

Raman Behari Roy Vs. Emperor

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Court : Kolkata

Decided On : Apr-24-1923

Reported in : AIR1924Cal215

Appellant : Raman Behari Roy

Respondent : Emperor

Judgement :

1. This Rule was issued calling upon the Deputy Commissioner of Sylhet to show cause why the conviction of the petitioner and the sentence passed upon him should not be set aside on the ground that, on the facts alleged by the prosecution, no offence under Section 417 of the Penal Code, has been made out. We have heard Mr. Manmatha Nath Mookerjee in support of the Rule, and Mr. Orr on behalf of the Crown, and for the reasons given below, we are of opinion that Mr. Mookerjee's contention must prevail.

2. The facts alleged by the prosecution, shortly stated, are as follows : - It is alleged that the accused sent to one Nobin Chunder Chowdhury an insured cover purporting to contain eight Government currency notes of Rs. 100 each. The envelope in question, it appears, was handed over by the accused in person to the Postmaster at the Nilambazar Post Office on the 16th November 1920. The cover was received at the Baliaghata Post Office on the 18th November, 1920, and was delivered to an agent of the said Nobin Chunder Chowdhury. On the addressee opening the envelope, the lame was found to contain a letter advising the

despatch of a sum of Rs. 800 and several bits of waste paper. No Government currency notes were found inside the cover. Thereupon the Postmaster of the Baliaghata Post Office was communicated with by the addressee, and the police were also called in.

3. These facts have been found to be correct by the learned Sessions Judge and, as stated above, the argument on behalf of the petitioner is that, assuming that these facts are correct, no offence under Section 417, of the Penal Code has been made out.

4. Now, in order to find out the ingredients of the offence of cheating, we must turn to Section 415 of the Penal Code. The ingredients required by that section are:

1. Deception of any person,

2 (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation or property. Now, in this case, having regard to the facts found, it is difficult for us to say that the person deceived has been induced to deliver any property to any other person, or to consent that the said other person should retain any property, or that the person deceived has been induced to do or omit to do anything which he would not have done or omitted, if he were not so deceived, and which act or omission has caused, or was likely to cause, damage or harm to that person in body, mind, reputation or property. All that the person deceived has been induced to do is that he has signed a receipt acknowledging the delivery of a cover. He has not acknowledged by that the receipt of any sum of money alleged to be contained in the cover. That being so, we are unable to say that the charge of cheating has been brought home to the accused in the circumstances which appear on the record before us.

5. The result, therefore, is that the Rule is made absolute. The petitioner will be discharged from his bail bond, and the fine, if paid, will be refunded.

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