

Skaria Vs. Narayanan

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Court : Kerala

Decided On : Feb-15-1961

Reported in : 1962CriLJ649

Judge : P. Govinda Menon, J.

Appellant : Skaria

Respondent : Narayanan

Judgement :

P. Govinda Menon, J.

1. The complainant in C.C. 59 of 1959 has filed this appeal against the order of acquittal passed by the Munsiff-Magistrate of Thodu-puzha.

2. The case against the accused was that on 28.6.1956 he executed a hypothecation bond Ext. P-1 in respect of the property in Section No. 795/5B in Kodikulam Village for Rs-. 350/- representing that the property belongs to him and that there were no encumbrances on the property. Believing the representation the complainant parted with money.

3. Later it was found out that the accused had no rights in the property, that on 30.1.1956 about 5 months before Ext. P-1 he had already gifted his rights in the property to his wife and that prior to the gift deed he had assigned and sold away

his half rights in the property to the wife.

4. Thus on the day the accused offered the property as security and made the representations to the complainant he knew that he had absolutely no rights in the property and that what he was representing was false. Where the accused knew from the very beginning that the representation while he was making to the complainant was a false one and it is on the basis of that representation that he obtained a certain sum of money from the complainant the accused would be guilty of cheating. Such a wilful misrepresentation fact with intent to defraud would clearly amount to cheating. The representation is proved to be false to the knowledge of the accused at this time when he made the representation. Illustration (i) to Section 415 may in this connection be noticed. The facts of this case are similar.

5. The learned Magistrate has acquitted the accused on the ground that it is a civil dispute. I fail to see where the civil dispute comes in this case. Merely because the accused puts forward a false defence when he was being prosecuted would not take it away from being a criminal offence. I am not able to understand the argument of the learned Counsel for the respondent that there was no intention to cheat. The learned Magistrate is in error, if he supposes that the existence of a civil remedy should necessarily exclude trial by a criminal court of a criminal offence. Merely because there is a covenant in the hypothecation bond to make good the loss if any would be wholly an inadequate ground to throw out the case when there is clear evidence of a criminal offence being committed. The acquittal therefore, clearly wrong, and unsustainable in law and has to be set aside.

6. The facts set forth above undoubtedly constitute an offence under Section 420, I.P.C. It was argued that the offence would amount only to one under Section 417, I.P.C. I cannot agree. Section 417, I.P.C. deals with cheating generally, but Section 420 deals with that species of cheating which involves delivery of property. The decisions are clear that the word property in Section 420 includes money. I have, therefore, no doubt that the offence committed is one under Section 420, I.P.C. I find the accused guilty and convict him under Section 420, I.P.C. In the peculiar circumstances of the case, I take a lenient view and sentence the accused to rigorous imprisonment for one month. The appeal is allowed.

