

State Vs. Nihar Ranjan Guha

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Court : Allahabad

Decided On : Oct-01-1954

Reported in : AIR1955All608; 1955CriLJ1439

Judge : Asthana, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 193

Appeal No. : Criminal Misc. No. 1230 of 1954

Appellant : State

Respondent : Nihar Ranjan Guha

Advocate for Def. : R.C. Ghatak, Adv.

Advocate for Pet/Ap. : J.R. Bhatt, Asst. Govt. Adv.

Disposition : Application rejected

Judgement :

ORDER

Asthana, J.

1. The complainant in this case is one Shri Mohan Lal, a retired Station Master. In 1943 he sent Rs. 2,500/- to the Mica Mining and Trading Company Limited, Calcutta, for the purchase of one hundred shares of the value of Rs. 25/- per

share: Shri Nikhil Ranjan Guha Thakurta was the Managing Director of this company at that time. The shares required by the complainant could not be purchased for some reason and so the sum of Rs. 2,500/- together with interest amounting to Rs. 2,612/S/- was sent to him by a cross-cheque. The complainant instead of presenting the cross-cheque through a bank wanted to cash it personally which he could not do

He, therefore, returned the cheque to the above company. Thereafter, the company sent a circular letter intimating to the complainant that negotiations were going on for the purchase of the Premier Mica Company Limited; a copy of this circular letter has been filed in this case. After the receipt of this circular letter it appears that the complainant asked the company to purchase one unit of shares worth Rs. 5,000/- for him. This letter was probably sent to the company on 9-9-1944.

In reply to this letter the complainant was informed that one unit of 10 shares would be worth Rs. 5,000/- and the complainant was asked to send the balance of Rs. 2,387/8/- in order to make up the total amount of Rs. 5,000/-. It is not known when this balance of Rs. 2,387/8/- was actually sent by the complainant to the company. The company purchased one unit of 10 shares for Rs. 5,000/- and sent share certificates to the complainant in 1944. In 1952 the complainant filed a complaint under Section 420, I. P. C. against Nikhil Ranjan Guha Thakurta and others that they had cheated him and instead of purchasing shares worth Rs. 5,000/- they had purchased shares which were really worth Rs. 1,000/- as the face value of the 10 shares which were purchased was only Rs. 1,000/-.

After this complaint was filed a summons was issued to Nikhil Ranjan Guha Thakurta alone and he moved an application under Section 561A, Cr. P. C in the High Court for quashing the proceeding on the ground that it was an abuse of the process of the Court and had been started against him in order to harass him. This application was made on 16-6-1953 and 4-1-1954 was fixed for its disposal.

Notice of this application was served on the complainant opposite party and he appeared through a counsel on 4-1-1954 and prayed for three weeks time to file a counter affidavit denying the allegations contained in the affidavit which had been

filed on behalf of Nikhil Ranjan Guha Thakurta in support of the application under Section 561A, Cr. P. C. The prayer was allowed and the case was adjourned to 16-2-1954, It appears that on that date no counter-affidavit was filed on behalf of the complainant.

The application under Section 581A, Cr. P. C. was allowed on 16-2-1954 and the proceedings in the Court of the Magistrate were quashed

2. On 13-5-1954 Mohan Lal complainant moved an application for the rehearing of me case under Section 561A, Cr, P. C. and also for the prosecution of Sri Nihar Ranjan Guha Tliakurta for making certain false allegations in the affidavit which had been filed by him in support of the application under Section 561A, Cr. P. C. It appears that no notice of this application was served on the opposite party,

3. On 14-7-1954 after perusing the affidavit filed by Mohan Lal complainant, Harish Chandra J. was of the opinion that the allegations contained in paras 3, 7, 12 and 16 of the affidavit of Nihar Ranjan Guha Thakurta were prima facie false. He, therefore, ordered that a notice might be issued to him to appear and show cause why a complaint should not be made against him for his prosecution under Section 193, I. P. C, for making deliberate false statements in the affidavit.

In response to this notice he has appeared through a counsel. It is contended on his behalf that no prima facie case under Section 193, I. P. C. has been made out and that it is not expedient in the interest of justice that this prosecution should be ordered.

4. In order to decide the application it is necessary to mention the allegations made in paras 3, 7, 12 and 16 of the affidavit filed by the opposite party Nihar Ranjan Guha Thakurta on 5-6-1953.

'3. That the complainant, a retired Station Master, 'who did' speculations in the Calcutta Share Market and had had dealings with, the Bengal Share Dealers Syndicate Ltd., a share broker firm of Calcutta, negotiated through the said Syndicate, the purchase of 100 shares of Rs. 25/- each of the Mica Mining and Trading Co: of India Ltd., and sent on 27-4-43 to the said Company a sum of Rs.

2,500/- along with an application for the shares.

7. That owing to the Mica boom, the Mica Mining & Trading Company of India Ltd. with a view to expanding its business decided to purchase the goodwill & assets of the Premier Mica Co. Ltd., Kodarama (Bihar), a very old and reputed concern, and the Company issued in May 1944, a printed circular marked 'confidential' to share-brokers informing that N. R. Guha Thakurta (applicant) the founder and Managing Agent of the Mica Mining and Trading Company of India Ltd. had completed the negotiations for the purchase of the goodwill and assets of the Premier Mica Co. Ltd., and that the said N. R. Guha Thakurta was the proposed Managing Director of the combined companies.

The circular further informed that one unit of shares of the said Premier Mica Co. Ltd. was of 10 original shares of Rs. 100/- each, which were being negotiated at a premium and at five times the original value.

12. That between 1944 and 1949, the applicant applied for and obtained balance sheets of the Company and never complained that he had been given share of the face value of Rs. 1,000/- only as against Rs. 5,000/- paid by him.

'16. That for the first time the applicant received a letter of a lawyer on behalf of the complainant opposite party dated 14-7-1950 (but redated 29-8-1950) alleging that the share certificate No. 46 issued to his client was worth only Rs. 1,000/- and his client was not satisfied about the remaining Rs. 4,000/-,"

5. It appears from the verification at the foot of the affidavit that paras 3 to 12 were verified as correct not upon personal knowledge but upon information received from the Bengal Share Dealers Syndicate Ltd. and from Sri Nikhil Ranjan Guha Thakurta. The allegation in para 16 was verified on personal knowledge.

6. In the counter-affidavit which was filed in support of the application made for the prosecution of the opposite party Nihar Ranjan Guha Thakurta under Section 193, I. P.. C. it was denied that the complainant ever did any speculation in the Calcutta Share Market or had had dealings with the Bengal Share Dealers Syndicate Limited or that he made negotiations through the said Syndicate.

It was also denied that the circular which was received by the complainant conveyed the information that one unit of shares of the said Premier Mica Company Limited was of 10 original shares of Rs. 100/-each and that they were being negotiated at a premium and at five times the original value. It was further denied that no complaint was made between 1944 and 1949 about the value of the shares.

7. Besides the two affidavits there is nothing on the record to show whether the complainant did any speculation in the Calcutta Share Market or had had any dealings with Bengal Share Dealers Syndicate Limited. In para 11 of the affidavit filed by Mohan Lal complainant it was alleged that he had reason to believe that Mr. S. Chatterji had got the entries made in the registers of the Bengal Share Dealers Syndicate about this transaction as he was connected with all the above companies and also with the Aryan Silk Company and this might have 'been done to take some commission out of it.

This paragraph indicates that there was some evidence about the Bengal Share Dealers Syndicate doing something with the transaction in question.

8. As regards the allegation in para 7 of the affidavit it is an admitted fact that the circular was sent to the complainant Mohan Lal. In this paragraph it is clearly mentioned what were the contents of the circular and what information was conveyed by it. As the circular was already with the complainant it could not be said that the allegations which were made in this paragraph were deliberately false.

It was, however, a question of interpretation of the circular and according to the allegations of the deponent the interpretation put upon the circular by the Company and by Nikhil Ranjan Guha Thakurta was that one unit of shares of the said, Premier Mica Company Limited was of 10 original shares of Rs. 500/- each. It cannot be said that this interpretation was put by the company for the first time. There is a letter dated 21-9-1944 which was sent by the company to the complainant about the purchase of the shares and this letter also shows that one unit of 10 shares was valued at Rs. 5,000/-. It was after the receipt of this letter that the complainant sent the balance of Rs. 2387/8/- to the Company. In any

case, it cannot be said that the deponent knew that the contents of this circular were false. He merely alleged in the affidavit the information which had been given to him by the company and by his brother Nikhil Ranjan Guha Thakurta and he therefore cannot be held liable under Section 193, I. P. C. if the interpretation put by them on the circular was incorrect.

9. As regards para 12 there is nothing on the record to indicate that any complaint regarding the value of the shares was made to Nikhil Ranjan Guha Thakurta personally. It appears from para 15 of the affidavit filed by Nihar Ranjan Guha Thakurta that his brother had severed his connection with the Mica Mining and Trading Company Limited and the Premier Mica Company Limited from 15-1-1947. It may be that some complaint might have been made by the complainant to the Mica Mining and Trading Company Limited about the value of the share which had been purchased for him, but it was not in the knowledge of the deponent nor had he been informed of it by his brother or by the company.

10. The allegation in para 16 is that it was for the first time that Nikhil Ranjan Guha Thakurta received a letter of a lawyer on behalf of the complainant regarding the value of the shares and making certain inquiries from him. It has not been alleged on behalf of the complainant that before the letter of 14-7-1950 any other letter had been received by the opposite party Nikhil Ranjan Guha Thakurta from the complainant's lawyer. No copy of any such letter has been produced by the complainant,

11. In view of the above facts I am of opinion that that it is not a fit case in which a complaint under Section 193, I. P. C. should be made against the deponent Nihar Ranjan Guha Thakurta. Whatever allegations he made he made on the information conveyed to him by the company and by his brother and even if the information which was given to him was wrong he cannot be held liable unless at the time he swore the affidavit he knew that it was wrong and in spite of that knowledge he swore the affidavit.

12. The prayer for the prosecution of the opposite party Nihar Ranjan Guha Thakurta under Section 193, I. P. C. is therefore rejected and the notice issued to him is discharged.

13. Leave to appeal to the Supreme Court is refused.

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