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Court : Rajasthan

Decided On : May-17-1952

Reported in : 1953CriLJ159

Judge : Atma Charan, J.C.

Appellant : Nandkishore

Respondent : State

Judgement :
ORDER

Atma Charan, J.C.

1. Heard the parties.

2. Naudkishore (accused-applicant) stands convicted under Sections 420/109 & 471/468, Penal Code, and. sentenced in the aggregate to undergo two years' rigorous imprisonment and to pay a line of Rs. 1000.

3. The facts of the case are that one Rajkumar is said to have cheated the complainant Shankerlal and his father Ghisalal of Nasirabad find extracted from them a sum of about Rs. 6000 by falsely representing to them that lie was a big sugar merchant at Bijnor doing business under the name and style of M/s. Surajprakash Rajkumar, that he was also an agent of the Ajudhya Sugar Mills at Raja-ka-Sahaspur, that he had a railway receipt for 200 bags of sugar consigned

to self from Raja-ka-Sahaspur, to Ajmer and that ho was prepared to transfer the goods to them for sale on commission basis. They agreed to this, and paid the amount in question to Rajkumar by means of a bank-draft. It was alleged by the prosecution that Nandkishoro was with Rajkumar at the time of the alleged cheating and acted as 'munim' of. Rajkumar and that Rajkumar and Nandkishore were members of a criminal conspiracy to cheat Shankerlal. When subsequently the complainant did not receive the goods enquiries were made by him, and it was found out that the railway-receipt was a forged one, that the transaction was altogether a bogus one and that ho had been cheated. The matter was reported to the Police, who investigated the casa and challaned the accused-applicant.

4. It has been amply proved by the prosecution evidence that the railway receipt was a forged one, that no sugar bags wore consigned from. Raja-ka-Sahaspur to Ajmer and that the railway-receipt was not at all issued from Raja-ka-Sahaspur. It was also proved that there was no firm of the name of M/s. Surajprakash Kajkumar at all at Bijnor and that no person of the name of Rajkumar was agent of the Ajudhya Sugar Mills. These facts have been found established by the two Courts below, and the same have not been challenged by the counsel for the accused-applicant before the Court. In fact, Nandkishore also admits in his statement before the trial Court that-there was no such firm at Bijnor.

5. The first point argued by the counsel for the accused-applicant is that the prosecution has not proved any guilty knowledge or dishonest intention on the part of Nandkishore in accompanying Rajkumar at the time of the alleged incident. So far as this point is concerned, I find from the evidence on record of the trial Court that Nandkishore and Rajkumar are both residents of Amorha and are closes acquaintances, and this fact has not been seriously denied at the time of arguments on behalf of tho accused-applicant before the Court. The presence of Nandkishoro at the Ajmer Railway Station, when Munnalal introduced Rajkumar to Ghisalal, and the fact of his accompanying Rajkumar to Nasirabad to settle the transaction with the complainant leads me to infer that they were acting jointly and in furtherance of a common intention. Being a close acquaintance of Rajkumar he must be knowing that Rajkumar was no sugar merchant at Bijnor. He also knew that there was no firm of the name of M/s. Surajprakash Rajkumar at Bijnor and

unless he was a party to the cheating he would have certainly dissociated himself straightway from Rajkumar and repudiated the intentional misrepresentation made to the complainant by Rajkumar. On the other hand, the accused applicant allowed himself to be passed as 'munim' of Rajkumar and took active part in cheating by proceeding to Nasirabad along with Rajkumar and actually abetting what took place at Nasirabad. The accused applicant has not been able to explain to my satisfaction this conduct on his part, and from tins the only inference that could reasonably be drawn is that he knew full well that Rajkumar was cheating the complainant with his active connivance After all guilty knowledge or dishonest intention cannot be proved by any direct evidence but only by proof of circumstances from which a reasonable inference could be drawn.

6. It has then been argued by the counsel for the accused-applicant that the accused-applicant remained silent while Rajkumar committed the cheating and that, as such, ho could not be convicted of abetment, and he has cited some authorities in support of this contention. I quite agree with the proposition of the law as stated in these rulings, but the accused-applicant did not merely stand by as an innocent spectator of a crime committed by a third party but, on the other hand, he not only accompanied Rajkumar to Nasirabad in furtherance of their common intention but also allowed him to be used as an instrument in the hands of Rajkumar for the purpose of cheating the complainant. He thus took an active part in ' the cheating by Rajkumar and is clearly 'guilty' of abetment as found by the two Courts below.

7. The complicity of Nandkishore with Rajkumar is further strengthened by the evidence of Indorlal (p. w. 30) of Jaipur, who has stated that about n fortnight before the incident in question ho was cheated by Nandkishore and Rajkumar jointly and deprived of a large sum of money in an almost identical manner on the basis of a similar forged railway-receipt. It is true that this evidence cannot be used for the purpose of proving the principal offence of cheating, but this piece of evidence can certainly be used to prove the previous criminal association of Nandkishore with Rajkumar and to prove that the fact of Nandkishore in accompanying Rajkumar to Nasirabad was not an innocent act but was with a dishonest intention to act jointly with Rajkumar for the purpose of cheating the

complainant.

8. The next point argued by the counsel for the accused-applicant is that the prosecution evidence as to the identity of the accused-applicant is doubtful as the complainant had not given any description of his in the F.I.R. My own personal view in the matter is that no hard and fast rule could be laid down in this connection, and the value to be attached to the identification of an accused by a witness, who gave no description of the accused-applicant to the Police, is to be decided with respect to the particular circumstances of each case. In the present case, the accused, applicant occupied only a secondary role in the commission of the offence and the complainant not giving his full description in the F.I.E. does not, in my opinion, render his identification doubtful, especially when he had the full opportunity to see the accused-applicant in broad daylight and for a sufficiently long time.

9. It has then been lastly argued by the counsel for the accused-applicant that the recovery of EX. P/57 from the possession of the accused-applicant has not been satisfactorily proved. Both the Courts below have held that the paper in question was recovered from the possession of the accused-applicant himself. This is a finding of fact, and could not be ordinarily interfered with on the revisional side by the Court. Even for arguments' sake if the evidence to the effect is discarded in toto it does not affect the sum total of the prosecution case as against the accused-applicant in any way whatsoever. The accused-applicant thus has rightly been convicted by the two Courts below under Sections 420/109 and 471/468, Penal Code. The sentences in no way appear to be excessive.

10. The application in revision accordingly is dismissed.

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