

Emperor Vs. Dedendra Prosad

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Court : Kolkata

Decided On : Mar-03-1909

Reported in : 4Ind.Cas.65

Judge : Caspersz and ;Ryves, JJ.

Appellant : Emperor

Respondent : Dedendra Prosad

Judgement :

1. This is an appeal by the Government of Bengal against the judgment and order of the learned Sessions Judge of Darbhanga, dated the 23rd September 1908, allowing the appeal of Debendra Persad who had been convicted by the Sub-Divisional Magistrate of Samastipur on the 5th August 1908, under Section 420 of the Indian Penal Code and sentenced to undergo nine months' rigorous imprisonment and to pay a fine of Rs. 300, or in default thereof, a further term of three months' rigorous imprisonment.

2. The facts of the case have been set out with very great care in the exhaustive judgment of the Sub-Divisional Magistrate. For the purposes of this appeal, it is not necessary to recapitulate all the facts. The case for the Crown, stated briefly, was as follows: The accused Debendra Persad, early in 1907, went to the shop of J. Bryan, a tailor in Allahabad, and ordered a suit of, clothes stating that he was the dewan of the Narhan estate. He paid for the clothes subsequently and took them

away. On the 31st May, Bryan received a letter from the accused offering him a post of Sub-manager on a salary of Rs. 250 a month, rising to Rs. 350 with cash security of Rs. 1,000, of which a third was to be paid in advance along with the application. He states in that letter--'I am the man to dispose of this application and you will have to work under me.' As Bryan had no desire to apply for the post, he put the letter aside. Sometime afterwards, it occurred to him that a friend of his, one Grindolph, the complainant in this case, might care for the job as he was then looking out for work. He gave the letter to Grindolph together with a letter of introduction to Debendra Persad. This was in September and, as according to Debendra Persad's letter, the last date for making an application was stated to be the 15th September, Grindolph immediately made arrangements with a friend of his to raise the necessary security money and started off to interview the accused, carrying with him both the letters. At the interview, Grindolph swears that the accused gave him to understand that he was dewan in the employ of the Rani of Darbhanga and repeated the promises made in his letter to Bryan emphasizing again the necessity of an advance of the security money being made with the application for the post. Grindolph returned to Allahabad and, after a long correspondence between him and the accused, whose letters are on the record, he took a loan from a local Bank and remitted Rs. 200 to the accused by a telegraphic money-order. The accused's receipt of the money is on the record. Grindolph waited in vain for the appointment. The accused assured him in many letters that he would get the appointment and that the only cause of the delay was that the Rani had gone on a pilgrimage. So confident was Grindolph of the bona fides of the accused's assertion that he would very shortly get the post that he sold off all his furniture by auction. As there was still further delay, he again wrote to the accused who, in order to allay his suspicions, arranged a meeting at the waiting-room of Bankipore Railway station between Grindolph and a person whom the accused described as Her Highness' cousin. On the 4th March 1908, after nightfall, a native gentleman appeared at this waiting-room and was introduced by the accused to Grindolph as Her Highness' cousin. This person told him that the Rani would return by about the middle of March, and that he must wait till then. Later on, on the 24th March, in consequence of a telegram sent by the accused, Grindolph went to Hajipore Dak Bungalow and met the accused who informed him

that the Rani was about to return and that he would be appointed on the day following her return. The accused told Grindolph in the meantime to go back to Allahabad and destroy the correspondence and, in future, to address letters to him in the name of Ramji Prosad. Subsequent letters from Grindolph to the accused were so addressed. To cut a long story short, Grindolph lost patience and demanded back his money under threat of legal proceedings. The accused promised to pay by the 30th April positively, but did not do so. Then at the intervention of some friends of the accused, he agreed to re-pay the money by monthly instalments of Rs. 50. One such instalment was paid, and that was all. The rest has not been paid up to date. The case was initiated by the police. They were investigating another similar case of cheating in which one Wade was the complainant. That case was actually started but, owing to the fact that Wade had taken up an appointment on a Railway in Madras, and could not easily come away that prosecution was dropped. In the course of the investigation, however, the police came to hear of the accused's dealings with Grindolph. The story for the prosecution is corroborated at almost every step by the letters written by the accused himself. It has been proved that the accused at that time had no connection whatever with either the Narhan or the Darbhanga estate, and that at neither place was there a post vacant such as was described by the accused. The accused put in no defence whatever. He declined, to make a statement and called no witnesses. This case came on for hearing after the appellate Court's judgment, in the case instituted on the complaint of J. Boodrie against the accused, had been delivered. In that case besides the direct evidence of the complainant with reference to the fraud committed on him, evidence of similar frauds, or attempted frauds, by the accused on other subordinate railway officials was tendered and accepted in evidence. As, how-ever, the learned Sessions Judge in his judgment in that case held such evidence to be inadmissible, no evidence of that kind was produced in this case. The Sub-Divisional Magistrate, after analysing the whole evidence very carefully has come to the conclusion that Grindolph borrowed Rs. 200 and remitted the sum to the accused in consequence of the latter's falsely informing him that he was Manager to the Rani of Darbhanga and would obtain for him a lucrative post under himself, provided a part of the security demanded was paid to him in cash at once. He has held on this evidence that the accused was

guilty of the offence punishable under Section 420 of the Indian Penal Code. On appeal, the learned Sessions Judge disposed of the case very shortly, being of opinion that no criminal offence was made out on the evidence because, apparently, the complainant admitted that, when he went to see the accused, he understood that if he did not get the appointment, he would get the refund of his money and it was admitted that, on the complainant's not getting the appointment, a refund of the money commenced, though after delay.' He goes on to say: 'The allegation (we presume of the accused) was not a definite promise of the post on payment of money, but the impossibility of getting the post without such payment. It thus becomes immaterial whether there was any truth in the other alleged statements of appellants, such as that he was a Rani's dewan or that he really had an appointment under his control. The arrangement between the parties was that complainant would get either the post or a refund of his money. There is nothing fraudulent in an arrangement of this description and there can be no conviction for cheating. The record has been burdened with much irrelevant matters relating to the steps taken by complainant to borrow the money and to his conversation with various people and altogether undue prominence seems to have been given to the case.' This is practically the whole of the judgment, and we think it does scant justice to the very great care taken by the Sub-Divisional Magistrate who tried the case.

3. We cannot at all agree with the conclusion at which the learned Sessions Judge has arrived. It seems to us to be established on the evidence that the accused obtained Grindolph's money by a promise which he knew he could not fulfil, and the fact that, long afterwards, under pressure the accused paid back a quarter of what he had received, can in no way affect his criminality. The test of the accused's criminality is not what he did months afterwards under pressure, as we have said, but what was in his mind at the time when, and under what circumstances, the money was given to him by Grindolph and whether the accused then intended to re-pay the same. He knew of Grindolph's straitened circumstances and probably thought, as indeed was the case, that he would not think it worth his while to incur the expense of a criminal prosecution or a civil action.

4. On behalf of the accused in this Court it has been urged that no inducement was held out by him to Grindolph. The inducement, if any, was addressed to Bryan, and the accused cannot be held responsible if Bryan sent on the letter to Grindolph. It was Grindolph who came to the accused and not the accused who went to Grindolph. In our opinion, there is no force in these arguments, because, at the first meeting between Grindolph and the accused, the latter verbally confirmed the contents of the letter, and it was only after this conversation and the passing of a considerable amount of correspondence between the parties that Grindolph actually borrowed and sent the money to the accused.

5. The second argument addressed to us was that the letters of the accused to Grindolph had not been proved. What happened at the trial was this. The complainant produced the letters and said he had received them from the accused. The accused was for six months working as a naib tehsildar on the famine-relief work in Darbhanga in 1907, immediately under the prosecution witness No. 8 who deposed that he was perfectly familiar with the accused's handwriting and swore to a large number of the letters on the record being in his handwriting. He was not attacked in cross-examination on this point, and the accused himself has nowhere denied that he was the writer of those letters. The Sub-Divisional Magistrate had the whole series of the letters forming the correspondence before him and he came to the conclusion that they were all written by the accused. Under these circumstances, we think there is no force in this argument either.

6. For these reasons, we allow the appeal and setting aside the order of acquittal, restore the order of conviction under Section 420 of the Indian Penal Code, recorded by the Sub-Divisional Magistrate of Samastipur.

7. We reserve for future consideration the question of sentence. Let a Rule issue returnable in ten days for the accused to show cause why the sentence should not be enhanced, meanwhile, the accused will be re-committed to custody.