

Ganesh and anr. Vs. State

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Court : Allahabad

Decided On : Feb-13-1976

Reported in : 1976CriLJ1403

Judge : H.L. Capoor, J.

Appellant : Ganesh and anr.

Respondent : State

Judgement :

ORDER

H.L. Capoor, J.

1. Ganesh and Puttu have preferred this application in revision against the order, dated 11th May, 1972 of Sri Harish Chandra, First Civil and Sessions Judge, Shahjahanpur, dismissing the appeal and upholding the conviction of the applicants under Section 420 read with Section 34, I.P.C. and a sentence of nine months R. I. awarded to each of them by the learned Additional District Magistrate (J.), Shahjahanpur.

2. It is not in dispute that Gendan co-accused and Puttu applicant are residents of village Baidapur Misripur end Ganesh alias Ghanshyam applicant of village Palia, Police Station Nigohi, district Shahjahanpur. Dori (complainant) is a resident of village Kajachakrapur, Police Station Banda, district Shahjanhenpur. Dori had

gone to village Garhia, Police Station Fatehganj, district Bareilly to the house of his nephew Ganga Charan about four days prior to the incident of this case. While sitting on the Chaupal of his nephew, he was having a talk with Ganga Charan, Gaya Din and others. At that very time, Puttu and Ganesh applicants along with Gendan co-accused reached there and also joined in the talks which were going on there. The applicants made an inquiry from Dori Lal as to how many children he had, to which he had replied that he had no child. According to the prosecution version, the applicants then offered that they would arrange a woman for him and that he will have to spend a sum of about Rs. 700. Thereupon Dori Lal told the applicants that he was no more interested in his own marriage, but he wanted to marry his sister's son. An agreement was made between the complainant and the applicants that if a sum of Re. 300 was paid, they would provide the girl for his sister's son. The applicants then took Dori Lal with them to Shahjahanpur. Dori Lal had asked Ganga Chanan, Gaya Din, Banwari and Shri Bam also to accompany him. Thereafter, they reached Shahjahanpur Railway Station, at about noon on 21st April, 1969. Thereafter having left Dori Lal and his companions at the Railway Station, the two applicants went to fetch the girl and her guardian and directed the complainant to wait at the Railway Station. At about sun-set, the applicants along with one, woman named Smt. Kunti and two other persons, named, Ram Pal and Ram Lal came back at the Railway Station and the applicants asked Dori to pay the agreed amount of Rs, 300. Dori Lal, however, replied that at that time he had no money with him. The applicants then gave out that the woman could not be sent with him unless the amount of Rs. 300 was paid. Dori Lal and his companions stayed at the Railway Station for the night. Next morning Dori Lal went to arrange for the money and came back at about noon. The applicants were present at the Railway Station and they were asked by Dori Lal to bring the woman. Thereupon, the applicants persuaded Dori Lal to pay the amount first and somehow or the other managed to take a sum of Rs. 300 from the complainant.

At that time, Ganga Charan, Gaya Din and Shri Ram were also present when the said payment was made. The applicants then asked Dori Lal to accompany them and promised to supply him the woman. Two rickshaws were engaged. The applicants took their seat on one rickshaw and Dori Lal along with two other companions of his sat on the other rickshaw. Both rickshaws started towards

Bahadurganj Market. The rickshaw upon which the applicants were sitting being ahead of the rickshaw upon which the complainant was sitting. The applicants succeeded in dodging the complainant and disappeared. Thereafter, the complainant asked those two persons who were accompanying him on the rickshaw about the whereabouts of the woman. Dori Lal made a search of the applicants for about two hours, but could not succeed in getting their clue. Thereafter Dori Lal went back to the Railway Station and gave out the entire version to his companions. In spite of a search of the applicants being made on the next day also, they could not be traced out. Ultimately, the complainant went to village Palia in search of Ganesh applicant who used to reside there.

According to the prosecution, Dori Lal then met Sri Moin Uddin Siddiqi, Sub-Inspector and the entire story about the manner in which he was cheated by the applicants was given out to the Sub-Inspector. Sri Moin Uddin Siddiqi then in the company of the complainant reached a place where all the applicants were present. Having seen the police, Puttu applicant managed to run away from there. Ganesh applicant and Gendan co-accused were, however, arrested by the Sub-Inspector and upon search being taken currency notes of Rs, 150 were recovered from the possession of Ganesh applicant and the currency notes of Rs. 50 from the possession of Gandan co-accused. The Sub-Inspector then took the recovered money and these two persons to the police station where the first information report was lodged. Puttu applicant ultimately surrendered in court on the 9th of October, 1969. Identification proceedings in respect of him were held in District Jail, Shahjahanpur by Sri G. P. Jhaldiyal, Magistrate First Class. He was correctly picked by Dori Lal and Gaya Din (P.Ws.) without any mistake being committed.

3. Both the applicants and Gendan co-accused pleaded not guilty and denied to have committed any offence. They attributed their false implication in the case due to enmity. One witness, namely Jhamman Lal (D.W. 1) was examined in support of the defence. He gave out a contrary version in respect of the arrest of Ganesh applicant and Gendan co-accused in different circumstances, but his solitary testimony not having found corroboration from any other source could not be implicitly relied upon and was rightly rejected by the courts below.

4. In order to establish its case, the prosecution relied upon the statements of Dori Lal (P.W. 1), Gaya Din (P.W. 2) and Ganga Charan (P.W. 4) as the witnesses of fact. Tota Ram (P.W. 6), Sri Moin Uddin Siddiqi, Sub-Inspector (C.W. 1) and Dori Lal (P.W. 1) deposed that Dori Lal conveyed the information of the said incident to Moin Uddin Siddiqi at the Chaupal of Tota Ram (P.W. 6) and as a result of it Ganesh applicant and Gendan co-accused were arrested and upon search being taken a sum of Rs. 150 was recovered from the possession of Ganesh applicant and a sum of Rs, 50 from the possession of Gendan co-accused.

5. Both the courts below, after considering the evidence on record and placing reliance upon the statements of the said witnesses of fact and the circumstances, arrived at the finding that the prosecution had succeeded in proving beyond any reasonable doubt that Dori Lal (complainant) was cheated by the two applicants and the co-accused who has not filed any revision against his conviction. Both the courts below accordingly convicted the applicants and the co-accused as aforesaid.

6. The learned Counsel appearing on behalf of the applicants has urged two points- firstly that the applicants brought Smt. Kunti at the Railway platform and were ready to give her to Dori Lal to serve as a wife for his sister's son as was agreed upon between Dori Lal on the one hand and the applicants on the other, but Dori Lal not having fulfilled his part of the agreement by paying a sum of Rs. 300, there cannot be said to be any breach of the contract or the agreement between the parties, with the result that no offence could be said to have been committed by the applicants and the co-accused and, secondly, that the applicants and the complainant having entered into a contract, which was clearly void for immorality, the complainant could not be said to be entitled to obtain any relief from a civil court for its breach and hence the complainant could also not be allowed to prosecute the applicants on a charge of cheating.

7. So far as the first contention of the learned Counsel is concerned, the production of the woman at the railway station could not be said to be a separate transaction, but the entire facts are to be looked into as one transaction, because the production of the woman at the railway station by the applicants could very

well be said to be an allurement to the complainant to part with a sum of Rs, 300 as was agreed between the parties. It was in all probability as a result of the said bait which was given to the complainant by producing the girl at the railway station that Dori Lal was convinced that if he would arrange for a sum of Rs, 300 and give it to the applicant and the co-accused he would be able to procure the woman produced at the railway station to serve as the wife for his sister's son. It is a finding of fact arrived at by the two courts below that Dori Lal actually went from the railway platform to arrange for a sum of Rs. 300 and ultimately came back at the railway platform with a sum of Rs. 300 which was paid by him to the applicants on their insistence that the money should be paid first to them and then they would give the woman Smt. Kunti to him as she was present at their house.

Ultimately, the two rickshaws were engaged at the instance of the applicants and the applicants took their seat on one rickshaw, while the complainant and the two other companions of the applicants sat on another rickshaw. Both the rickshaws started for the place where the woman was said to have been and it was only in the way that the applicants by dodging the complainant disappeared along with a sum of Rs. 300 which they had by deception taken from the complainant. On the basis of the said facts being established on behalf of the prosecution, as found by the two courts below, it is obvious that the applicants clearly committed an offence under Section 420 read with Section 34, I.P.C. Thus, the findings of fact arrived at by the two courts below could not be successfully challenged in the application in revision and the first contention of the learned Counsel must be rejected as being without any substance.

8. With regard to the second contention of the learned Counsel, reliance has been placed by him on a Division Bench case-Emperor v. Jani Hira reported in (1912) 13 Cri LJ 521 (Bom). The facts of the said reported case were that the accused Jani Hira agreed to let her daughter on hire to the complainant for concubinage for one year in consideration of the complainant paying her a sum of Rs. 70. The complainant paid Rs. 35 in advance. Subsequently, the accused refused to allow her daughter to go to complainant or to refund the money advanced to her. On these facts, the accused was convicted of cheating.

9. It was urged by the learned Counsel for the accused that the conviction and sentence could not be sustained because there was no evidence to show that there was any fraudulent or dishonest intention on the part of the accused at the time she took a sum of Rs. 35 from the complainant. On the other hand, it is more likely that at that time she intended to let complainant have her daughter and changed her mind only later. That being so, if the arrangement had been an ordinary contract instead of being merely void agreement, no criminal prosecution would have been successful and the complainant would have had to sue in the civil courts for specific performance or compensation or refund. It was also urged that a suit for specific performance or compensation or refund, in the circumstances as indicated above, would not lie as the agreement was void from the beginning for immorality. These contentions found favour with the Sessions Judge who made a reference to the High Court that, upon the facts and circumstances as stated above, the offence of cheating was not committed.

10. Their Lordships of the Bombay High Court were of the view that the accused and the complainant had entered into a contract which was clearly void for immorality. Hence, the complainant would not be entitled to obtain any relief from a Civil Court for its breach. That is no reason why he should be allowed to prosecute the accused on a charge of cheating. Therefore, their Lordships held that the Magistrate's conviction and sentence must be reversed and the accused acquitted and discharged.

11. The said Bombay case was, however, considered by a Division Bench of Oudh Chief Court in a case, Emperor v. Raghunath reported in AIR 1941 Oudh 3 at pp. 5 and 6 - (41 Cri LJ 881 at page 883) and it was observed as follows:

It is certainly true that the judgment in the said Bombay case lends some colour to the view taken by the Magistrate, but the judgment in the case is very brief and it has subsequently been dissented from. There was also some doubt in that case whether there had actually been an attempt to cheat..... We cannot read into the said Bombay judgment the general principle stated in the head note to it that a party should not be allowed to prosecute on a charge of cheating when he would not be entitled to obtain from a Civil Court any relief for breach of the contract.

Apart from this, as we have said, the suggestion that a criminal prosecution must fail if it is based upon a contract which could not be enforced in a Civil Court has been expressly repelled in two later cases, namely AIR 1917 Low Bur 105 : 18 Cri LJ 362 and AIR 1933 Rang 199 : 34 Cri LJ 1255. We see no reason to dissent from this later view.

12. The said Bombay case was also considered by his Lordship Mr. Justice P. L. Bhargava, in a case, Rama Shankar v. Rikhab Kumar reported in : AIR1952 All428 and was dissented from. On the other hand, the said Division Bench case of the Oudh Chief Court was followed. It was ultimately held by his Lordship that a criminal prosecution for cheating can be based on a contract which cannot be enforced in a Civil Court. If A induces B to part with a sum on the assurance that he would exert his influence over the Income-tax Officer so as to persuade him to assess B in a particular manner, the Magistrate has only to see what offence has been committed by A, and it is immaterial whether the offence involved an illegal or void contract which could not be enforced in a Civil Court.

13. Similar view was taken by the Madras High Court in a case Public Prosecutor v. Bhimeswara Rao reported in AIR 1948 Mad 258 at p. 260 : 49 Cri LJ 443 at p. 445. His Lordship observed as follows:

Mr. V.T. Rangaswamy Ayyangar, learned advocate for the accused, raised an interesting point relying on the decision of the Bombay High Court in (1912) 15 Ind Cas 793 : 13 Cri LJ 521 (Bom) that the money paid by P.Ws. 1 and 2 to the accused for an illegal object could not have been recovered even in a civil suit and in respect of such money a criminal prosecution for cheating will also not be sustainable. I am not certain that the amount could not have been recovered in a civil suit. But even assuming it was not, I do not consider that ipso facto no criminal prosecution can lie if otherwise an offence under the Penal Code is made out. The learned advocate conceded that there was nothing in the general exceptions from which we can derive any support. It must then be on grounds of public policy. But I do not think it right to import considerations of public policy in adjudicating on the criminal liability of an accused person.

14. After a careful consideration of the said reported cases, it is obvious that the view, taken in the Bombay case (supra), did not find favour with the other High Courts and hence it could no more be said to be good law. As such, the applicants were rightly convicted by the courts below under Section 420 read with Section 34, I.P.C. The sentence awarded to the applicants, in the circumstances of the case, could by no means be said to be severe and no interference is called for.

15. In the result, the application in revision is dismissed being devoid of all force. The conviction and sentence of the applicants are maintained. The applicants are on bail. They shall be taken into custody forthwith to serve out the sentences imposed upon them and their bail bonds are discharged.

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