

In Re: N. Venugopal Mudaly

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Court : Chennai

Decided On : Oct-22-1915

Reported in : AIR1916Mad1098; 31Ind.Cas.353

Judge : Abdur Rahim, J.

Appellant : In Re: N. Venugopal Mudaly

Judgement :

Abdur Rahim, J.

1. I think that in this case there can be no doubt that the convictions are right. The accused somehow or other got hold of orders sent to two different firms and sent value payable articles to the persons who had sent the orders. In one case it appears that the articles sent were not what were wanted, though, as stated, it may be that the market price of the articles actually sent was the same as or even a little more than the price of the articles ordered. In the other case, it appears that three tins of a particular medicine were wanted, and the accused sent two larger tins. The evidence is that they were practically of the same value as the three tins ordered. The accused in common with a large number of other persons in Georgetown carry on the business of what is called 'V.P. firms'; that is to say, when men living outside Madras want certain articles which are to be had at the market these men receive their orders, buy the articles and send them by value payable parcel realising the price in that way. The profit they make is the

commission which they receive from the shopkeepers. I think, there can be little doubt that prosecution witnesses Nos. 2 and 7 were really deceived as to the man they were dealing with. They thought they were dealing with two other firms and not with the accused. The accused undoubtedly also made a profit in the nature of commission. It is argued by the learned Vakil for the accused that, granted there was deception, there was no fraud or dishonesty within the meaning of the Indian Penal Code, and he has cited in support of his contention a ruling of the Punjab Chief Court reported as Kahn Singh v. Empress 25 P.R. 1890I am of opinion that there was clearly dishonesty in this case, the dishonesty consisting in the wrongful gain which the accused made by imposing upon the prosecution witnesses Nos. 2 and 7. The law does not require, and does not say, that the wrongful gain must be made out of the person deceived. That is the other case of wrongful loss which also is a constituent of dishonesty. But the Code provides that it may be either wrongful loss to the person deceived or wrongful gain to the person who deceived. I confirm the convictions, but this is apparently the first offence of the accused and the sentences are heavier than called for. The sentence on the first charge is two months' rigorous imprisonment and a fine of Rs. 250, in default further rigorous imprisonment for four months. The sentence on the second charge is the same. The sentences of imprisonment are to run one after another. The accused is said to have already undergone about ten days' imprisonment. I remit the rest of the sentence of imprisonment. The fines will stand.

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