

Jagat Narain Vs. State and anr.

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Court : Delhi

Decided On : Jan-09-1985

Reported in : 1985(1)Crimes529; 27(1985)DLT346

Judge : J.D. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 415; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 203

Appeal No. : Criminal Revision Appeal No. 220 of 1983

Appellant : Jagat Narain

Respondent : State and anr.

Advocate for Pet/Ap. : Umesh Mishra,; A.K. Bajpai,; Bharati Anand and;

Judgement :

J.D. Jain, J.

(1) The revision petition is against an order dated 15th April 1983 of a Metropolitan Magistrate dismissing the complaint instituted by the petitioner against respondent No. 2 under Section 420 IPC. The said order was made under Section 203, Code of Criminal Procedure (hereinafter referred to as 'the Code').

(2) Respondent No. 2 Kanwar Balbir Singh is the Managing Director of M/s Kanwar Papers Private Limited, Kala Amb, Distt. Sirmaur (Himachal Pradesh) which was incorporated as a private limited company on 14th January 1981. A complaint was instituted by the petitioner against respondent No. 2 sometime in January 1983 alleging that he was employed as a head clerk in Grindlays Bank and he was to retire there from on superannuation on 15th February 1981. He was, therefore, on the look out for a job to maintain himself and his family after his retirement. Sometime in December 1980 he happened to meet respondent No. 2 at the residence of Shri H, Malik a retired Additional District & Sessions Judge, who was his close friend. The accused was closely related to Shri Malik and, therefore, he had occasions to meet the respondent several times at the residence of Shri Malik. During the said meetings respondent No. 2 came to know that the petitioner was about to retire from service and that he was on the look out for a job and so he planned somehow to get the money from the petitioner which was paid to him on retirement. The respondent therefore, offered to give the petitioner a job in his company M/s Kanwar Papers Private Limited which he was to float provided the petitioner purchase shares of that company. The petitioner was, however, reluctant to take the risk of purchasing the shares of a small company which was yet to be floated much less start functioning. However, on the respondent drawing a very rosy picture of the future progress of the company and also offering a job to him, he agreed to deposit Rs. 60,000.00 at 18% per annum interest. Of course, he was given the option to purchase the shares even after the company had gone into production. Feeling satisfied with the promises made by respondent No. 2 the petitioner paid Rs. 60,000.00 to the aforesaid company by means of a cheque and a draft which were duly encashed in March 1981. However, the respondent did not keep his promise of providing a job and he was insulted by the driver of respondent No. 2 at the latter's instance when he was called by respondent No. 2 for giving him a job at Kala Amb. The petitioner protested against the behavior of the respondent who then offered a job to him with Shri Malik who was one of the Directors of the said company. He was assured that he would work with Shri Malik at Delhi itself as his personal assistant but on the petitioner trying his level best for the said job the respondent failed to provide the same. Feeling frustrated the petitioner demanded back his money but the

respondent did not pay. However, he was stunned when in August 1982 Sbri Malik showed him a share certificate dated 20th June 1981 to the effect that shares of the face value of Rs. 60,000.00 of the company had been allotted to Shri Malik and not to him. At this stage he could realise that he had been cheated by respondent No. 2. He again tried to persuade respondent No. 2 to pay back his money but in vain. The petitioner, inter alia, contended that he would not have made payment of such a huge amount to respondent No. 2 out of his life's savings but for the clear assurance given to him by the latter that he would be provided with a job and that he would be paid interest at 18% per annum on the amount so deposited with the company.

(3) The petitioner examined himself and also Shri H.K.S. Malik in support of his case. Shri Malik has by and large supported the version of the petitioner and has, inter alia, deposed that the share certificate dated 20th June 1981 which had been issued in the name of the petitioner was received by him sometime in August 1982 and he showed the same to the petitioner.

(4) It is on these facts that the learned counsel for the petitioner has vigorously urged that the learned Magistrate fell into a grave error in not summoning respondent No. 2 for trial on a charge under Section 420 IPC. The learned Magistrate has/no doubt misread some of the facts as would appear from the impugned order but basically he is of the opinion that the petitioner never took any action of any kind against respondent No. 2 even though he came to know of the issuance of share certificate in his favor in August 1982 (wrongly stated June 1981) During the course of his arguments 1. enquired from the learned counsel for the petitioner if any demand notice for re-payment of the principal amount or payment of interest was ever sent by the petitioner to respondent No. 2 in writing stating that the amount had been paid to the company by way of deposit. The learned counsel for the petitioner candidly concedes that there is nothing on the record as such, although according to him he would have produced such evidence later on if the respondent had been summoned. Be that as it may, the fact remains that there is nothing on the record to show that at any stage the petitioner felt really perturbed over the conduct of the respondent in issuing the share certificate to him instead of an interest bearing deposit receipt and not paying interest for

nearly two years. That apart, guilty intention is an essential ingredient of the offence of cheating. On a plain reading of Section 415 Indian Penal Code which defines cheating it is abundantly clear that deceitful or fraudulent intention must (co-exist with inducement offered to the victim of cheating. The opening words of the Section 'whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived deliver any property' are very pertinent to note in this context. My attention has been invited to illustration (f) by the learned counsel for the petitioner which runs as under : 'A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby, dishonestly induces Z to lend him money. A not intending to repay it. A cheats.'

(5) On a plain reading of this illustration the observation made by me above is fortified rather than not. Were it not so then in every case of money loan a case of cheating would be made out. Thus, the intention of the person who is alleged to have committed the offence of cheating has to be seen at the time when inducement is made and money is paid. Subsequent change of mind on his part is not very relevant to an offence under Section 420 IPC. In other words, what may be merely a civil liability to begin with will not be converted into criminal liability by the subsequent change of mind and conduct. No doubt intention to cheat can only be gathered from the facts and circumstances of each case but the fact and circumstances must be such as to exclude any reasonable hypothesis of good faith. Looked at the case from this angle, I am unable to find anything on the record which would warrant an inference that at the very inception of the transaction in question the respondent had an intention to defraud the petitioner. It is no doubt true that according to the petitioner, no application for allotment of shares was ever made by him and, therefore, the transaction must be deemed to be one of interest bearing deposit. However, I regret that such an inference to foist criminal liability cannot be drawn from the circumstances which have come on record. What transpired between the parties orally is anybody's guess but the fact remains that no writing whatsoever has come on record to show what were the terms of the transaction. Strangely enough the petitioner did not ask for any fixed deposit receipt. He did not ask for re-payment of the loan or payment of interest in writing. There is no averment to this effect anywhere. Hence, the learned Magistrate was perfectly justified in holding that a case for fastening criminal

liability on the respondent is prima-facie not made out. I find no good ground to interfere with the impugned order. The revision petition is accordingly dismissed.

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