

Emperor Vs. Atma Ram

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Court : Allahabad

Decided On : Apr-09-1934

Reported in : AIR1934All846

Appellant : Emperor

Respondent : Atma Ram

Judgement :

Niamatullah, J.

1. This is an application for revision against an order of acquittal passed by a Magistrate, First Class, District Muzaffarnagar, The applicant Kishore Lal was the complainant in a case of cheating brought by him against Atma Ram and Krishna Lal. The complainant is a partner in a firm known as Uggar Sen Parshotam Das, carrying on business of commission agents at Muzaffarnagar. His story was that, on 14th September 1933, the accused met him at Dehra Dun and desired to purchase through, his firm 10 'bijaks.' The complainant insisted on payment of 50% of the price, but the accused assured him that, payment would be made as soon as the 'bijaks' were purchased. The transaction was to be completed at Muzaffarnagar. The complainant phoned to his firm informing them of the bargain and assuring them that payment would be made by the accused as soon as the 'bijaks' were purchased. The accused made payment by a cheque on the Allahabad Bank, Dehra Dun branch. The bijaks were purchased by the

complainant's firm at Muzaffarnagar; but the cheque was dishonoured on presentation on the ground that the accused had no account with the Dehra Dun Branch of the Allahabad Bank.

2. The defence was that it was the complainant who approached the accused with an offer of purchasing, on their behalf, certain 'bijaks' which were likely to prove profitable. The accused agreed, but stated that they had no money. The accused however told him that payment would be made after a certain time. It is also alleged by the accused that they distinctly told the complainant that they had no money in the Bank, but that they would deposit it in the Allahabad Bank, Dehra Dun, for the purpose of payment for the 'bijaks.' On that understanding they gave the cheque to the complainant with instructions not to present it for payment till a time named by which the accused would open an account with the Allahabad Bank, Dehra Dun for payment to the complainant's firm. Both parties produced witnesses in support of their allegations. The Magistrate who examined the witnesses disbelieved the complainant's story and his witnesses and believed those produced on behalf of the accused. On that finding the accused were acquitted.

3. In revision before me two questions have been argued by the learned advocate for the applicant. First, it is contended that the Muzaffarnagar Court had no jurisdiction to try the accused. This comes with a bad grace from the complainant, who himself filed a complaint at Muzaffarnagar. This however is not a fatal objection to the argument, if it is otherwise well founded. The learned advocate for the applicant has referred me to a case recently decided by a Full Bench of this Court, in which it was held that Section 179, Criminal P.C., applies where the act done and the consequence following that act must enter into the definition of the offence the commission of which is complained against. But where the offence is complete in itself by reason of the act having been done and the consequence is a mere result of it which was not essential for completion of the offence, then Section 179 would not be applicable : *Kashi Ram Msehta v. Emperor* 1934 All. 499. Section 179, Criminal P.C., which was the subject of consideration in the ruling cited above provides that:

When a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

4. It is argued that the offence Of cheating was committed at Dehra Dun in its entirety. It is said that the accused made a misrepresentation to the complainant at Dehra Dun that payment would be made immediately on purchase of 'bijaks' and that they handed over a cheque at Dehra Dun in payment of the price, which also implied a representation that they had money in the Allahabad Bank, Dehra Dun, from which it could be drawn by the complainant's firm. Acting on these representations, the complainant instructed the firm at Muzaffarnagar to make the purchase. It is contended that the complainant would not have phoned to his partner to make the purchases if the accused had not made misrepresentations already referred to. In this view it is said, the offence of cheating, as defined in Section 415 was completed at Dehra Dun and no part of that offence was committed at Muzaffarnagar. This argument ignores one aspect of the case, which makes Section 179, Criminal P.C., clearly applicable. It was not the complainant who was cheated. It was the complainant's firm at Muzaffarnagar who were deceived into purchasing the bijaks in consequence of misrepresentations made by the accused through the complainant. But for his misrepresentation purchase would not have been made at Muzaffarnagar. In this view, the consequences resulting from the deception practised by the accused at Dehra Dun ensued at Muzaffarnagar. In my opinion, Section 179, Criminal P.C., is clearly applicable to the case and the ruling to which reference has been made does not help the applicant's contention.

5. The learned advocate for the applicant also contended that the Magistrate disbelieved the witnesses examined on behalf of the prosecution and believed those produced in defence in disregard of the contents of a written agreement between, the parties. I have examined the written contract, and do not find anything which militates against the statements of witnesses examined on behalf of the accused or corroborates the evidence given by the prosecution witnesses. It is a well established rule of law that this Court will not interfere with an order of

acquittal, except in very special circumstances. The learned advocate for the applicant offered to take me through the evidence to show that the weight of evidence is against the finding of the Magistrate. I do not think that this course is permissible in a revision from acquittal. Accordingly I dismiss this application for revision.

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