

In Re: Antony D' Silva and Ors.

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SooperKanoon Citation : sooperkanoon.com/776379

Court : Chennai

Decided On : Mar-19-1948

Reported in : 1949CriLJ70

Judge : Happell and ;Govindarajachari, JJ.

Appellant : In Re: Antony D' Silva and Ors.

Judgement :

Govindarajachari, J.

1. The above criminal revision case and criminal miscellaneous petitions arise out of seven cases on the file of the Special First Class Magistrate of Mangalore and involve an important question of jurisdiction. They have been placed before a Bench by order of Govinda Menon J, It is unnecessary at this stage to set out the several charges framed against the various petitioners.

2. The arguments before us proceeded on the footing that there are only two classes of cases involved, that the first charge in C. C. No. 10 of 1947 out of which Cri. R. C. no. 133S of 1947 arises is typical of one of these classes while the other is typified by the second charge in the same calendar case.

3. Under the first charge the petitioners in Cri. Rule 0. no. 1338 of 1947 are charged with cheating P. w. 13 by sending him certain lottery tickets without running a lottery and thereby inducing him to deliver money which act of cheating

was partly committed in South Kanara and partly in Trichur. The accused in this case and in the other cases are residents of South Kanara and therefore 'native Indian subjects of His Majesty' within the meaning of the Penal Code. P. w. 13 is a resident of Trichur. Under the second charge which is also under Section 420, Penal Code, the accused are charged with selling to P. w. 10, a resident of Travancore through p, W. 9 also a resident of Travancore, certain lottery tickets without running a lottery and thereby inducing the former to part with money. It is Slid to have been committed partly in South Kanara and partly in Travancore.

4. In regard to the latter charge the relevant evidence is that of P. W. 9 and E W. 10 which is to the following effect. For the purpose of deciding the preliminary question of jurisdiction the truth of this evidence must, of course, be assumed. p. w. 10 saw in Travancore certain lottery tickets similar to Exs. p. 83 series and was led to believe that a lottery would be held. He then purchased from P. W. 9 Exs. P- 83 series and paid cash for them. The accused never held the lottery. P. W. 9 was, according to his evidence, the outright purchaser of the tickets-P- 83 series- from the accused and was not a mere agent to sell the tickets on their behalf. The argument of Mr. M K. Nambiar, the learned advocate for the petitioners, was that the offence took place at Travancore. The learned Public Prosecutor argued on the other hand that it was committed in South Kanara. Looking at the definition of 'cheating' contained in Section 415, Penal Code, there can be no doubt that it consists of two ingredients, namely, (1) deception and (2) parting with property by the person deceived. Under the Explanation a dishonest concealment of facts is deception within the meaning of the section. Deception may result from words spoken or written, or from visible representations or from conduct. When tickets resembling Exs. P- 83 Series were offered for sale in Travancore either by an agent of the accused or by a purchaser from them the accused must be taken to have represented to the persons who saw those tickets that a lottery would be run. If that representation or assurance turns out to be false the accused can certainly be said to have practised deception on the persons who saw those tickets of whom P. W. 10 is one.. According to Mr. Nambiar the re-presentation took place only when the tickets were so seen by P. W. 10. In consequence of that representation P. W. 10 bought Exs. p. 83 series from P. w. 9 and the payment of money by P W. 10 to P. W. 9 being also in Travancore the argument on behalf of

the petitioners was that be to parts of the offence occurred outside South Kanara and within the jurisdiction of a sovereign State namely Travancore. The learned Public Prosecutor argued that the tickets were printed in South Kanara, that they were despatched from South Kanara to Travancore to P. W. 9, who sold them in his turn to P. W. 10, that all these facts must be regarded as part of one series and that the offence must be held to have occurred in South Kanara at any rate as regards the deception practised on P. W. 10.

5. Under Section 177, Criminal P. C, every offence shall ordinarily be enquired into and tried by the Court within the local limits of whose jurisdiction it was committed. This is based on the principle of English law that all crime is local. Section 177, Criminal P. C, provides for the simplest case and perhaps the case which most frequently occurs, namely, of an offence committed entirely within a single jurisdiction. The other provisions of chap. 15, Criminal P. C., deal with a variety of situations which are more or less complicated. Another material section for the present purpose is Section 179 which provides that:

When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Dealing with a case coming under Section 420, Penal Code, it may at once be stated that if the deception and the deprivation of property be to take place within the local limits of the jurisdiction of a Court, Section 177, Criminal P. C, will directly apply. If, on the other hand, deception is practised within the territorial jurisdiction of one Court and the consequence, namely, payment of money occurs within the jurisdiction of another Court either Court can, by virtue of Section 179, Criminal P. C, try the case subject of course to the applicability of the Code of Criminal Procedure to be to the Courts. See *Bichitranaund Doss v. Bhugbat Perai*, 16 Cal. 667. If one of these Courts is not governed by the Criminal Procedure Code as for instance where it is a Court situated in an Indian State Section 179, Criminal P. C, has obviously no application to that Court. But where an offence is committed at any place without and beyond the limits of British India by a Native Indian subject

of His Majesty Section 188, Criminal P. C, provides that he may be dealt with in respect of such an offence as if it had been committed at any place within British India at which he may be found. To this, however, there is a proviso that:

Notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be Inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, In his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Provincial Government shall be required.

Section 188, Criminal P. C, is the procedural counterpartArticle if we may so describe it of Section 4, Penal Code, which makes the provisions of that Code apply to any offence committed by any Native Indian subject of His Majesty in any place without and beyond British India. The explanation to that section which was added by way of abundant caution makes it quite explicit that the word 'offence' in the section includes every act committed outside British India which, if committed in British India, would be punishable under the Code.

6. In support of his argument that the deception can be said to have been practised only in Travancore Mr. Nambiar cited the decisions in *Ratnam v. Emperor* : AIR1932 Mad427 , *In re Abdur Shukur Sahib* : AIR1943 Mad500 and *In re Sivaprakasam Pillai* : AIR1948 Mad292 . The first two of these cases were concerned with an offence under Section 182, Penal Code, namely, of giving false information with. intent to cause a public servant to use his lawful power to the injury of another person, the letter addressed to the public servant concerned being posted at one place and delivered at another. The false information was - held in be to these cases to have been given at the place where the letter was delivered. Horwill J. who decided *In re Abdur Shukur Sahib*, : AIR1943 Mad500 put the matter pithily' when he said that the post office acted as the agent of the accused in carrying the letter from one place to another and that the effect was the same as if the accused handed over the letter in person at the latter place. In *In re Sivaprakasam Pillai*, : AIR1948 Mad292 the offence alleged was one under Section 311, Penal Code, namely, of making a false charge of offence with intent

to injure the person against whom it is made. Here again it was held that where the posting and delivery of a letter which contained such a false charge were at different places, the jurisdiction to try the offence was in the Court within whose local limits the delivery was made. In our opinion the present case is analogical. The printing of the lottery tickets in South Kanara or their despatch to Travancore cannot be regarded as being an essential part of the deception which is contemplated by Section 415, Penal Code, though of course there could have been no deception if the lottery tickets had not been printed or if they were not sent by the accused to Travancore where they were seen by P. W. 10 amongst others. If the accused were guilty of deceiving P. W. 10 by the representation contained in the lottery tickets, the deception or representation for the purpose of Section 415, Penal Code, must be taken to have commenced only when p. W. 10 saw them and was induced to believe in something which was not true. The acts which preceded the display of the tickets to P. W. 10 can in no sense be regarded as forming an integral part of the offence of cheating. It is by seeing tickets similar to Exs. P-83 series that P. W. 10 was deceived. The distribution of such tickets through an agent or through a purchaser like P. W. 9 to people in Travancore may constitute an act of deception practised on P. W. 10 by the accused because they knew or must have known that when P. W. 10 or other persons in his position saw these tickets in the usual course they would be deceived into believing that the lottery would take place. It cannot be pretended otherwise. The representation, however, in our opinion, must be deemed to have been made in Travancore and nowhere else. As regards the payment of money there is so far as this charge is concerned no difficulty. The money was paid by P, W. 10 and received by P. W. 9 in Travancore. As regards, 'therefore, be to the act that was done and the consequence that followed the offence under the second charge must be held to have been committed in Travancore.

7. Turning to the first charge the matter is somewhat more complicated and the series of events culminating in the final receipt of the price of the lottery tickets by the accused from the poet office must be divided into several stages and viewed separately from the point of view of jurisdiction. The first of these events is the deception to which p. w. 13 was subjected when he saw Exs. P-93 series and believed that there would be a lottery and prizes would be drawn. This, from what

we have already stated, must be taken to have occurred only in Trichur, the printing of the tickets and their despatch by the accused to Trichur being irrelevant as they form no part of the representation from which stage alone the committing of the offence of cheating would begin. The next stage is the letter which P. W. 13 addressed to the accused asking for lottery tickets to be sent by Value Payable Post and the compliance with that order by the accused. The conduct of the accused in sending a consignment of lottery tickets without any attempt to disillusion P. W. 13 may be regarded as a concealment of facts within the meaning of the explanation to Section 415, Penal Code, and therefore deception by conduct, but that deception again, in our opinion, must be held to have been practised when the packet was delivered to p. w. 13 and was found to contain no communication of any kind informing him of the truth. According to the line of cases to which we have just adverted the post office may be regarded as the agent of the accused for the delivery of the packet and borrowing the reasoning of *In re Abdur Shukur Sahib* : AIR1943 Mad500 the effect is the same as if the accused came over to Trichur and delivered the packet to P. W. 13 without saying anything as to whether the lottery was to be run at all. When he received the packet which was sent to him by Value Payable Post, P. W. 13 paid the amount to the post office which, in our opinion, must be held to have received the amount as the agent of the person who sent the packet. The amount) is no doubt handed over ultimately to the accused. by the post office in South Kanara. But if the amount, when it was received by the post office in Trichur, was the property of the accused the secondary receipt of the same amount at South Kanara is of no importance. We do not regard *Kaleek v. Emperor* A.I.R. 1927 Mad. 544; (1927) Cri. L. J. 452 as having decided anything more than that the handing over of money to the post office in respect of a Value Payable Parcel completes the delivery contemplated by Section 415, Penal Code, and that the subsequent delivery by the post office to the accused is not a necessary ingredient of the offence. The restricted scope of this decision is sufficiently indicated by its reference to *Krishnamachari w Shah Wallace and Co.*, 39 Mad. 576 : A.I.R. 1916 Mad. 438: (1916) Cri. L. J. 491.

8. Moreover, from the point of view of P. W. 13 the delivery within the meaning of Section 415, Penal Code, took place at Trichur when he parted with money unless

the post office is to be regarded as the agent of p. W. 13 for transmitting the amount to the accused in South Kanara. Assuming for a moment that the delivery of the money must be taken to have been made in South Kanara when the value of the packet was finally paid over to the accused the result would only be that the deception was in Trichur and the consequence was in south Kanara Under Section 179 Criminal P.C., the South Kanara Court would then have Jurisdiction but a part of the offence would have occurred outside British India . This brings us to another aspect of the case which we shall now proceed to deal with

9. Assuming that Section 179, Criminal P. C, applies Mr. Nambiar argued that under the proviso to Section 188, Criminal P. C, a certificate of the Political Agent as contemplated by that proviso will be needed. In its opening words Section 188, Criminal P. C., refers to the commission of an offence by a Native Indian subject of His Majesty at any place without and beyond the limits of British India. Comparing this with the language of Section 177, Criminal P. C, it may seem as if Section 188, Criminal P. C., deals only with offences committed entirely outside British India and not with cases where one ingredient of an offence occurs outside British India while the other occurs within it; but in view of a series of decisions of this Court and of other Courts all doubts on this point must be taken to have been set at rest by the insertion by the Code of Criminal Procedure Amendment Act of 1923 (Act XVIII [18] of 1928) of the words 'Notwithstanding anything in any of the preceding sections of this Chapter' in the proviso to Section 188, Criminal P. C, the result according to these decisions being that a certificate such as is contemplated by that proviso must be produced even in cases falling under Section 179. It is enough, in this connection, to refer to *Emperor v. Sane Mathur*, Bom. 171 : A.I.R. 1980 Bom. 155:(1980) Cri. L. J. 838, *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ludarchandra Das* : AIR1932 Cal465 , *Eahrullah Khan In re*, (1936) 68 M. L. J. 415 : A.I.R. 1936 Mad. 826: (1936) Cri. L. J. 195 and *Verghese In re* : AIR1947 Mad352 . If therefore s 179, Criminal P. C, should be held to be applicable to the first charge a certificate as prescribed by the proviso to Section 188, Criminal P, C, would be required. It is not denied that no such certificate has been obtained.

10. Mr. Nambiar further argued that where the objection as to jurisdiction applies to one or some of the charges and does not apply to the rest the whole case must still be regarded as being without jurisdiction. He cited in support of this argument, *Budragowda Bachangowda Patil v Emperor* I. L. R. (1937) 256 : : AIR1937 Bom160 and *Ramachandra Rango v. Emperor* : AIR1939 Bom129 . We are unable to agree with this contention. The mere fact that the Court has no territorial jurisdiction or the requirement of the proviso to Section 188, Criminal P. C, has not been satisfied as regards one charge does not in any way exclude the jurisdiction of the Court to entertain another or other charges not similarly affected or -render the prosecution under such charges illegal or irregular.

11. The learned Public Prosecutor has argued that in any event the Special First Class Magistrate, Mangalore, will have jurisdiction to try all cases in which the deception and the payment of money are to be in the Province of Madras though outside South Kanara and he relied for this purpose on Section 14, Criminal P. C, which says that:

The Provincial Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the First, Second or Third Class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the Presidency towns,

Mr. Nambiar's answer to this argument is based on the terms of the Notification appointing a 'Special First Class Magistrate in the South Kanara district' for the trial and disposal of bogus lottery cases. Mr. Nambiar reads this as indicating that the Provincial Government intended to confer jurisdiction on the Magistrate to try bogus lottery cases if the offence was committed in the district of South Kanara. It seems to us that the object of the Government was to confer upon the Magistrate jurisdiction to try a particular class of cases namely, those relating to bogus lotteries, and all that might have been intended by the reference to the South Kanara district is that the Magistrate should sit and function in that district. The Provincial Government may perhaps make the matter clearer by substituting the words 'at Mangalore' for the words 'in the South Kanara district' occurring in the

order of appointment.

12. It now remains to deal with the several charges in the light of our conclusions. (After dealing with these his Lordship concluded.)

13. The revision case and the miscellaneous petitions are allowed and the charges are quashed to the extent indicated above. We need hardly add that it is quite open to the Government to take any fresh action they may be advised to take.

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