The Public Prosecutor Vs. K.M. Vedantam

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Court : Chennai

Decided On : Jan-30-1951

Reported in : AIR1952Mad183; (1951)1MLJ554

Judge : Subba Rao, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 415

Appeal No. : Criminal Appeal No. 102 of 1950

Appellant : The Public Prosecutor

Respondent : K.M. Vedantam

Advocate for Def. : K. Kalyanasundaram, Adv.

Advocate for Pet/Ap. : State Prosecutor

Disposition : Appeal dismissed

Judgement :

Subba Rao, J.

1. The accused was charged under three counts under Section 420, I.P.C., and was convicted by the Court of the Joint First Class Magistrate, Coonoor, and sentenced to pay a fine of Rs. 300 for each of the three offences, in default to undergo rigorous Imprisonment for three months. In appeal the Additional

Sessions Judge of Coimbatore set aside the conviction. The Public Prosecutor preferred the above appeal.

2. The ease of the prosecution may be briefly stated as follows. The accused was the highest bidder for the year 1947-48 at the auction of minor forest produce in Ooty, Seegur and Mudumalai ranges. The amount of his bid was Rs. 10,750, and he paid 25 per cent of the bid amount, that is Rs. 2,887-8-0, on 25th June 1947 and 26th June 1947. He represented to P.W. 1 and her father P.W. 3 that he urgently required money for depositingthe balance of the bid amount with the forest department and that P.W. 1 believing his representations lent him a sum of Rs. 5,600 on three promissory notes dated 8th July 1947, 17th July l947 and 19th August 1947, Exs. P. 2, P. 3 and P. 4 respectively. He also represented that he had 10 tons of sandal wood worth Rs. 13,000 and that he had sold sandalwood worth Rs. 7,000 to one Sarobji and that he had not received the money yet from him. Relying upon those two representations the accused fraudulently, with no intention of repaying the amount, committed the offence of cheating.

3. The offence of cheating is defined by Section 415 of the Indian Penal Code. It reads:

'Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally Induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat.'

'Explanation': A dishonest concealment of facts is a deception within the meaning of this section.'

The offence therefore is made up of two ingredients. (1) Deception of any person. (2) (a) fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property or 2 (b) intentionally inducing that person to do or omit to do anything which If he were not so deceived &' which act or omission causes or is likely to cause harm to that person in body, mind, reputation or property. For the purpose of this case 2 (b) may be ignored as the arguments were advanced to bring in the case within the first part of the definition.

4. Deceiving generally is to lead into error by causing to believe what is false or to disbelieve what is true. If A makes a representation to B Intending to deceive B and B acts upon that representation, B may be said to be deceived by A. If A makes that representation which induces B to lend money to him who has no intention of repaying it, to A, the offence of cheating Is complete. But, on the other hand, If B does not act upon the representation of A but lends money because he Is satisfied with the financial position of A and if A has the intention of repaying it, it cannot be said that A is guilty of the offence of creating.

5. (After discussion of the evidence the judgment proceeds:) On the evidence, therefore, the following facts emerge. The accused, to the knowledge of P.Ws. I and 3, was solvent. They lent the money to him in promissory notes carry-Ing 12 per cent interest. He badly wanted the money at that time as he had to deposit the sum with the forest department. But he did not deposit the amount on account of disputes between them. He had therefore no Intention at the time of borrowing to defraud P.W. 1, nor did P.W. 1 lend the money because of his representation that he wanted the money for paying to the forest department. At best that was only the occasion for borrowing. On these facts, it is manifest that the accused did not, by deceiving P.W. 1, fraudulently or dishonestly, Induce her to deliver any property to him. I therefore agree with the learned Additional Sessions Judge that the prosecution did not make out the case against the accused.

6. In the result, the appeal is dismissed.