

Damodaran Vs. the State

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Court : Kerala

Decided On : Jun-11-1951

Reported in : 1952CriLJ157

Judge : Kunhi Raman, C.J. and; Joseph, J.

Appellant : Damodaran

Respondent : The State

Judgement :

Kunhi Raman, C.J.

1. Calendar Case No. 1 of 1125 (M.E.) was disposed, of by a special Tribunal constituted for that purpose by the Government of India consisting of a senior District and Sessions Judge deputed from the Madras State. The crime excited considerable local interest in Cochin. The subject-matter of the offence was over 5 (five) lakhs of rupees taken from the coffers of the erstwhile Cochin State during the time of His Highness' Kerala Verma who was then the ruling Prince of the State and who died before the trial commenced. Three persons were charged with offences of forgery and cheating under the Cochin Penal Code which was then in force in the State. The 2nd accused was a son of the then Maharaja and it was believed that he wielded considerable influence over his father. The Police investigation was conducted by an officer deputed by the Union Government at Delhi. The trial before the Special Tribunal continued for over eight months at

Ernakulam (from January to September 1950) and on the 12th of September 1950 the judgment of the Tribunal was pronounced convicting the 1st accused Damodaran of the offence of cheating under Section 400 of the Cochin Penal Code and sentencing him to rigorous imprisonment for 18 months. The 2nd accused who was charged with abetment of the offence was acquitted. The 3rd accused died pending trial and the case against him, therefore, terminated. The present appeal is brought on behalf of the first accused.

2. The evidence is considerable in quantity. The appeal was argued before us by Mr. Malloor Govinda Pillay who appeared for the appellant, Mr. Saranjame, the Special Public Prosecutor appointed by the Government of India appeared on behalf of the State. The Advocate-General of this State who had filed a criminal revision case, contended that the punishment was not adequate and he, therefore, prayed for a more severe sentence. According to him, a sentence of fine should have been coupled with the sentence of imprisonment. We should like to record that learned Counsel who appeared before us discharged their respective duties with commendable brevity without at the same time omitting to deal with any relevant aspect of the case, with the result that it was possible for us to conclude the hearing in a little over two days.

3. It is necessary at the outset to refer to the main features of the case which came in for comment in the course of the arguments. We propose to confine our attention to these and these alone and not to refer to the wealth of detail which is contained in the judgment of the Tribunal.

4. To begin with the substance of the case for the prosecution is that the 1st accused appellant practiced deception and fraudulently induced P.W. 1 who was then employed as Director of food Supplies in the Cochin State to part with two cheques for Rs. 1,10,740 and Rs. 4,42,960 respectively on 15.7.1947 and 21.7.1947 in his favour, by making false representations. The representations were that the 1st accused on behalf of his firm, the South Indian Agencies had purchased 200 and 800 tons of cocoanut oil, on doing which P.W. 1 was to pay him the difference between the controlled rate and the market rate for the commodity the cheques being for such differences. The oil was intended to be

exported to certain merchants in Hyderabad (Dn) who were reported to be having such influence over H.E.H. the Nizam that they would be able to coax him to accede to the Indian Union, It will be seen that during the period in question the major States had not yet acceded to the Indian Union. It will also be remembered that the political situation in India at that time was unsettled and efforts were being made to induce the princely States to accede to the Indian Union. The then Maharaja of Cochin was a strong believer in this course and he felt that he would be doing a great service to the country if he brought about the accession of Hyderabad.

5. At the first blush, the statement that H.E.H. the Nizam could be made to take a decision on such a vital question, if 1,000 tons of cocoanut oil were supplied at controlled rates to certain of his subjects, sounds fantastic. That was what the then Diwan who was examined as P.W. 6 and the then Food Minister of the State who was examined as P.W. 14, felt when the idea was propounded to them in all seriousness by His Highness who was then completely under the influence of the second accused, one. of his sons. The latter was no doubt interested in getting the amounts involved in the case paid to his friends and reputed partner, the first accused. Since the 2nd accused has been acquitted and there is no appeal from the order of acquittal, we shall not say anything in this judgment to his prejudice except to refer to the links in, the chain of events which he had forged. To understand how His Highness was so credulous, it is enough if we refer to the evidence of his Diwan. Here are his words:

During the period I was Diwan I had to interview His Highness the Maharaja at least two or three times a week. Due to his mental and physical weakness, I used to notice that he was generally unwilling to discuss files seriously. In the middle of discussions, he used to tell me that he was tired and we used to stop discussions. I noticed that he used to be sometimes absent minded and not coherent while discussing matters.

It also appears from the evidence that the Maharaja was then 79 years of age.

6. Fully believing that the despatch of cocoanut oil to Hyderabad sold at controlled rates would enable him to attain his object, the Maharaja issued the necessary

orders. He spoke to the Diwan P.W. 6 and the Food Minister, P.W. 14 at the Hill Palace where they were called for interview. At that time, the control over the price of cocoanut oil which had remained in force for some time in the State had been removed. The market prices naturally went up subsequent to this event and the difference between the controlled and the market rates would be in the vicinity of 5 lakhs of rupees for 1,000 tons of cocoanut oil at the relevant period.

7. Having adverted to the main features of the incident which led to the commission of the offence, we shall come to the events that happened which resulted in the prosecution of the accused. The Maharaja having conceived the idea of paying the firm of the first accused the amount of the difference between the controlled and market prices of 1,000 tons of cocoanut oil to enable the company to export the oil to the Hyderabad State, communicated the idea to his Minister for Food and his Diwan. The former pointed out to the Maharaja that such a payment would come in for adverse criticism in the Legislature of the State and lead also to interpellations. He therefore, advised His Highness that if he had definitely made up his mind on the point, the safer course would be to pay the amount out of the political funds of the State which were under the control of the Diwan. This would not lead to any protests from the legislature, the fund being outside the purview of the jurisdiction of the Legislative Assembly. The suggestion appealed to the Maharaja who sent for his Diwan and asked him to carry out his idea. This did not find favour with the Diwan who pointed out that the funds of the State would be depleted beyond the capacity of the State and that it was not provident to use the amount for the benefit of persons outside the State. These arguments, however, did not convince the Maharaja although they were accompanied by a threat of resignation by the Diwan which made the Maharaja angry to such an extent that he left the audience chamber abruptly. The Diwan returned home greatly perturbed at the extraordinary order transmitted to him and not knowing what to do. At that stage he got a personal letter written to him by the Maharaja. This has been marked as Ext BC. Paragraphs 2 & 3 of this letter contained the mandate issued by His Highness. The whole of the letter deserves to be read in full:

My dear Karunakara Menon,

I am afraid you have not understood clearly what I wanted to convey to you. This oil question involves a big political issue which I am obliged to keep secret. In substance it is to prevent a political alliance detrimental to the country. This I told Mr. Panampalli Govinda Menon and he is, I think, right when he told me that there would be difficulty in doing this through the normal channel.

Therefore, after discussion with him it has been decided by me that the Government should purchase 1,000 tons at market rate through the Director of Food Supplies and give it to the party who is nominally acting here at controlled rate. The loss will be treated as political expenditure and no question, Govinda Menon says, can be asked then in the Council.

The issues are too big and no consideration of loss should stand in the way. Therefore, please issue a cheque, for the necessary amount for purchase to the Director of Food Supplies and direct him to effect the purchase as quickly as he can. This should be done immediately. Mr. Govinda Menon will explain everything.

This letter was written on the 11th July 1947. On the 12th July the Diwan evidently to safeguard his position wrote for formal sanction of the payment (Ext K) and on this payment was sanctioned in the usual way by the Maharaja. The note submitted by the Diwan is worded as follows:

As commanded in His Highness' D.O. Dated 11.7.47 I have issued a cheque for Rs. 5,65,600 in favour of the Director of Food Supplies and ordered its debit as a grant on political issues under the Budget Head. 41 Miscellaneous - Political Expenditure - other charges - not voted. I am asking the Controller of Finance and Accounts to admit this expenditure without vouchers. Formal sanction of His Highness is solicited. An additional allotment to this extent may be sanctioned. This represents the estimated difference between the old controlled rate of Rs. 1,390 per ton and the market rate (which may fluctuate) of Rs. 1,955 a ton on 1,000 tons.

This is dated 12th July 1947. On the 13th of July 1947, the endorsement containing the sanction for this expenditure and the additional allotment, was made on this note by the Sarvadhikariakar on behalf of His Highness and sent to

the Diwan.

8. Fortified with this voucher, the Diwan passed the amount in two cheques to the Director of Food Supplies, P.W. 1. The Diwan and P.W. 1 had in the meantime agreed that since the Maharaja had given strict orders that the matter should be kept as a 'top secret', the proper course to adopt would be to make the purchaser through the first accused and then reimburse him by giving the two cheques to cover the loss. The Diwan has stated in his evidence that he and P.W. 1 felt that Ext K would warrant such a procedure and we cannot say that this assumption was wrong. The parties whom the Maharaja wanted to benefit were the 1st accused and his firm in which incidentally the 2nd accused was also interested. P.W. 1 contacted the first accused who represented in due course that the purchases were concluded and the commodity obtained which representations were untrue. The two cheques were then passed on to the 1st accused. He passed two formal receipts Exts W and W (1) when he got the two cheques.

9. It would be convenient to deal with the two questions of law that were raised on behalf of the accused appellant by his learned Counsel at this stage. The first point urged on behalf of the appellant is that the questions asked by the Court below in examining the accused after the witnesses for the prosecution had been examined are inquisitorial in their nature and that they contravene the provisions of Section 259 of the Cochin Code of Criminal Procedure which-was the law applicable on the date of the trial to the present case. Section 259 of the Cochin Code corresponds to Section 342 of the Indian Code of Criminal Procedure. All the questions were read out to us by the learned Counsel for the appellant and we are not satisfied that they were asked for the purpose of eliciting information which would incriminate the accused appellant. On the other hand, the trial had gone on beyond reasonable limits and in view of the time taken in finishing' the evidence on behalf of the prosecution and the voluminous depositions given by the witnesses especially as a result of cross-examination, the Court below was fully justified in inviting the attention of the accused to the essential features of the case against him and ascertaining from him whether he had any explanation to give of the circumstances appearing in evidence against him. There is no defect in the procedure adopted by the trial Court in respect of this point as urged on behalf of

the defence.

10. The next point urged is that the charge is not sufficiently explicit to give reasonable notice to the accused of the prosecution case against him. This contention is based upon illustration (C) to Section 201 of the Cochin Code of Criminal Procedure. According to the section no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. Illustration (C) refers to a case of cheating where there are many transactions between 'A' and 'B' in the course of which 'A' is alleged to have cheated 'B' but the manner in which he cheated 'B' is not set out in the charge. If 'A' had no means of knowing to which of them the charge referred and had offered no defence the Court may infer that the omission to set out the manner of the cheating is a material error. The charge could have been more explicit in the present case but there were only two incidents in respect of which the accused was charged with cheating. He obtained by making untrue representations two cheques from P.W. 1 Director of Food Supplies in the Cochin Government. They were for the difference between the controlled price and the market price of coconut oil on the relevant dates. The Maharaja had given directions that the Diwan should see that P.W. 1 made the purchase in the market at the market rates and passed the commodity on to the 1st accused and his firm at the controlled rates, the Government bearing the difference between the two rates which would roughly work out at the total amount involved in the case. The Diwan and P.W. 1 decided that instead of the Government making the purchase which would have led to undue publicity contrary to the strict injunction given by the Maharaja that the matter should be regarded as 'Top Secret' the proper course to adopt would be to ask the first accused and his firm to make the purchase and pay him the difference between the market rate and the controlled rate. The 1st accused represented that he had not only arranged, for the purchase of the 1,000 tons in two instalments of 200 and 800 tons but produced documents to show that the purchases had been effected by him. As a matter of fact, no such purchases were effected. He thus induced P.W. 1 to part with the two cheques in his favour after practising this deception. There is no doubt that the accused and the

advocate who appeared for him in the Court below fully understood the nature of the case against him. The charge does not specifically state in so many words that the accused made representations that he had arranged to buy and actually purchased the commodity and thus induced P.W. 1 to part with the two cheques in his favour. This omission in the present case we do not consider as material within the meaning of illustration (C) to Section 201. It is stated in that illustration that the accused in the case contemplated had no means of knowing to which of the various transactions between him and the complainant the charge referred. As a result of that, he offered no defence. In the present case the accused not only raised a defence but strenuously pressed the defence in the Court below through his advocate and even applied for process to call a witness. In the circumstances we are not satisfied that the accused was in any way misled by the omission of details in the charge framed against him or that it has occasioned a failure of justice. There was no objection raised in the course of the trial in Sri. Court below about the nature of the charge. The memorandum of appeal filed in this. Court bears the signature of the advocate who appeared for the first accused appellant in the trial Court. There is no question raised in these grounds about the legality of the charge or the insufficiency of the particulars disclosed in the charge. From this it is apparent that neither the accused nor the advocate who appeared for him at the trial was misled by the charge or failed to understand the nature of the case brought against him on behalf of the prosecution. Both the accused and his Advocate fully understood the nature of the charge and raised all possible defence in the trial Court. The case therefore does not fall within the purview of illustration (C) to Section 201. On the other hand, it comes within the purview of the section which lays down in unequivocal terms that absence of particulars in the charge shall not be regarded as material, unless the accused was in fact misled by the omission and it has occasioned a failure of justice. We have already stated that both these conditions are not fulfilled in the present case. There is also Section 434 of the Cochin Code of Criminal Procedure corresponding to Section 537 of the Indian Code of Criminal Procedure according to which:

no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of (a) any error, omission or irregularity in the...charge...or other proceedings before or during trial or in any

inquiry or other proceedings under this Code...unless such error, omission, irregularity...has in fact occasioned a failure of justice.

The explanation to this section makes the position clearer still by laying down that in determining whether any omission has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. Here, no objection was raised either during the course of the proceedings or even in the memorandum of appeal filed in this Court by the advocate who represented the accused in the trial Court. It was another learned Counsel who represented the accused before this Court who thought of raising this point in his arguments. We hold that there is no substance in this objection.

(After discussing the evidence his Lordship dismissed the appeal of the accused and further holding that the ends of justice were sufficiently satisfied by the punishment awarded by the Court below saw no reason to enhance or to supplement it by imposing a sentence of fine dismissed also criminal revision petition.)

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