

Sarda Saran Vs. Emperor

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Court : Allahabad

Decided On : Oct-08-1923

Reported in : 83Ind.Cas.997

Judge : Sulaiman, J.

Appellant : Sarda Saran

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a criminal revision from a conviction under Section 420 of the Indian Penal Code.

2. The applicant Sarda Saran was a temporary clerk at Lucknow, and took leave from the 23rd of January 1923 till the 31st of January of that year. While he was on casual leave he went to Cawnpore and was appointed a permanent Head Clerk of the Cawnpore Cantonments by a Temporary Cantonment Magistrate. He applied to the Lucknow Authorities for an extension of his leave but originally this leave was not granted. It is not disputed that his casual leave expired on 31st of January 1923. On the 2nd of February 1923 he had been informed that he was ineligible under the rules for a permanent appointment.

3. Captain Pocock, prosecution witness No. 3, states that he told the accused that he could not consider his retention in the Cantonment Magistrate's Office, whereon the accused informed him that he had resigned his post in the Military Accounts Department, and that it would entail considerable loss to him if he did not retain him. He even offered to accept the position of an apprentice clerk. The witness goes on to say that as he could not retain him in his office, he thought it fit and proper to give him a month's pay in lieu of notice, and adds that he was induced to do so on account of the representation made to him by the accused.

4. The accused took the pay in lieu of notice and went back to Lucknow. It is stated that he then got his leave extended and re-joined on the 5th of February. He again drew his pay at Lucknow but the clerk who paid him has stated that on receipt of it the accused made it clear that he had already drawn his pay for the month at Cawnpore and he would have to refund one of the two sums.

5. On these facts the accused has been convicted of the offence of cheating.

6. Cheating is defined in Section 415 of the Indian Penal Code as being committed when by deceiving any person fraudulently or dishonestly one induces the person so deceived to deliver any property, etc., and which act causes damage.

7. There can be no doubt that deception was practised on Captain Pocock. Whether it was intentional or not is a matter which was to some extent in dispute, it being suggested on behalf of the accused that as he had overstayed his leave he honestly believed that he had lost his appointment. The question however still remains whether the accused by deceiving Captain Pocock, induced him to pay him the salary for February in lieu of notice. The charge as framed was that he had cheated Captain Pocock and thereby dishonestly induced him to give him (the accused) one month's pay in lieu of one month's notice, while he was actually drawing pay for that period from another Government Department.

8. Captain Pocock's statement however makes it clear, and the learned Sessions Judge himself has conceded that admittedly the accused did not ask Captain Pocock to give him the sum of Rs. 145, or for the matter of that any other sum. Captain Pocock's own statement is that the accused requested that he may be

retained, and even offered to accept the position of an apprentice clerk. It is manifest, therefore, that the statement, if it was knowingly made by the accused, was made with the object of inducing Captain Pocock to retain him in service, or at any rate to accept him as apprentice clerk. There is nothing to show that at that time the accused even suggested that any compensation should be paid to him.

9. The question, therefore, is whether it can be said that the accused by false representation, which he made with the intention of securing his retention as Head Clerk or his employment as an apprentice, can be said to have induced Captain Pocock to pay him Rs. 145, simply because the Captain on that statement thought that that was the most fit and proper thing to do.

10. The case is certainly not free from difficulty.

11. In my opinion in order to convict a person for cheating, it is necessary to show that there is a proximate connection between deception practised on the complainant, and his being induced to part with some property. If the connection is too remote, or very indirect, it is difficult to see that the offence of cheating would be complete. I have, therefore, to see whether the circumstances of this case are such as to make it clear without any reasonable doubt that the payment of one month's salary in lieu of notice was approximately connected with the false representation made by the accused. There is no doubt that Captain Pocock does say that he would not have made the payments unless he had been told that the accused had lost his appointment.

12. The other matter which must have influenced Captain Pocock's mind was the circumstance of the accused's sudden dismissal without previous notice. The accused certainly was guilty of an attempt to cheat Captain Pocock in this way, that he deceived Captain Pocock and thereby dishonestly attempted to induce him to retain the accused in his service and thus do an act which he might not otherwise have done. But the accused has unfortunately not been charged with that offence.

13. What I have to see is whether he can be convicted of having induced Captain Pocock to pay him Rs. 145 in lieu of notice. On the evidence of Captain Pocock

himself it is clear that the accused in no way suggested to him that he should be paid any compensation. He certainly did not ask him to pay any sum. All that he did was to request him to retain him in, service as permanent Head Clerk, or even as apprentice clerk. Can it, therefore be said that the accused induced Captain Pocock to pay him Rs. 145? I think the case is just on the border line, and it is very difficult to say that the accused induced Captain Pocock to pay him Rs. 145. I am far from saying that Captain Pocock would have paid the sum even if he had not been told by the accused that he (the latter) had lost his appointment.

14. I accordingly allow this application, set aside the conviction and sentence passed on the accused and discharge him. He should be released forthwith. The fine, if paid, will be refunded.

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