SUPREME COURT OF INDIA

Laxmi Narain Kalra

BVs.

State of U.P.

Crl.A.No.61 of 1954

(T. L. Venkatarama Ayyar and S. J. Imam, JJ.)

25.11.1955

JUDGEMENT

VENKATARAMA AYYAR, J. :

1. This is an appeal by special leave against the judgment of the High Court of Allahabad confirming the conviction of the appellant by the two courts below on a charge under Section 420, Indian Penal Code. In response to a notice dated 4th November, 1949, the District Development Officer Etawah, inviting tenders for the supply of bricks in connections with a Flood Relief Housing Scheme the appellant made a tender which was accepted and he was required to deposit in accordance with the rules, a sum of Rs. 4000 by way of security. Accordingly, on the 17th November, 1949 he delivered a cheque dated 16th November for Rs. 4000 drawn on the Punjab National Bank Ltd., Kanpur while in fact there was only a sum of Rs. 5 to his credit on that date.

It must be noted that according to clause 11 of Ex. P-2 which prescribes the procedures to be adopted in the matter of acceptance of tenders, the deposit should be in cash or postal securities. The cheque presented by the appellant, therefore, could not have been accepted by the authorities acting under that rule. On the 21st of November, 1949, the Development Officer returned the cheque asking the appellant to deposit cash as required by the rule. At that time the appellant was not in station and his brother, one Sobhraj, went, on the 22nd November, to the Development Officer and stated as follows :

"Laxmi Narain has gone out. On his return the money will be deposited. If the District Development Officer so desired, he could have the cheque cashed."

2. On this representation the cheque was sent for encashment and was dishonoured. The charge against the appellant is that in giving the cheque on 17-11-1949, and in re-presenting it on the 22nd of November 1949 when there was admittedly only a sum of Rs. 5 to his credit in the Bank, he had cheated the authorities and had committed an offence punishable under section 420, Indian Penal Code.

3. The Additional District Magistrate, Kanpur who tried the case, held that the offence had been made out and convicted the appellant and sentenced him to one year's rigorous imprisonment and a fine of Rs. 1,000. The appellant took the matter in appeal to the Court of the Sessions Judge Kanpur, who affirmed the conviction and the sentence passed by the Additional District Magistrate.

There was a revision preferred to the High Court against the order of the Sessions Judge,; and that was heard by Sankar Saran J. who observed that, on the facts, "the appellant was not a cheat as cheating is generally understood in common parlance" and that "he was a victim of circumstances", but held that technically the offence had been established and he accordingly confirmed the conviction. He however reduced the term of imprisonment to the period already undergone, but confirmed the fine. It is against this order that the present appeal has been filed by special leave.

4. On the materials placed before us we are of opinion that the conviction under section 420 cannot be sustained. We start with the fact that on the 17th November, the appellant presented a cheque when he had only Rs. 5 to his credit in the bank account. Now under the rules, the railway receipts for coal could be handed over to the appellant only after the deposit had been made and as under clause 11, the cheque could not be accepted as security by the department, the railway receipts could not in the normal course be delivered on the strength of the cheque and therefore there could be no question of the cheque having been delivered with any dishonest intention.

This is not seriously disputed by the respondent. The fact appears to be that the appellant had not the requisite amount for making a deposit and was making arrangements to raise the same. He wanted time and gave the cheque with that object. As a businessman, he must have known that the officers had no authority to accept the cheque as security, and having regard to the usual course of business he would have expected the cheque to be returned.

This is indeed what happened on 21st November, 1949 when the Department wrote to him that the cheque could not be accepted and that he should deposit the amount in cash. Thus far there is nothing to support any charge of cheating. Even the cheque, the delivery of which on the 17th of November is the foundation for this charge, had been returned unaccepted by the Department and therefore there was no question of cheating.

5. Now we must turn to what happened on the 22nd November, 1949. On that day the appellant was not in station. He had gone to arrange for the amount. It is stated that large amounts were due to him by the Railways, much more than four thousand rupees and it is therefore probable that he was away for raising the funds of making the deposit. When the letter dated 21st November was received, he not having been there, his brother Sobhraj, who it is stated was also interested in the business, took it into his head to see P. W. 2 on the 22nd and make the representation which he already been mentioned.

Now assuming for the purpose of the present appeal that Sobhraj was actuated by dishonest intention in making those representations, the question is whether the appellant could be fixed with responsibility for those representations and whether dishonest intention could be imputed to him. There is absolutely no evidence that he sent his brother on this errand with authority to make these representations. On the 22nd November he was not in the station and it is obvious that in his absence his brother Sobhraj did what he thought was best in the circumstances and therefore there is no ground for holding the appellant responsible for the representation made by him.

6. On behalf of the respondent, Mr. Asthana drew our attention to some passages in the evidence of P. Ws. 2 and 3 as showing that Sobhraj was acting under the authorisation of the appellant. P. W. 2 stated in his examination-in-chief that on the 15th November 1949. Laxmi Narain had told him that Sobhraj was his brother and "that he would come and go in his place as he was engaged in contracts outside at several places.

From this it is sought to be argued that a general authority had been given by the appellant to his brother to act for him and that authority included making the representations which he actually did make. We find it very difficult to accept this argument. In cross-examination P. W. 2 admitted that no writing was taken to show that Sobhraj could work on behalf of the appellant and such a general statement, as is spoken to by him is, in our opinion, wholly insufficient to constitute Sobhraj the authorised representative of the appellant for the purpose of making those representations.

P. W. 3 stated in his evidence that in the beginning Laxmi Narain and Sobhraj both came to him together on the 15th and 16th November and they also came together sometimes even later on. This has little significance seeing that they were brothers and were connected in business. On the other hand, P. W. 3 said in cross-examination that on the 22nd of November, 1949, Sobhraj informed him that Laxmi Narain would come the following day. This appears to us to show that Sobhraj did not possess any authority to make representations on his own responsibility in the matter and that the matter was one for the final decision of Laxmi Narain. We are unable, on this evidence, to hold that Sobhraj had been authorised to make the representation which he did make on behalf of the appellant.

7. There is no other evidence connecting the appellant with what happened on the 22nd of November 1949. That being so, there is no material on which we can say that the appellant has done anything which brings him within section 420 of the Penal Code. His conviction under that section must accordingly be quashed.

8. This appeal is allowed and the conviction and sentence passed by the courts below set aside. The fine is stated to have been paid and will be refunded.

Appeal allowed.

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