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In Re: Chellam Chetty and anr.

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Court : Chennai

Decided On : May-06-1927

Reported in : AIR1928Mad224

Appellant : In Re: Chellam Chetty and anr.

Judgement :
ORDER

Wallace, J.

1. The petitioners in these cases were jointly charged before and convicted by the 3rd Presidency Magistrate, of the offence of cheating under Section 420, I.P.C.

2. The case against them generally was that they are the officials of a so-called Royal Sports Club, which existed for the purpose of receiving from clients bets on horse races and employing agents on the race-courses to put their clients' bets on the horses, and for paying to the winning clients the sums less commission, which they had won. The clients became members of the club by a small payment and were then entitled to the above services. They put in applications to the Secretary stating the horses they wished to back and paying up the amounts of their bets.

3. The prosecution case was that P.Ws. 1, 2 and 3, under these rules, became members of the club, and paid various sums as bets on horses running at Kolhapur races, believing that the club would have an agent there to place their bets, that there was no agent there and that their bets were therefore not placed,

that their money has not been returned and therefore they have been cheated. The lower Court convicted petitioners, who are the secretary and manager respectively of the club, under Section 420, I.P.C. Petitioners come up in revision, the chief ground urged being that the Magistrate has wholly neglected to find that the ingredients of the offence of cheating were present.

4. It seems to me there are strong grounds for holding so and the fact that P. Ws. 1, 2 and 3 cannot recover their lost money in the civil Court will not make this Court less careful to see that all the ingredients of the criminal offence of cheating are present. The essential points which the prosecution had to prove are: (1) that each accused made representations to P. Ws. 1, 2 and 3; (2) that these were false; (3)that in consequence of these false representations P. Ws. 1, 2 and 3 were induced to hand over their money. Now, on the charge framed, the representations are said to be contained in the book of rules, Ex. D, a copy of which is given to each member. It has been urged on behalf of the prosecution here that there is also evidence of oral representations.

5. That is so, but the lower Court has either disbelieved it or disregarded it in framing its charge. Such oral representations find no place in the charge. The charge as framed is that you' (1) Anjaneya Sastri and (2), Chellam Chetty, deceived P. Ws. 1, 2 and 3 by publishing the rules of the Royal Sports Club and

that P.Ws. 1 to 3 were deceived by the rules so published and induced to' pay....

and the conviction is statedly on the charge as framed';

6. What the Court had to find then was that these rules were promulgated by accused 1 and 2 to P. Ws. 1 to 3, that they contained false representations and, that P. Ws. 1 to 3 were deceived by these into paying money. I think I am right in saying that the lower Court has not considered any of these points, or recorded a finding on them. As to the first point it is not suggested that the rules were drawn up by accused 1 and 2, but it is contended that they, in their capacity as secretary and manager of the club, gave them to P. Ws. 1, 2 and 3 as the conditions under which they could be admitted to the privileges of the club. They are printed over the signature of accused 1, and it may be taken that his duty is not only to see that

they are given to the members as the conditions under which they join the club, but also to make himself responsible on behalf of the club for the statements contained therein. That it is any part of the duties of accused 2, to supply these to members, or to represent to members that these are the conditions of membership is not in evidence. Of the four members who gave evidence, P. Ws. 1 to 4, P.W. 1 is the only one who says who gave him the book of rules, and he says accused 2 gave it to him. Now accused 2 was appointed manager by accused 1 under Ex. W, dated apparently 26th March 1926, after P.W. 1 had joined the club.

7. The Crown Prosecutor attempted to argue here that Ex. W is a forgery, but it was filed for the prosecution as genuine. The suggestion of forgery was never put forward in the lower Court, and I can only express my astonishment at the Crown Prosecutor, with a full sense of his responsibilities, attempting to put it forward here. Now a mere handing of the book of rules by a servant of the club, will not, in my view, make him criminally responsible fur the representations contained in the rules. I can find no evidence from which it can be deduced that accused 2 published or made the representations contained in the rules. He simply presented P.W. 1 with a copy of the conditions under which he might become a member of the club. I am satisfied on the first point, that it cannot be held that accused 2 made the representations contained in the rules.

8. As to the second point: proof is wanting also, i. e., proof that the representations in the rules are false. The lower Court makes no attempt to find what is the false statement in the rules which amounts to a false representation. If the rules are, so to speak, the mouth of accused 1 or accused 2, where and which is the false statement? It is not pleaded, at least it is not found, that the rules when made, contained false representations i.e., that there was from the time of their being framed, no intention to carry them out, or that they were made merely for the purpose of deception. That would be equivalent to a finding that the whole club is, from its inception, a swindle. As I say there is no finding to that effect. The contention must then be that accused did not, when they induced P. Ws. 1, 2 and 3 to join, intend to carry out the rules. There is no finding on this point.

9. Rule 4 is the one to which attention has been chiefly given. It merely sets out generally that the club arranges agents to carry the bets, which the members have paid to the Secretary to the race enclosures, which agents will put the bets on the horses specified by members, and report results, and that if the agent is unable to back the bets the money will be refunded. Now it is not denied that accused did send such an agent, viz., P.W. 7 to Kolhapur. He says. he returned four days later as money was not sent to him, but the lower Court does not indicate whether it accepts that statement or not, nor does it find as a fact that accused never intended to put their agent at Kolhapur in funds. It is impossible from one instance to infer and the lower Court has not inferred, that there never was any intention on the part of the accused to carry out Rule 4, and that, therefore, Rule 4, contains a representation which was and was intended to be consistently false. There is no evidence therefore for any finding that any representation in the rules is a false one.

10. The third point is, were P. Ws. 1 to 3 deceived by any representation in the rules into paying money. None of them makes such a statement. P.W. 1 does not say what it was that deceived him. P.W. 2 says that he paid on the assurance that his moneys would be used for backing the selected horses; who gave him this assurance he does not say. P.W. 3, so far as his evidence is definite, seems to rely on some oral statement by accused 2. I am unable to follow the lower Court when it concludes ostensibly on this evidence before it that P Ws. 1 to 3 were deceived by representations made 'on the basis of rules.' There is therefore no evidence of any deception due to representations in the rules.

11. The case has been tried with much carelessness by the lower Court and I cannot but hold that the ingredients of the offence as charged have not been found and that the conviction cannot be upheld. I hereby set it aside and direct that the petitioners be set at liberty.

12. As to a retrial, I am not prepared to order it. All the members of the so-called club were out to get money, if they could, without earning it, and must have known that in organizations of this kind absolute honesty of dealing is conspicuous by its absence. Neverthless they elected to run the risk and are no worse off than if the

horses they had backed had lost. They have only their own folly to blame for their predicament, and I am not solicitous to protect them from the consequences of their own folly.

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