

SUPREME COURT OF INDIA

Mahadeo Prasad

Vs.

State of W.B.

Crl.A.No.29 of 1953

(N. H. Bhagwati, B. Jagannadhadas and T. L. Venkatarama Ayyar, JJ.)

13.01.1954

JUDGEMENT

BHAGWATI, J. :

1. This is an appeal by special leave from a decision of the High Court of Judicature at Calcutta upholding the conviction of the Appellant under Section 420 of the Indian Penal Code and the sentence of one year's rigorous imprisonment passed upon him by the Additional Presidency Magistrate of Calcutta.

2. The Appellant agreed to purchase from the complainant Dulichand Kheria 25 ingots of tin on the 5th May 1951. The complainant had in his stock 14 ingots only and purchased 11 ingots from the firm of M. Golam Ali Abdul Hossain. These 25 ingots were to be delivered by the complainant at the guddi of the Appellant and it was agreed that the price which was fixed at the rate of Rs. 778 per cwt. and amounted to Rs. 17,324/12/6 was to be paid by the Appellant against delivery. The Jamadar of the complainant went to the Guddi of the Appellant. The Appellant took delivery of the ingots but kept the Jamadar awaiting and did not pay the price to him. The Jamadar waited for a long time. The Appellant went out and did not return to the Guddi and the Jamadar ultimately returned to the complainant and reported that no payment was made though the ingots were taken delivery of by the Appellant.

The complainant who was induced to part with these 25 ingots of tin by the Appellant's promise to pay cash against delivery realised that he was cheated. He therefore filed on the 11th May 1951 his complaint in the Court of the Additional Chief Presidency Magistrate, Calcutta charging the Appellant with having committed an offence under Section 420 of the Indian Penal Code.

The defence put up was that the Appellant had no intention whatever to swindle the complainant, that the transaction was on credit and that the story of the promise to pay in cash was introduced by the complainant to give a criminal complexion to the case. It was alleged that the Appellant went of his own accord to the complainant 7 or 8 days after the transaction in order to settle the money to be paid in view of the fluctuations in the price of tin in the market and was arrested at the place of the complainant while he was thus negotiating for a settlement.

3. It transpired in the evidence that the Appellant had an overdraft account with the

Bank of Bankura Ltd. in which account he had overdrawn to the extent of Rs. 46,696-12-9 as on the

4th May 1951, the overdraft limit being Rs. 50,000/-. On the 5th May 1951 the Appellant hypothecated with the bank 70 ingots of tin as additional cover against the overdraft account. There was no satisfactory evidence to show that these 25 ingots of tin which were taken delivery of by the Appellant from the Jamadar of the complainant were included in these 70 ingots which were thus hypothecated with the bank on this date.

There was however sufficient evidence on the record to show that on the 5th May 1951 when such delivery was taken by the Appellant he had not with him any assets beyond the margin of the overdraft account to the extent of Rs. 3,303-3-3 which certainly would not go a long way towards the payment of the price of these 25 ingots. The question to be determined by the Court of the Additional Presidency Magistrate was whether having regard to the surrounding circumstances it could safely come to the conclusion that the Appellant had no intention whatsoever to pay but merely promised to pay cash against delivery in order to induce the complainant to part with the goods which otherwise he would not have done. The Additional Presidency Magistrate, Calcutta held that the charge against the Appellant was proved and convicted him and sentenced him as above. The Appellant took an appeal to the High Court against this conviction and sentence passed upon him. The High Court dismissed the appeal and confirmed the conviction and sentence passed upon the Appellant by the Additional Presidency Magistrate, Calcutta.

4. The High Court observed rightly that if the Appellant had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established. It was common ground that the market of tin was rapidly declining and it went down from Rs. 840/- per cwt. in about April 1951 to Rs. 540/- per cwt. in about August 1951. Even between the 3rd May 1951 and the 5th May 1951 the two dates when the negotiations for the transaction took place between the parties and the contract was actually entered into, the market declined from Rs. 778/- per cwt. to Rs. 760/- per cwt. It was therefore urged on behalf of the Appellant that the complainant would be anxious to sell the goods to the Appellant and there would be no occasion for the Appellant to induce the complainant to part with the goods on a false promise to pay cash against delivery.

It was further urged that the Appellant was not shown to have had no other resources except his overdraft account with the Bank of Bankura Ltd., that he had miscalculated his capacity to pay the price against delivery and that therefore there was no justification for holding that he had initially no intention to pay for the ingots when they would be delivered to him. It was also urged that the bill (Ex. No. 1) which was given by the complainant to the Appellant stipulated that interest at the rate of 12 per cent. per annum would be charged on the price of goods which was not paid in cash against delivery and this stipulation went to show that it was only a case of civil liability and did not import any criminal liability on the part of the Appellant.

It was lastly urged that the Appellant was anxious to arrive at a settlement with the complainant and actually went to his shop and was arrested there while negotiating a settlement and this showed that he had harboured no fraudulent intentions against the complainant when he had taken delivery of the ingots.

5. All these contentions which have been urged on behalf of the Appellant however are of no avail. The complainant had never known the Appellant and had no previous dealings with him prior to the transaction in question. The complainant could therefore not be anxious to sell the goods to the

Appellant either on credit or even in a falling market except on terms as to cash against delivery. Whatever be the anxiety of the complainant to dispose of his goods he would not trust the Appellant who was an utter stranger to him and give him delivery of the goods except on terms that the Appellant paid the price of the ingots delivered to him in cash and that position would not be affected by the fact that the market was rapidly declining.

There was no question of any miscalculation made by the Appellant in the matter of his ability to pay the cash against delivery. He knew fully well what his commitments were, what moneys he was going to receive from outside parties and what payments he was to make in respect of his transactions upto the 4th May 1951. The position as it obtained on the evening of the 4th May 1951 was that he had not with him any credit beyond a sum of Rs. 3,303-3-3 as above and there is nothing on the record to show that he expected any further payments by the 5th May 1951 to enable him make the payment of the price against delivery of these ingots. The stipulation as to payment of interest indorsed on the bill would not militate against an initial agreement that the price of the ingots should be paid in cash against delivery. It would only import a liability on the part of the purchaser to pay 12 per cent. interest on the price of the goods sold and delivered to him if he did not pay cash against delivery. That would indeed be a civil liability in regard to the payment of interest but would certainly not eschew any criminal liability of the purchaser if the circumstances surrounding the transaction were such as to import one.

The anxiety to arrive at a settlement could easily be explained by the fact that the Appellant knew that he had taken delivery of the ingots without payment of cash against delivery and the only way in which he would get away from the criminal liability was to arrive at a settlement with the complainant. The state of the overdraft account of the Appellant with the Bank of Bankura Ltd., the evidence of the complainant as well as the evidence of the complainant as well as the Jamadar, the hypothecation of 70 ingots of tin by the Appellant with the Bank of Bankura Ltd. on the very 5th May 1951 and the whole of the conduct of the Appellant is sufficient in our opinion to hold that at the time when he took delivery of the 25 ingots of tin, the Appellant had no intention whatsoever to pay but merely promised to pay cash against delivery in order to induce the complainant to part with the goods.

The Appellant was therefore rightly convicted of the offence under Section 420 of the Indian Penal Code and both the Courts below were right in holding that he was guilty of the said offence and sentencing him to one year's rigorous imprisonment as they did. The appeal therefore is without any merits and must stand dismissed.

Appeal dismissed.

</html