

In Re: K.R. Uppasini

In Re: K.R. Uppasini

SooperKanoon Citation : sooperkanoon.com/778972

Court : Chennai

Decided On : Oct-18-1926

Reported in : (1927)52MLJ179

Appellant : In Re: K.R. Uppasini

Judgement :

Curgenven, J.

1. The petitioner has been convicted by the Third Presidency Magistrate of criminal breach of trust by an agent under Section 409, Indian Penal Code, and sentenced to rigorous imprisonment for six months.

2. The prosecution evidence shows that, under the name of Mr. V. Joshi, the petitioner in April, 1925, started a betting business in Madras which he called the Star Sports Club. According to Rule 4 of the rules which he issued as Secretary an object--and undoubtedly the principal object--of the club was to provide facilities to constituents to back horses at various race meetings in India. He was to remit sums furnished for this purpose to some person present at the race meeting, who would put them on the selected horses, either through the totalizator or otherwise. In point of fact, it is admitted that no such sums were remitted, but it was the petitioner's practice to carry on an independent business as bookmaker, receiving bets and paying winnings according to the odds published in the newspapers. This went on until 9th September, 1925 when the petitioner got into difficulties and next

day left Madras owing a considerable sum of money to numerous clients.

3. The charge framed was in respect of a sum of Rs. 4,383-4-0 collected by the petitioner's clerks in Madras and placed in his hands on 9th September as bets on horses running in the Poona races taking place at that time. The basis of the charge was that, according to the petitioner's own rule, he undertook to forward the money to Poona, there to be used for making bets, and that he failed to fulfil this obligation. At the trial, however, all but three of the witnesses who proved payment of money to the petitioner or his agents admitted that they were aware of the petitioner's modus operandi, so that in respect of sums subscribed by such persons, it could not be said that a breach of the agreement, as it in fact existed between them and the petitioner, had taken place. There remained the three persons, prosecution witnesses. 2, 5 and 10, who deposed to being under the impression that the petitioner was conducting the business in accordance with Rule 4. In respect of the sums paid by them, aggregating Rs. 262-8-0, the learned Third Presidency Magistrate has found the charge to be established, on the ground, as I understand his judgment, that the petitioner accepted the money upon the undertaking that it would be dealt with under the rule referred to, and that he intentionally omitted so to deal with it.

4. This finding has been attacked upon two grounds. The first that the charge was not sufficiently specific has, I think, no substance. The sum in respect of which the petitioner has been found guilty was included in the total sum named in the charge, and I see no reason to doubt that he was aware of the nature of the case he had to meet. The second point of view arises from the definition of criminal breach of trust contained in Section 405, Indian Penal Code, which runs as follows:

Whoever, being in any manner entrusted with property, with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

5. It will be seen that the offence may be committed in two ways: (a) when the person dishonestly misappropriates or converts to his own use the entrusted property; (b) when he dishonestly uses or disposes of it in violation (to confine ourselves to the portion here relevant) 'of any legal contract, express or implied, which he has made touching the discharge of such trust.

6. Now, except that the learned Magistrate observes that the petitioner spent some portion of the sum of Rs. 4,383-4-0 collected, he has not specifically found that he dishonestly misappropriated or converted to his own use the sum of Rs. 262-8-0 which forms the subject-matter of the conviction. I conclude therefore that the offence found was deemed to fall under (b) above, as in violation of an express or implied legal contract. What is a contract (the qualification 'legal' appears to be redundant) is defined in Section 10 of the Contract Act, and excluded from that term are agreements which that Act expressly declares to be void. Section 30 declares agreements by way of wager to be void, and it is quite clear, from the language of that section, that the agreements now under reference were of this character and that no suit could have been brought to recover the money from the petitioner. See also *Weir 463 & Cohen v. Kittell* (1889) 22 QBD 680. The learned Public Prosecutor has not seriously contested this conclusion, and has endeavoured to bring the conviction under the first part of Section 405, although for the reasons which I have given. I cannot uphold his contention.

7. In these circumstances, I have no alternative but to set aside the conviction. The case is, I think, of sufficient gravity and importance to justify me in according to the prosecution the opportunity for which it asks to establish that the offence of criminal breach of trust, as defined by the first part of Section 405, Indian Penal Code, has been committed in respect of this sum of Rs. 262-8-0. It will, of course, be Open to the Court to consider also whether the facts proved amount to the offence of cheating. I have myself refused to enter upon this question,, as I do not think, that assuming the evidence to substantiate that offence, I ought to' convict of cheating a person tried only of criminal breach of trust.

8. I set aside the conviction and sentence and remand the case to the Third Presidency Magistrate, Georgetown, for retrial.

