

Ramadoss Vs. Muniammal

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Court : Chennai

Decided On : Jul-30-1964

Reported in : AIR1965Mad452; 1965CriLJ514

Judge : Anantanarayanan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 415

Appeal No. : Criminal Revn. Case No. 194 of 1963 (Cri Revn. Petn. No. 193 of 1963)

Appellant : Ramadoss

Respondent : Muniammal

Judgement :

ORDER

(1) The point for consideration in this revision proceeding is a very simple one, and it really depends upon the application of the ingredients of cheating, as defined in Section 415 I.P.C., to the facts as found by the learned Special Honorary Presidency Magistrate. I take it that, as found by the Magistrate, Muniammal (complaint) was a subscriber to two chit funds, both of which were conducted by the revision petitioner (Ramadoss), related to her as nephew. I further take it that, in one of these chit funds, Muniammal (P.W. 1) was the highest bidder at the auction, and that, in accordance with the practice of these funds, in accordance with the practice of these funds, the accused paid her the chit prize or

accumulated money. It is the definite finding of the learned magistrate, with which this court will not ordinarily interfere in criminal revision, that there was also another chit fund organised or run by the accused, that Muniammal (P.W. 1), was subscribing to that chit fund also, that she became entitled to certain monies from the accused in the second chit fund, in addition to the monies she had received in the first, and that she went to the accused and asked him to meet this liability. The accused then chose to repudiate the second chit fund altogether, and to claim that Muniammal (P.W. 1) was not a subscriber to the second chit fund at all. This, as the learned Magistrate has observed, was clearly dishonest; I do not see how there could be two views upon the dishonesty of the repudiation.

(2) But this has no relation to the ingredients of S. 415 I.P.C. The facts do not justify any inference that, on prior occasions, the accused dishonestly induced P.W. 1 to deliver monies to him, in the second chit fund. On the contrary, there were monies regularly paid as subscriptions by P.W. 1, like other subscribers, and the accused took them as an organiser, in a proper manner. Later on, when he found himself liable to pay monies to his own aunt, (P.W. 1) in the second fund, in addition to what he had paid her under the first, he chose to repudiate this civil liability. Had he done so, in a straightforward fashion, by pleading inability to pay, there would be no question of a criminal complaint. But he adopted the highly unethical course of denying that there was a second chit fund organised by him, or that P.W. 1 was a subscriber thereto. But the moneys had been paid earlier, and were received and retained by the accused without any dishonest intention. It is only where a fraudulent representation leads in delivery of property, which is dishonestly retained, that the ingredients of S. 415 I.P.C. are established. Otherwise every debtor who repudiates his civil liability, on some false pretext or other, would be guilty of cheating, and that is not the law. It must be made clear that the criminal process can only be used against a person, when the ingredients of the offence are proved by the complainant, beyond any element of reasonable doubt. Because the conduct of a debtor has been highly unethical, the criminal process cannot be used against him, in order to compel him to discharge a civil liability. With these observations, the criminal revision petition is allowed, and the conviction and sentence are set aside. The fine, if paid, will be refunded.

(3) I must make it clear, in the interests of P.W. 1 herself and the future steps that she might be compelled to take that I do not differ from the appreciation of the evidence by the learned Magistrate to the effect that the revision Magistrate to the effect that the revision petitioner did organise a second chit fund, that P.W. 1, was a subscriber to that fund also, and that she paid monies which the revision petitioner refused to deliver, though he was bound to do so by the rules of the fund.

(4) Revision allowed.

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