

Tula Ram Vs. Emperor

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Court : Allahabad

Decided On : Sep-18-1923

Reported in : 83Ind.Cas.993

Judge : Sulaiman, J.

Appellant : Tula Ram

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is an application in revision from a conviction under Section 417 read with Section 511 of the Indian Penal Code.

2. The facts as found by the Courts below, about which in revision there cannot be much dispute, are as follows:

Some five years ago the accused had borrowed Rs. 562-8 as loans on different occasions from the complainant. The complainant was asking for the re-payment of the loan, and it is said that a serious demand was made for the return of this money last year. The accused ' is said to have made promises to re-pay. Sometime before the alleged occurrence, it is also in evidence, that he sent a letter to the complainant saying that he would be sending money under a

registered cover. On the 8th of March the accused admittedly sent a registered and insured cover to the address of the complainant. When this cover was received by the complainant he did not open it at the Post Office but took it home and opened it in the presence of a number of witnesses. On opening it he discovered that instead of five Government Currency Notes of Rs. 100 each, there were five khilafat bonds, which are of course of no money value. On this he reported the matter to the Post Office, which was followed by an enquiry. During the enquiry the accused's statement was taken, as it is fully borne out by Exhibit H, and in that statement he put forward the story that as a matter of fact he had sent Government Currency Notes and not the khilafat bonds.

3. He was put on his trial and the charge framed against him was worded as follows: that he on. the 8th of March 1923 at Moradabad cheated Krishen Das Harrumal by dishonestly inducing them to receive and accept the insured letter, Exhibit H, containing Islamic Unity Bonds which they would not have accepted if they were not so misled and caused them damage.

4. It is to be noted that there was no charge of any attempt to cheat the Postal Authorities. The Trying Magistrate convicted the accused under Section 417, but on appeal that conviction was altered to one under Section 417 read with Section 511 that is to say, an attempt to. cheat.

5. The question for consideration in this revision is whether on the facts stated above the accused has been rightly convicted of the offence of attempting to cheat.

6. The learned Sessions Judge has also sent up a Reference recommending that the sentence of three months' rigorous imprisonment and a fine of Rs. 200 should be enhanced. In his judgment he has relied on the decision of a case in the Patna High Court, decided by a Division Bench of that Court, which is to be found reported as Sadho Lal v. King-Emperor 34 Ind. Cas. 992 : 1 P.L.J. 391 : 17 Cr.L.J. 272 : 3 P.L.W. 99. The facts of that case I must say were very much similar to the facts of this case, and the learned Judges of the Patna High Court upheld the conviction under Section 417 read with Section 511.

7. It is obvious that no question of an offence of any actual cheating having been committed arises in this case. Under Section 415 of the Indian Penal Code mere deceiving a person fraudulently is not sufficient unless that deception is coupled with dishonestly inducing that person to deliver any property to any person, or to consent that any person shall retain any property, or intentionally inducing the person so deceived to do or omit to do any thing which he would not do or omit to do if he were not so deceived, and which act or omission is likely to cause damage or harm to that person. It is conceded that in the present case no offence of cheating was committed.

8. I have then to see whether the accused can be convicted of an attempt to cheat. There can be no doubt that the sending of these worthless bonds was not by way of a mere joke. In his statement before the Postal Authorities, as well as in his defence at the trial, the accused stuck to his story that he had in fact sent Government Currency Notes. In cases of this kind one may very well imagine that the object is to cheat the Postal Authorities and try to recover the amount for which the contents were said to have been insured. But that is not the offence with which the accused has been charged. I may, therefore, leave that possibility entirely out of account.

9. 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 complainants 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.

10. The point to be further considered is whether the object was not to induce the complainants to do or omit to do anything which they 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 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.

11. If, however, that be the view, the offence that the accused committed was an attempt to cause a circumstance to exist, intending that such circumstance may appear in evidence in a judicial proceeding or proceeding taken by law before a public servant or before an arbitrator, and such circumstance, so appearing in evidence, may cause a person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion on any point material to the result of the proceeding. Then the offence would be an attempt to fabricate false evidence within the meaning of Section 192 of the Indian Penal Code. The accused however has not been charged with any such offence.

12. The judgment of the Patna High Court referred to by the learned Sessions Judge does not clearly set forth the grounds on which the learned Judges thought that the case fell under Section 417 read with Section 511. In the present case I am of opinion that it is impossible to say that the complainant would have been induced to do a thing, or omit to do a thing in consequence of what was done by the accused.

13. In this view of the matter I hold that no offence under Section 417 read with Section 511 was committed. Of course I do not mean to say that no offence of any kind whatsoever was committed. I accordingly allow his application, set aside the conviction and sentence passed on the applicant and acquit him of the offence with which he was charged. He should be released at once, and the fine, if paid, be refunded.