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Court : Allahabad

Decided On : Mar-15-1948

Reported in : AIR1948All433

Appellant : Narain Rao

Respondent : Rex

Judgement :

Harish Chandra, J.

1. This is a criminal revision. The applicant Narain Rao was convicted by a Magistrate of the First Class under Section 417 read with Section 511, Penal Code, and sentenced to a fine of Rs. 200 and in default of the payment of the fine to six months rigorous imprisonment. His appeal was dismissed by the learned Sessions Judge of Benares and he has now come to the High Court in revision from the order of the learned Sessions Judge.

2. The findings of fact upon which the applicant's conviction is based are that he owed some money to the complainant Makund Lal who had obtained a decree against him for a sum of Rs. 78. The applicant was in Military service at Jubbulpore and the Military authorities there had agreed to the payment of the decree in monthly instalments of Rs. 10 each which were to be deducted from the applicant's pay. When the first instalment did not arrive, the complainant complained about it to the Military authorities at Jubbulpore, but before, he could

receive a reply, on 26th September 1945, a postal cover was received from him insured for a sum of Rs. 70. His brother, Bhol Nath, took delivery of the insured cover and signed the postal receipt for him in his absence from the shop. When the cover was opened, It was found to contain seven currency notes of rupee one each along with four blank sheets of paper. When the complainant returned to the shop in the evening and came to know of what had happened, he went and made a report of the incident at the police station at 6.45 P.M. and followed it up by a complaint in Court on 9th October 1945. It may also be mentioned that the evidence is that the applicant after the delivery of the insured cover to the complainant gave notice to him calling upon him to set off the sum of Rs. 70 alleged to have been sent by him under the insured cover against the total amount due from him under the decree.

3. A question of law has been raised on behalf of the applicant and it is said that on these findings he cannot be convicted of an offence of cheating or an attempt to cheat. Reliance is placed upon the case in *Tularam v. Emperor* 11 A.I.R. 1924 All. 205 in which Sulaiman J. in similar circumstances held that no offence under Section 417 read with Section 511, Penal Code, had been committed.

4. The offence of cheating is defined in Section 415, Penal Code, and the ingredients of the offence as required by the section are : (1) Deception of any person: 2(a) Fraudulently or dishonestly inducing that person, (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation or property. There can be no doubt that on the findings of fact arrived at by the Courts below the applicant did deceive the complainant and intentionally induced him to do an act which he would not have done if he had not been so deceived, namely, to sign the acknowledgment of the insured cover purporting to contain currency notes of the value of Rs. 70. The only question that has to be considered in this case is whether such act was likely to cause damage or harm to the complainant in body, mind, reputation or property. If the answer is in the affirmative, all the conditions laid down in Section 415 are clearly satisfied and the

applicant is guilty under Section 417, Penal Code, of the substantive offence of cheating and not merely of the offence of an attempt to cheat. The learned Judge who decided *Tularam v. Emperor* 11 A.I.R. 1924 All. 205, however, does not seem to have considered this aspect of the matter, for it was conceded before him by the Public Prosecutor that in that case no offence of cheating had been committed and after that his Lordship proceeded to consider whether the facts did or did not constitute an attempt to cheat and came to the conclusion that they did not. The following is reproduced from the judgment:

The question to be answered is whether the accused did attempt to cheat the complainants, and, if so, in what way. It cannot be imagined that the accused expected that on the receipt of these false notes, the complainant would be induced either to give a valid discharge of his debt, or to grant him any receipt, or to deliver any property to him, or to consent to retaining any property.

The point to be further considered is whether the object was not to induce the complainant to do or omit to do anything which he would not have done or omitted to do. The only possible suggestion that has, been made, and that can be made, is that by these means of fraud the accused hoped that when a suit for recovery of the debt was instituted, he would have in substance some sort of evidence to bolster up a defence that the debt had been discharged. I cannot see how on receipt of these false bonds the complainant would have been prevented from bringing a suit altogether. The mere fact that a cover insured for a certain amount is sent raises no presumption in law that, that cover contains the necessary amount of Government Currency Notes. It is, therefore, not easily conceivable what is the thing which the complainant would have done or omitted to do if the fraud contemplated by the accused had succeeded. The only thing that can be said is that the accused imagined that he would have had some sort of a proof that the debt had been paid off.

It would be clear from the above that the question whether the signing of the acknowledgment of the insured cover by the complainant was likely to cause damage or harm to him 'in body, mind, reputation or property' was not considered by him and the question whether the substantive offence of cheating has or has

not been committed by the applicant obviously depends upon an answer to that question.

5. In the Calcutta case in *Raman Behari v. Emperor* : AIR1924 Cal215 a similar view was taken. The judgment in that case does not, however, disclose any clear reasons as to why it was held that no offence of cheating had been committed. The words are:

All that the person deceived has been induced to do is that he has signed a receipt acknowledging the delivery of a cover. He has not acknowledged by that the receipt of any sum of money alleged to be contained in the cover. That being so, we are unable to say that the charge of cheating has been brought home to the accused in the circumstances which appear on the record before us.

A similar view was also taken in the Madras case in *Kunju v. Emperor* ('27) 14 A.I.R. 1927 Mad. 199. The reasoning of this case also is not clear. It is said:

The act of signing a postal acknowledgment by itself is not likely to cause damage. To satisfy the definition of cheating there must be immediate causation and the act itself must involve the probability. It is not enough to say that the signed acknowledgment is likely to be used so as to cause damage; the act of signing itself must be likely to cause damage.

If the signed acknowledgment is in fact likely to be used so as to cause damage to the person signing it, it is difficult to understand how it can be said that the act of signing the acknowledgment is not likely to cause damage. In the: Calcutta case in *Harendra Nath Das v. Jobtish Chandra* : AIR1925 Cal100 it was rightly pointed out that under Section 415

damage or harm caused or likely to be caused must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom

and that 'the law does not take into account remote possibilities that may flow from the act.' But the use by a debtor of such an acknowledgment to facilitate the evasion of payment of his debt by him and to cause embarrassment to the creditor

when he seeks to enforce his claim, cannot be regarded as merely a remote possibility that may flow from the act. In *Arura v. Emperor* ('13) 20 I.C. 596, the Punjab Chief Court in similar circumstances held that an offence under Section 417 read with Section 511 had been committed. The reason why it thought that the facts constituted only an attempt to cheat are not clear. The learned Chief Judge of the Punjab Chief Court, who decided that case observes in the judgment:

The signature on the receipt and taking delivery of the envelope by the complainant as the result of the deception would be likely to cause damage to the complainant in property.

If this is so, it is obvious that a substantive offence of cheating as defined in Section 415 had been committed in that case.

6. The matter has been very fully considered in the Patna case in *Baijnath Sahay v. Emperor* ('33) 20 A.I.R. 1933 Pat. 183 in which most of the decisions of the High Courts in India bearing upon this matter have been considered. James J. who decided that case sums up as follows:

These decisions differing from that of the Patna High Court proceed on the assumption that to trick a creditor into fabricating evidence which may be used against him is not an offence punishable under Section 417, Penal Code, unless the evidence is such as would afford conclusive proof of payment. I would say, with due respect to the learned Judges who have, in my judgment, been misled, that the question of whether what is obtained from the creditor is a valid quittance or merely something to be used as evidence of payment, is unimportant. If he had been tricked into giving what, if obtained honestly, would have been a valid quittance, he would no more be debarred from instituting a suit than if he had been tricked into giving a receipt which was to be used merely as a piece of evidence. A person commits an offence punishable under Section 417 if by deceiving his creditor he obtains from him a document, not necessarily a legal quittance or a valuable security, but such a document as is likely to facilitate the evasion of payment by the debtor and to cause embarrassment to the creditor when he seeks to enforce his claim. The terms of Section 415 of the Code are wide; in this particular case it is clear that the intention of the petitioner was fraudulent, and he

has been rightly convicted.

No doubt a different view was taken in the Sind case in *Ayodhya Prasad Sital Prasad v. Emperor* ('38) 25 A.I.R. 1938 Sind. 193 decided later in the year 1938. The, view taken in that case was that unless the act or omission was 'in itself' likely to cause damage or harm within the meaning of Section 415 no offence under that section can be said to have been committed. But on a plain reading of Section 415, Penal Code, there seems to be no justification for this view. The likelihood of damage or harm consequent on the doing of an act will, in most cases, depend upon some future contingency which may or may not arise. And in a case like this the misuse of an acknowledgment by the debtor who had intentionally and dishonestly induced the complainant to sign it so as to cause embarrassment and even actual damage or harm to the complainant in 'mind' and 'property' cannot be regarded merely as a probability or a remote possibility.

7. I accordingly hold that although the applicant has been convicted of an attempt to cheat, he has in fact committed the substantive offence of cheating and see no reason to interfere and would dismiss the application.

Sankar Saran, J.

8. I agree.

9. The application is dismissed. The order staying realisation of fine is withdrawn.

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