

Ram Dhari Vs. the State

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Court : Delhi

Decided On : Dec-20-1973

Reported in : ILR1975Delhi49

Judge : Jagjit Singh and; Prithvi Raj, JJ.

Acts : [Constitution of India](#) - Article 134

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 58 of 1973 and Criminal Appeal No. 44 of 1967

Appellant : Ram Dhari

Respondent : The State

Advocate for Pet/Ap. : R.K. Maheshwari,; Suresh Sethi and; D.R. Sethi, Advs

Judgement :

Prithvi Raj, J.

(1) This petition and the other four petitions Sca 56 of 73 in Crl. Appeal 46 of 1967, Sca 57 of 73 in Crl. A. 48 of 1967, Sca 59 of 1973 in Crl. A. 47 of 1967 and Sca 60 of 1973 in Crl. A. 45 of 1967, raise a common question of law. It would be appropriate to dispose them of by a common order. For the purposes of this order the facts of Criminal Appeal No. 44 of 1967 are being taken.

(2) By this application under Article 134 of the [Constitution of India](#) the petitioner has prayed for the grant of a certificate for leave to appeal to the Supreme Court.

(3) The main contention advanced by the learned counsel for the petitioner was that electricity could not be said to be 'property' within the meaning of section 22 of the Indian Penal Code. The conviction of the petitioner under section 420 Indian Penal Code . accordingly was not proper and could not be sustained under the said section. In support of the contention reliance was placed on Avtar Singh v. The State of Punjab : 1965 CriLJ605 . In that case the appellant was convicted under section 378 of the Indian Penal Code . of having committed theft of electricity, as per provisions of section 39 of the Indian Electricity. Act 1910. It would be relevant here to reproduce the aforesaid section, which is as follows :-

'WHOEVER dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code.'

(4) The appellant in that case contended that his conviction was illegal. Dealing with the contention it was observed, 'Section 378, read by itself even after the enactment of section 39 would not include a theft of electricity for electricity is not considered to be moveable property.'

(5) The learned counsel for the petitioner vehemently contended that electricity having been held to be not moveable property the conviction of the petitioner in the instant case was had in law.

(6) The charge framed against the petitioner was that between 1959 and 1962 the petitioner cheated the electricity board Delhi and Desu in obtaining electric power connection at 5-DLF by making false representations, forging and using forged documents in the name of M/s. Ram Lubhaya Charan Dass, although no such concern existed or worked in the said premises.

(7) On examining the documentary and oral evidence together with the circumstantial evidence on the record we came to the conclusion that the charge of having cheated the authorities concerned in procuring and shifting of power connection granted in the name of Ram Lubhaya Charan Dass in plot No. 196-A,

Shyama Parshad Mukherjee Park to 5-DLF was fully established. As noted above, the charge against the petitioner was that he cheated the electricity board Delhi and Desu in procuring electric power connection at 5-DLF. The contention, however, of the learned counsel for the petitioner was that the necessary consequence of procuring the electric connection would be that he succeeded in getting the electric power which he consumed at his premises. If that be so, it was urged, the charge would be in respect of getting the power and consuming the same at 5-DLF. Electricity having not been considered to be 'moveable property' the conviction of the petitioner under section 420 could not be sustained. We express our inability to accept the contention of the petitioner. The judgment of their Lordship of the Supreme Court in Avtar Singh's case (supra) is distinguishable from the facts of the instant case. The charge against Avtar Singh was that he had dishonestly abstracted, consumed and used energy and for having done so he was deemed to have committed theft within the meaning of the Indian Penal Code. It was in that context that their Lordship observed that a reading of section 378 by itself would not include a theft of electricity for electricity could not be considered to be moveable property. The allegations of the prosecution in the instant case, however, were for having obtained electric power connection and not for having dishonestly abstracted, consumed or used (power) energy. In *R. K. Dalmia and others v. the Delhi Administration* : [1963]1SCR253 , it was observed at page 1833 that there are,

'NO good reasons to restrict the meaning of the word 'property' to 'moveable property' only when it is used without clarification in section 405 or any other sections of the Indian Penal Code .'

Further the definition in section 22 is of the expression 'moveable property' and not of 'property' and can apply to all corporeal property except property excluded from the definition. Accordingly it was observed that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. Their Lordship accordingly expressed their inability to restrict the word 'property' in section 405 to 'moveable property'. In *Ishwarlal Girdharilal Parekh v. State of Maharashtra and others* : 1969 CriLJ271 , it was observed that the word 'property' occurring in section 420 does not necessarily mean that a thing of which a delivery

was dishonestly desired must have a money value or market value in the hand of the person cheated. Even if the thing has no money value, in the hand of the person cheated, but becomes a thing of value in the hand of the person, who may get possession of it, as a result of the cheating practiced by him, it would still fall within the connotation of the term 'property' in section 420. In *Abhayanand Mishra v. State of Bihar* 1961 SC 1698 an admission card to sit for the M.A. Examination of a university was held to be property. The contention of the appellant that the admission card had no pecuniary value and was, therefore, no property was negated on the ground that the admission card as such had no pecuniary value but it had immense value to the candidate for the examination. In *Durgadas Tulsiram Sood v. State* : AIR1955 Bom82 , it was observed that the word 'property' occurring in section 420 Indian Penal Code . does not necessarily mean that the thing of which delivery is dishonestly desired by the person who cheats must have money value or a market value in the hand of the person cheated. Even if the thing has no money value in the hand of the person cheated, but becomes a thing of value in the hand of the person who gets possession of it, as a result of the cheating practiced by him, it would still fall within the connotation of the term 'property'. In that case import license was held to be property within the meaning of section 420. In *Ram Chander v. State* A.I.R. 1966 Raj. 182, motor driving license was held to be property. From the various decisions noted above, the principle of law deducible is that the word 'property' used in the various sections of the Indian Penal Code . would apply to all corporeal property and cannot be restricted to 'movable property'. Besides the word 'property' occurring in section 420 Indian Penal Code . would not necessarily mean that the property should have money value or market value, but if it becomes a thing of value in the hand of a person who gets possession of it, as a result of the cheating practiced by him, the thing so procured would fall within the connotation of the term 'property'. Looked at from this point of view the 'electric power connection' obtained by the petitioner by cheating the electricity board Delhi and Desu by making false representations, forging and using forged documents in the name of M/s. Ram Lubhaya Charan Dass would fall within the connotation of the term 'property'.

(8) It may also be mentioned here that the contention now sought to be raised was not taken up in the grounds of appeal filed by the petitioner and neither urged

during the course of arguments at the time of appeal was argued. In the circumstances, normally it would not be open to the petitioner to raise this contention now in the present petition.

(9) For the reasons stated above, the application fails and is hereby dismissed.

(10) Criminal M. 873 of 1973 filed by the petitioner under sections 498 and 561-A of the Criminal Procedure Code praying that he be enlarged on bail is also dismissed as having become nugatory.

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