

# SUPREME COURT OF INDIA

K.Damodaran

Vs.

State of Travancore-Cochin

Crl.A.No.87 of 1952

(Mehr Chand Mahajan and S. R. Das, JJ.)

20.03.1953

## JUDGEMENT

### **S. R. DAS, J.:-**

K. Damodaran the appellant before us, one P. Gopalan Menon, one of the sons of the late Maharaja of Cochin, and one Balanarayanan Nambiar were sent up for trial for alleged offences under Ss. 389, 400, 448 and 104. Cochin Penal Code corresponding to Ss. 409, 420, 468 and 108, Indian Penal Code. Balanarayanan Nambiar died during the pendency of the proceedings. The learned Judge of the Special Tribunal who held the trial framed two counts of charges against the appellant (hereinafter referred to as A1). The first count charged him with having on or about 15-7-1947 at Ernakulam cheated one M. M. Paul (P. W. 1), the Director of Food Supplies, Government of Cochin, by dishonestly inducing him to deliver to the appellant Rs. 1,10,740/- which was the property of the Government of Cochin and thereby having committed an offence under S. 400, Cochin Penal Code, corresponding to S. 420, Indian Penal Code. The second count was also a charge of cheating under the same Section with respect to a sum of Rs. 4,42,960/which the said M. Paul (P. W. 1) was said to have been dishonestly induced by the appellant to deliver to him on or about 21-7-1947. The learned Judge also framed two counts of charges against P. Gopal Menon (hereinafter referred to as A2) under S, 104 read with S, 400, Cochin Penal Code, corresponding to Ss. 109 and 420, Indian Penal Code, for having abetted A1 in the commission of the two acts of cheating by making his (A2's) father H. H. the late Maharaja believe that the export of oil to Hyderabad at controlled rates would lead H. E. H. the Nizam to accede to the Union of India. It should be noticed that although the Police charge-sheet referred to a charge of forgery no charge was actually framed against A1 of that offence.

2. After a protracted trial A2 was acquitted but A1 was convicted by the Special Tribunal on both counts and sentenced to rigorous imprisonment for 18 months. There was also an order that the sum of Rs. 1,50,385/13/6 seized from A1 and from places where he had deposited the same be forfeited to the Government of Travancore-Cochin and that the motor car No. M. S. C. 5678 seized from A1 be sold by public auction and the sale proceeds be credited to that Government. A1 appealed to the High Court of Travancore-Cochin against his conviction and sentence. The Government also moved a revision petition for enhancement of the sentence. The High Court, in agreement with the Special Tribunal, came to the conclusion that the charges against A1 had been satisfactorily proved and accordingly upheld the decision of the Special Tribunal and dismissed A1's appeal on 11-6-1951. The High Court at the same time also dismissed the Government's revision petition as no ground for enhancement of the sentence had been made out. A1 thereafter applied to this Court and on 22-10-

1952 obtained special leave to appeal to this Court. The appeal has now come up before us for final disposal.

3. The alleged offences are said to have been committed in July 1947 and it is necessary, to appreciate the rival contentions, to keep in view the surrounding circumstances prevailing in those days. However the accused Nambiar being dead and A2 having been acquitted it will suffice to note the prosecution case in so far as it concerns A1 who is the only appellant before us. The 75-year old Maharaja Kerala Varma ascended the throne of Cochin on or about 31-1-1946 and was the ruler of that State for a little over two years. He was one of the Indian princes who, at an early date acceded to the Indian Union. The State of Hyderabad and Travancore were proclaiming their determination to keep out of the Indian Union. At all times material to this case one M. M. Paul who has given evidence as P. W. 1 in this case was the Director of Food Supplies. Towards the middle of 1946 the Cochin Government introduced control over the price and movement of coconut oil.

On 7-6-1947 an application (Ex. C) was made to the office of P. W. 1 by a firm named South Indian Agencies Inc. for a permit for exporting 300 tons of coconut oil to Hyderabad State. This application was signed by A1 as the Managing Proprietor of the firm. Before this application could be disposed of by the Cochin Government by an order made on 21-6-1947 decontrolled coconut oil. Prices having shot up P. W. 1 on 29-6-1947 issued order freezing all the coconut oil available in the State. About this time A2, who was said to have a great influence over his father the Maharaja, intervened and requested P. W. 1 to grant a permit to A1's firm to export 300 tons of coconut oil to Hyderabad and to import pulses from that State. P. W. 1 offered certain terms and conditions on which permit could be issued to A1 but the latter, on 9-7-1947, declined to accept any condition. The freezing order was withdrawn on 11-7-1947. Although permit was no longer necessary for exporting oil, the prices had gone up so high that it became difficult, from a practical and commercial point of view, to buy oil at the market rate prevailing in Cochin for exporting the same to Hyderabad.

It was at this stage that events began to move fast. On 11-7-1947 the Maharaja sent for the Food Minister, Panampilli Govinda Menon (P. W. 14) and the Director of Food Supplies (P. W. 1). At the interview the Maharaja told them (P. W. 14 and P. W. 1) that the South Indian Agencies (A1's firm) should be given Government help to export 1000 tons of coconut oil to Hyderabad. The Maharaja said that it was a matter of high political importance and of a secret nature which could not be fully revealed. He, however, hinted that it might lead to the accession by the Nizam to the Indian Union. The Maharaja wanted that the oil should be made available to the firm at the controlled rate which prevailed before the order of decontrol was issued. The Food Minister told the Maharaja that if the Food Ministry dealt with the matter it would be criticised by the Legislature. He, however, advised that as the matter was of a political nature and finance was in charge of the Diwan, the latter would be the proper person to deal with it. Maharaja said he would consult the Diwan and asked P. W. 14 also to discuss the matter with the Diwan. The interview came to a close.

4. On the same day pursuant to an urgent message from the Palace C. P. Karunakara Menon (P. W. 6) who was then the Diwan waited on the Maharaja. Maharaja told him that a man very close to the Nizam who could influence the latter to accede to India had come to Cochin and that 1000 tons of coconut oil should be made available to him at the controlled rate for export to Hyderabad and that the difference between the market rate and the controlled rate should be met from the Cochin State funds. The Diwan suggested circumspection and proper enquiry before such a large sum was spent out of the State coffers but, the Maharaja said that the matter was urgent as big political issues were involved and that the Diwan should issue a cheque immediately to the Director of Food Supplies (P. W. 1) The Diwan returned from the Palace in a dejected mood.

5. Evidently the Maharaja on the same date sent the Sarvadhikariakar (P. W. 13) to see the Diwan (P. W. 6) to make sure that the latter had issued the cheque as directed. On being told that the Diwan had not done so the Sarvadhikariakar (P. W. 13) went back and reported that fact to the Maharaja. The Maharaja then sent the Sarvadhikariakar again to the Diwan with a letter (Ex. B/C) dated 11-7-1947 stating that it had been decided by the Maharaja that the Government should purchase 1000 tons of cocoanut oil at the market rate through the Director of Food Supplies (P. W. 1) and give it to the party nominally acting here (meaning Al's firm) at controlled rate and the loss should be treated as political expenditure. The letter ended with a direction to the Diwan to issue a cheque for the necessary amount in favour of P. W. 1 and to direct him (P. W. 1) to effect the purchase as quickly as he could.

6. In the morning of 12-7-1947 P. W. 1 saw the Diwan (P. W. 6). The Diwan told P. W. 1 that the Maharaja's order must be carried out and after some discussion it was decided that instead of the Government purchasing the oil, Al's firm should purchase the same and P. W. 1 should pay the difference between the purchase price and the controlled price. It was estimated that the difference would amount to about Rs. 5,65,000/-. The Diwan (P. W. 6) drafted a formal note evidencing the Maharaja's sanction to the issuing of a cheque for Rs. 5,65,000/- This was sent to the Maharaja who signed it on the 13th July 1947.

7. In the evening of 12-7-1947 P. W. 1 met Al and informed him of the decision and said that he (P. W. 1) would pay the difference oil production of documents showing that the oil had been purchased. Al agreed. On the 13th July 1947 P. W. 1 instructed the Assistant Supply Officer Jacob Kiltiath (P. W. 10) about the decision and deputed him to assist Al to purchase the oil. P. W. 10 approached some merchants but the rate quoted by them was about Rs. 600/- per candy. Al said that he had made arrangements for the purchase of the oil from the West Coast Trading Co., at Rs. 575 per candy. On 15-7-1947 Al came to the office of P. W. 1 and told him that he had purchased 200 tons of oil and produced the original invoice (copy of which is Ex. L) of West Coast Trading Co, for 200 tons of oil costing Rs. 3,89,200 with a receipt. (copy of which is Ex. L1) endorsed thereon acknowledging receipt of the price in full. These were dated 14-7-1947 and were signed by one M. A. Thomas (P. W. 2) on behalf of the West Coast Trading Co. He also produced a letter (Ex. M) dated 15-7-1947 written and signed by him on behalf of his firm to P. W. 1 advising the latter that he had made arrangements to purchase 200 tons of oil and requesting him to issue a cheque for the difference in prices. P. W. 1 reduced the price of the oil to Rs. 570 per candy which was accepted by Al. On this basis the difference on 200 tons worked out at Rs. 1,10,740. P. W. 1 went and saw the Diwan (P. W. 6) with these documents Exs. L, L1 and M. P. W. 6 issued a cheque (Ex. N) in favour of P. W. 1 for that amount P. W. 1 returned to his office and handed over the cheque (Ex. N) to Al after duly endorsing the same. It is this payment which is the subject-matter of the first count of charges against Al.

At that time Al said that he was arranging for the purchase of the balance of 800 tons of oil. As the Diwan (P. W. 6) was going away to Delhi next day, P. W. 1 told him that Al was arranging to buy 800 tons and the Diwan left with him (P. W. 1) a cheque(Ex. P) for Rs. 4,54,260 and P. W. 1 gave to P. W. 6 a consolidated receipt (Ex. Q) for Rs. 5,65,000. On 21-7-1947 Al saw P. W. 1 and informed him that he had made an agreement with West Coast Trading Co. for the supply of the balance of 800 tons of oil and produced a written agreement (copy of which is Ex. R) with a receipt (copy of which is Ex. R1) endorsed on it acknowledging receipt of an advance payment of Rs.10,00,000, He also produced another receipt (copy of which is Ex. S) acknowledging payment of an additional sum of Rs. 1,12,000 towards the price of 800 tons. All these were signed by M. A. Thomas (P. W. 2). On the faith of these representations supported by these documents P. W. 1 issued a cheque (Ex.

T) for Rs 4,42,960 in favour of A1's firm. A1 then give two receipts, Ex. W for Rs.1,10,740 which had been paid on 15-7-1947 and Ex. W1 for Rs. 4,42,960 which was paid on that day, i.e., 21-7-1947. The last mentioned sum forms the subject -matter of the second count of the charges against A1.

After delivery of the receipts (Exs W and W1)A1 requested P. W. 1 to return to him he originals of Exs. L. Ll. R. R1 and S on the Plea that he would have to show them to his own principal. The original documents were then copied in P W. 1's office by his Head Clerk Raman Menon (P. W 4) and a clerk Sreevalsa Menon (P. W.5). These copies which are Exs. L. Ll. R. R1 and S remained In P. W 1's, office. On 30-7-1947 A1 handed over to P. W. 1 a letter (Ex. Y) written by him to P. W. 1 stating that 100 tons of cocoanut oil had been lifted by S.S. Mahadevi on the 25th July and that a further quantity was ready for shipment by the first steamer that might be available next. The prosecution case is that in point of fact no oil was purchased at all and the representations were false.

8. Evidently A1 fell out with A2 and Nambiar. On the complaint of Nambiar A1 was arrested at Nagpur on the 1st April 1948 on a charge of having stolen Rs. 5,000 from a trunk in Nambiar's House. In connection with that case certain statements were made by A1 on different occasions which necessitated further enquiries which eventually led to the three accused persons being sent up for trial on allegations summarised above.

9. Learned Advocate appearing for the appellant contends before us, as he did before the High Court, that the charges against A1 were extremely vague and prevented him from putting up his defence properly and meeting the charges and that such defect was an illegality which vitiated the whole trial. There can be no doubt that the charges as framed were vague in that they did not specify the manner and made in which the cheating had been done. The charges undoubtedly should have been more explicit and should have set out the particulars of his acts or conduct which were being relied on as having induced P. W. 1 to part with the two cheques (Exs. N and T). Learned Attorney-General appearing for the State does not seek to justify the vagueness of the charges but supports the decision of the High Court that the defect in the charges amounts to an irregularity which has not materially prejudiced the appellant. We find ourselves in agreement with the High Court.

It will be recalled that the charges related only to two incidents that took place on two specific dates. The evidence of P. W. 1 began on 4-1-1950. M. A. Thomas (P. W. 2) was examined on 10-1-1950. The two clerks (P. W. 4 and P. W. 5) were examined on the 18th and 19th January 1950. The Diwan (P. W. 6) also gave his evidence on 19-1-1950. The Assistant Supply Officer (P. W.10) deposed on the 21st January 1950 and the Food Minister (P. W.14) was examined on the 6th March 1950. The evidence of these witnesses gave all the particulars and details of the charges levelled against the appellant. The charges were formally framed on 13-6-1950 and the appellant was examined under that Section of Cochin Penal Code which corresponds to Section 342 of the Indian Penal Code. On 14-6-1950 the appellant was further examined and on being asked whether he wished to further cross-examine any of the prosecution witnesses he desired to cross-examine, amongst others P. W. 1 and P. W. 10. After such further cross-examination the appellant was again asked if he wished to say anything regarding the evidence of P. W. 1 and P. W. 10. He made some statement and also said that he would file a written statement which does not appear from the Paper Book to have been done by him. He said he was filing a petition praying for examination of Sri Jose Kallivayalil and of no other defence Witness.

It does not appear from the record that he examined any defence witness. He was finally examined

on 17-8-1950. In the premises it cannot reasonably be maintained that he did not know the particulars and details of the charges brought against him. Indeed, the particulars and details were all on the record before the charges were framed and A1 could not have been misled in any way. The fact that he had no difficulty in knowing what case he had to meet is fully proved by the fact that no grievance was made by him or his Advocate on this score before the Special Tribunal. In our judgment the High Court was clearly right in holding that the irregularity complained of did not cause any real prejudice to the appellant and did not vitiate the trial.

10. The prosecution case as summarised above is fully established by the evidence of P. W. 1 if that evidence is believed and accepted. He speaks to the facts leading up to the incidents of the 15th and the 21st July 1947. He avers that A1 did in fact make oral representations on the 15th July 1947 that he had purchased 200 tons of oil and had paid the price thereof to the West Coast Trading Co., and had in support of his statement produced the originals of Exs. L and L1 which were signed by P. W. 2 on behalf of West Coast Trading Co., and Ex. M which is admittedly signed by himself. Likewise, according to P. W. 1, A1 did on 21-7-1947 verbally represent that he had entered into a firm contract for the purchase of the balance 800 tons of oil and had actually paid Rs. 10,00,000 and Rs. 1,12,000 to the West Coast Trading Co., and in support of such assertion produced the originals of Exs. R, R1 and S. Finally, on 30-7-1947, A1 delivered to P. W. 1 the letter (Ex. Y) stating that 100 tons had already been shipped per S.S. Mahadevi and that another 400 tons were ready for shipment by the first available steamer. Exs. M and Y are admitted.

It is urged that the Exs. L, L1, R, R1 and S have been fabricated for the purpose of this case. It is pointed out that the terms of his letter Ex. M dated 15-7-1947 to the effect that he had "made arrangements to purchase 200 tons of coconut oil" clearly indicate that he could not have produced an invoice dated 14-7-1947 of which Ex. L is a copy and which purports to say that 200 tons had already been purchased. This is laying an under emphasis on the words "made arrangements to purchase." Exs. L and L1 were invoice and receipt given by the West Coast Trading Co., to A1's firm. It was, therefore, quite natural and perfectly in order that A1 should in addition to Exs. L and L1 make a formal request to P. W. 1 asking for payment so that the entire series of documents might serve as vouchers on the strength of which P. W. could make the payment. The demand for payment of the difference between the market price and the controlled price was certainly calculated to convey the impression that the goods had been purchased at a certain rate for without that rate the actual difference could not be calculated. It, therefore, does not follow that Ex. M. falsifies Exs. L and L1. Further, that argument is not available in discrediting the evidence of P. W. 1 as regards the production of Exs. R, R1 and S. According to P. W. 1, he told A1 on 13-7-1947 that his firm should purchase the oil on behalf of the Government and Government would meet the difference in price that the oil was to be sent to Hyderabad and that A1 should show P. W. 1 the document in token of the purchase before payment would be made and that A1 agreed to these terms. This evidence, if true, certainly makes it probable that A1 should produce the originals of the several exhibits mentioned above.

P. W. 1 swears that these documents were shown to him by A1 in support of his representation that he had purchased the oil. P. W. 1's examination-in-chief concludes with the statement that what induced him to issue the two cheques (Exs. N and T) in favour of A1 was the fact that he represented that the purchase had been made and that the documents he produced indicating the purchases were genuine. In cross-examination he reiterated that on 15-7-1947 before he endorsed the cheque (Ex. N) he was satisfied from the representations A1 made and from the documents he produced that 200 tons of oil had been purchased by A1. Further on he repeated that he relied on A1's oral representation about the purchase because of the documents produced. The two admitted

exhibits M and Y clearly point to representations having actually been made. The evidence of P. W. 1 is substantially corroborated by the Diwan (P. W. 6) and the Assistant Supply Officer (P. W. 10). There are undoubtedly some discrepancies in detail. Thus while P. W. 1 said that on 15-7-1947 he went to the Diwan (P. W. 6) taking with him Exs. L, L1 and M to show them to the Diwan (P. W. 6). the latter said that so far as he remembered P. W. 1 did not show him any documents such as the originals of Exs. L, L1 and M. It may well be that P. W. 6 had actually forgotten this detail. Likewise, P. W. 1 said that A1 asked for the return of the originals of Exs. L, L1, R, R1 and S in order to show them to his own principal whereas P. W. 10 said that A1 wanted them back because he would require them if any dispute arose between him and the West Coast Trading Co.

There are other yet minor discrepancies between these three witnesses. Reference has been made to the several statements subsequently made by P. W. 1, namely HA, DB, DC, and it has been pointed out that P. W. 1 did not in those statements come out with what he stated in Court and it is suggested that his evidence is a fabrication made by him to implicate A1 and to save his own skin. This criticism has been adverted to by the trial Judge who came to the conclusion that those documents were consistent with the prosecution case and that P. W. 1 could not come out with full details without permission of higher authorities and that it was after the death of the Maharaja that he could venture to mention about the interview of 11-7-1947. M. A. Thomas, the Proprietor of West Coast Trading Co., has been examined as P. W. 2. After stating how he came to know A1, A2 and Nambiar (the deceased accused) P. W. 2 stated that A1 told him that a company known as Pathanwala Ltd., required a lot of cocoanut oil and that he (A1) desired to purchase the oil to supply the same to that company. After some discussion in which the deceased Nambiar also took a leading part certain documents similar to L, L1, R, R1 and S were drawn up only to impress Pathanwala Ltd., that A1 was making arrangements and induce them to open a letter of credit for the necessary amount. A superscription was made on the copies of those documents to the effect that they were not intended to be acted upon and would be returned within 2 or 3 hours. The superscribed copies were left with P. W. 2 and A1 went away with the originals but returned after 2 or 3 hours and the documents were destroyed. P. W. 2 also stated that although those documents were similar to Exs. L, L1, R, R1 and S there were differences in the amounts and quantities. He also stated that A1 approached him first for export of oil on 19-7-1947. He denied that any oil was actually purchased or that he received any money except a sum of Rs. 12,000/- given to him by a cheque on 21-7-1947 partly for the purchase of drums and partly in payment of a sum of Rs. 1,000/- then remaining due to him by Nambiar.

Thus as to the correctness or genuineness of Exs. L, L1, R, R1 and S we have the evidence of P. Ws. 1, 4, 5 and 10. P. W. 2 did say that those exhibits did not quite tally with the originals signed by him on behalf of his firm and tried to explain that they had been brought into being to impress Pathanwala Ltd., but he also said that documents similar to those had been prepared. In spite of the several discrepancies and the pointed criticisms levelled against the trustworthiness of P. Ws. 1, 2, 4, 5 and 10 the trial Judge believed the evidence of P. Ws. 1, 4, 5 and 10 as substantially correct and true. The High Court said categorically that it had "no hesitation in accepting the testimony of P. W. 1." In view of the concurrent findings of fact by both the Courts this Court cannot substitute its own appreciation of the evidence for those of the Courts below. This Court has, in the absence of any compelling reason, always declined to act as a third Court of facts. There is in this case no reason for departing from that well recognised rule of practice adopted by this Court.

11. Learned counsel has pressed us to hold that the Courts below approached the case from a wrong angle and overlooked certain basic facts. He contends that in view of the order of the Maharaja, the Diwan and particularly P. W. 1 had no option but to pay the money to A1 and, therefore, there could be no question of or occasion for A1 making any representation or producing any document and in

any event for P. W. 1 relying thereon before actually making any payment and, therefore, it cannot be a case of cheating at all. We do not find any substance in this plea. The Maharaja's order Ex. BC was that the Government should purchase 1000 tons of oil at market rate through the Director of Food Supplies i.e. P. W. 1 and give it to the party who was nominally acting here, i.e. A1, at controlled rate. Maharaja never in terms ordered the Diwan (P. W. 6) or P. W. 1 to pay to A1 only the difference in cash. It was the Diwan who decided that it was not practicable or expedient for the Government to make the purchase in the open market and that A1 should be asked to purchase and to produce documents evidencing such purchase and that the difference in price would then be paid. These terms, as P. W. 1 said, were accepted by A1. In view of this decision A1 had to satisfy P. W. 1 by production of documents that he had actually purchased and, according to the evidence which has been accepted by the Court below, that is exactly what A1 in fact did. Therefore, the charge of cheating cannot be ruled out 'in limine'.

It is said that P. W. 1 really relied on the assurance of his Assistant Supply Officer (P. W. 10) and it was that assurance, rather than the representation of A1 and the documents produced by him, which induced P. W. 1 to part with the cheques. This is again a question of fact which is concluded by the findings of the Courts below. P. W. 1 said - and it is accepted by the Courts below - that he relied on the representations of A1 supported by the documents and that P. W. 10 also said that he was also satisfied that A1 had actually purchased the goods. The fact that P. W. 10 also gave such assurance does not mean that P. W. 1 did not get any faith on the representations at A1 or the documents produced by him. P. W. 10's assurance may, well have made P. W. 1 more readily induced by the representations of A1. Reading the evidence as a whole it seems that the only result of P. W. 10's assurance was that P. W. 1 did not think it necessary to ring up West Coast Trading Co., and to verify the correctness of A1's representations and the genuineness of the documents produced by the latter. As already stated the question as to whose act or conduct actually induced P. W. 1 to part with the cheques, whether he relied on the representations of A1, or on the assurance of both, is on ultimate analysis, a question of fact. The Courts below have accepted the evidence that P. W. 1 was induced to hand over the cheques by the representation of A1 that he had purchased the oil and had made payments to the sellers as shown in the documents produced by him. It cannot be said that such finding is opposed to the evidence on the record or is not supported by any evidence.

12. In the circumstances and for the reasons noted above there can be no escape from the conclusion that the conviction of the appellant was well-founded. At the same time there is strong indication, on the evidence on record, that there were other and perhaps bigger persons involved in the fraud that was perpetrated on the Government. The circumstance that such persons have not been brought to book certainly does not excuse or exonerate the appellant from his guilt which has been established by and reasonable doubt but, nevertheless, it has a bearing on the question of sentence. The trial was a protracted one and the appellant was in custody for a long time. Further, the commission of the crime was facilitated by the deviation from the terms of the Maharaja's order (Ex. BC). It cannot also be over-looked that the crime could perhaps have been prevented if only P. W. 1 took the obvious precaution of verifying the correctness of A1's representations by contacting P. W. 2 on the telephone or otherwise. We, therefore, uphold the conviction of the appellant and reduce the sentence of imprisonment to the period already undergone. The order of forfeiture of Rs. 1,50,385/13/6 and the directions for sale of the motor car and for crediting the sale proceeds to the Government must stand. The appeal is disposed of accordingly.

Order accordingly.

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