

14. It has been held by Patterson J. in *King v. Burrell*, (1840) 12 A. & E. 460 (469) : 9 L. J. Q, B. 387) that the general rule is 'not to import into statutes words, which are not to be found there.'

15. I am unable to discover any necessity for supplying the word 'necessarily' before the word 'likely' or for departing from the general rule formulated by Patterson J. It further appears to me that 'necessarily' is not an apposite adverb to modify the meaning of 'likely.' The dictionary meaning of the word 'necessary' is, 'that must be; that cannot be otherwise; unavoidable,' 'Necessarily' is an adverb from this word and is therefore cognate in its connotation. The dictionary meaning of the word 'likely' is 'probable.' It would thus appear that the two words connote contradictory ideas. Anything which is 'likely' may not happen, but 'necessarily' requires that it must happen.

16. In my opinion, therefore, the insertion of the adverb 'necessarily' before the word 'likely' can result only in confusing the plain and simple meaning of the language used in the statute. According to the plain language of the section the evidence on the record proves the charge against the applicant. There is thus no force in this application in revision. It is accordingly rejected. The applicant shall surrender50-Cr. L. J. 5 & 6 to his bail and serve out the rest of the sentence.

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