

Chothmal Narayanji Vs. Ramchandra Govindram

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Court : Madhya Pradesh

Decided On : Sep-19-1952

Reported in : 1954CriLJ788

Judge : Nevaskar, J.

Appellant : Chothmal Narayanji

Respondent : Ramchandra Govindram

Judgement :

ORDER

Nevaskar, J.

1. Complainant Chothmal who is a landlord filed a complaint under Section 467, I. P. O. against his tenant Ramchandra that the latter had submitted an application to the Indore Electric Supply Authorities in the name of the complainant and purporting to bear the signature of his son Manakchand stating that the said complainant had no objection to the grant of electric connection in the premises of the tenant. This application was in fact not signed by his son Manakchand but his signature was forged by the accused.

2. In this complaint the trying Magistrate passed order under 8. 363, Criminal P. C. discharging the accused holding that even if all the facts stated by the complainant be assumed it cannot be said that an offence under Section 465, I. P. C. is

committed by the mere fact of making a false document.

3. This view was confirmed by the learned Second Additional Sessions Judge, Indore. The complainant has therefore preferred this revision application.

4. Mr. Shambhudayal Sanghi who appears for the complainant contended that the view of the courts below that even if it is held proved that the accused forged an application in the name of the complainant and purporting to be signed by his son and submitted it to the Indore Electric Supply in order to induce them to instal electric connection the ingredients necessary for commission of an offence under Section 465, I. P. C. are not made out is incorrect.

5. He submitted that for an offence under Section 465, I. P. C. what is essential is that there should be deception and intention to secure an advantage to himself which he would not have got but for such a deception and in this connection it is not necessary to show either legal injury or risk of legal injury to anyone.

6. In this connection he relies upon - 'Emperor v. Abdul Hamid' AIR 1944 Lah 380 (A); - 'In re, Sivnanda Mudali' AIR 1926 Mad 1072 (B); - 'Queen Empress v. Abbas Ali', 25 Cal 512 (FB) (O and - 'Baij Nath Bhagat v. Emperor' AIR 1940 Pat 486 (C-1), for the aforesaid proposition. He then discussed the authorities cited in the order of the Additional Sessions Judge.

7. In order to consider the point it is necessary to refer to some of provisions of the Penal Code. Section 25 of the Penal Code is:

A person, is said to do a thing fraudulently if he does that with intent to defraud but not otherwise.

Section 453 of the Penal code is:

Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 464 of the Penal Code is:

A person is said to make a false document: Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Section 465 of the Penal Code is:

Whoever commits forgery shall be punished with Imprisonment of either description for a term, which may extend to two years, or with fine, or with both.

From these Sections, it is clear that in order to sustain a charge under Section 465, I. P. C., it is necessary that the act of the accused must either be dishonest or fraudulent.

8. Now, Mr. Sanghi concedes that in this case no question of the act being dishonest arises because there is no wrongful gain. or wrongful loss but according to him the act is fraudulent.

9. In order to appreciate this part of his submission it is necessary to examine what is the meaning of the term 'fraudulently' in criminal law.

10. Stephen in his History of Criminal Law of England Volume II p. 121 says thus:

I shall not attempt to construct a definition which will meet every case which might be suggested but there is little danger in saying that whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime: namely, first, deceit or an intention to deceive or in some cases mere secrecy; and, secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent, I may add, is very seldom the only or the principal intention entertained by the fraudulent

person, whose principal object in nearly every case is his own advantage. The injurious deception is usually intended only as a means to an end, though this, as I have already explained, does not prevent it from being intentional.

The only practical difficulty that I have ever noticed in applying the law upon this subject arises from forgetfulness of this fact or from attempts to confuse the minds of juries by refusing to remember it. The argument is this:

Dr. Dodd had no intent to defraud when he raised money on a security to which he forged Lord Chesterfield's name, because he had every reason to believe that he would be able to raise funds wherewith to redeem the security before it became due and because he fully intended to do so. The obvious answer is that he did not intentionally put the holder of the security in a worse position than that in which he would have stood if he had not been deceived, the position namely of having advanced money to Dr. Dodd without any security at all, and in this way he did defraud him by inducing him to take a risk which he would not have taken had he known the truth.

A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that that advantage should not have had an equivalent in loss, to some one else, and if so there was fraud. In practice people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent.

According to Stephen therefore for the existence of 'intent to defraud' there must be present (1) deception or intention to deceive (2) injury or risk of injury.

11. The ultimate object of the doer in all injurious deception, according to Stephen, is to seek his own advantage.

12. The principles thus stated have been variously applied in different cases which now I shall examine.

13. In - 'Queen Empress v. Sheo Dayal', 7 All 459 (D), where an accused having lost genuine receipts of payments, he had made, prepared false ones to support

genuine payments it was held that he committed no offence. There is hardly any discussion about the meaning of the terms dishonestly or fraudulently in this case.

14. In - 'Sanjiv Ratnappa v. Emperor' AIR 1932 Bom 545 (E), where an accused Sub-Inspector of Police altered the case diary after the inception of proceedings against him in order to create evidence in his own favour it was held by Baker and Broomfield JJ. that no offence under Section 465, I.P.C. was committed on the ground that the element of fraud as defined in the Penal code was absent. They then emphasised that the word defraud involves two conceptions, deceit and injury to the person deceived, i.e., infringement of some legal right of that person. Their Lordships in this case relied upon an unreported ruling of the same Court in Criminal Appeal No. 525 of 1930 wherein Beaumont C. J. and Murphy J. took the view that an offence under Section 477A, I. P. C., was not complete. It was a case where a Kulkarni of a village who had omitted to make certain payments made false entries in account in order to screen himself. The reason given by their Lordships was that the element of 'intent to defraud' was absent in this case.

15. In - 'Kotamraju Venkatrayadu v. Emperor', 28 Mad 90 (FB) (F), their Lordships at Madras High Court had to deal with a case in which a certificate for admission to an university examination was forged. The majority of the learned Judges constituting the Pull Bench held 'there was intent to obtain advantage and corresponding loss to the university' and therefore the act may be said to have been done fraudulently. In this view they convicted the accused.

16. Next case having an important bearing on the point is - 'Surendra Nath Ghose v. Emperor', 38 Cal 75 (G). In this case the accused inserted his name as an attesting witness after the document was executed and registered but without putting the date. While discussing whether such an act did or did not fall within the first clause of Section 464, I. P. C., his Lordship Justice Mukerjee on a reference made by reason of difference of opinion between Harrington and Teunon JJ. says at pp. 89-90 as follows;

The insertion of his name as an attesting witness may have increased the apparent evidence of the genuineness of the instrument. But the insertion of the name by itself could not have been intended to cause wrongful gain to one person

or wrongful loss to another person. It seems to me further to be obvious that the insertion of the name of the appellant as an attesting witness, could not have been with intent to defraud.

The expression 'intent to defraud' implies conduct coupled with intention to deceive and thereby to injure, in other words, 'defraud' involves two conceptions namely, deceit and injury to the person deceived, that is, infringement of some legal right possessed by him, but not necessarily deprivation of property.

In this case a reference was made to an earlier Full Bench case of Calcutta High Court reported in - '25 Cal 512 (C)', wherein it was held that 'deprivation of property, actual or intended is not an essential element in the offence of fraudulently using a document which the accused knew or had reason to believe to be false.

17. In this latter Pull Bench case the facts were that a person forged a certificate of his having put in a requisite technical service and being sober, intelligent, smart and trustworthy, in order to enable him to appear for examination to obtain a certificate of competency as an Engine Driver of ocean going steamers. It was held that the act was fraudulent and that deprivation of property actual or intended is not necessary in order that the act may be called fraudulent.

18. In - 'AIR 1944 Lah 380 (A)', Din Mohammad and Sale JJ. held approving the definition of fraud given by Le blone J. in - 'Hay Craft v. Creasy' (1801) 2 East 92 (H), viz. 'By fraud is meant an intention to deceive whether it be from any expectation of advantage or ill-will towards others' that this definition is consistent with one of the elements in Section 463, I. P. C. and that it is not essential that an element of injury to other should always be proved.

19. In this case the accused had misrepresented his age at the time of entering Government Service. Later to cover up misrepresentation he prepared forged letters. It was held that the accused was guilty.

20. By reference to these authorities it is clear that there are two views as regards the meaning of the term 'fraudulently'.

21. One set of cases take Sir James Stephen's definition while the other set take the view that an element of injury or risk of injury is not a 'sine qua non' for the act being fraudulent and that where there is an intention to secure an advantage by having recourse to deception there is fraud. The advantage may be in gaining some pecuniary benefit or in gaining some position or situation favouring the accused. In majority of cases this will result in corresponding injury or Infringement of some legal right.

22. On giving anxious thought to the matter I feel that having regard to the definition of the word 'fraudulently' the exposition of that term by Sir James Stephen appears to be preferable viz. that there must be (1) deception actual or intended (2) and injury or risk of injury though not to any particular person. In practice an act is said to have been done fraudulently where there is injurious deception resulting in some advantage to the doer of a secular character.

Applying this to the facts of this case it is plain that the accused is said to have concocted an application indicating complainant's consent for fixing electric connection in his premises. This the department would not have done in the absence of so-called forged letter. It may be said that the alleged act indicates deception but the question is does it indicate legal injury or risk of legal injury. The view taken by the courts below is that the deception may result in securing an advantage for the accused but will cause injury or risk of injury to no one. Electric Department will get lawful charges for the electricity consumed from the accused. Nor will there be any legal injury to the landlord because of the connection fixed in his house.

23. This view suffers from this defect that it assumes that there is no injury or risk of injury to Electric Department. It would be startling if a person were legally permitted to forge a document in the name of another and secure an advantage and yet commit no offence. Though apparently no injury or loss to the Electric Department is discernible it is certain that in making rule of practice which requires a consent of the owner of premises the Department intended to save them from risk of obstruction or unnecessary litigation with the unwilling owner which may result in some injury. Therefore element of injury or risk of injury is present in this

case too.

24. The considerations that a tenant would be paying for the electricity consumed and the landlord will not materially suffer if an electric connection which is an ordinary modern amenity is fixed in the leased portion of his house are those that may affect the sentence. But not the criminality of the act.

25. For these reasons I set aside the order and send back the case for trial and disposal according to law.

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