Madan Lal Ram Chandra Daga Etc.

Vs

State of Maharashtra

Criminal Appeals Nos. 99 to 104 of 1964

(R. S. Bachawat, M. Hidayatullah, K. S. Hegde JJ)

05.02.1968

JUDGMENT

HIDAYATULLAH, J.

This judgment shall govern the disposal of Criminal Appeals Nos. 99-104 of 1964. These appeals arise from a number of criminal prosecutions started against four persons for cheating. In the original court there were as many as nine cases filed against them which were tried simultaneously, three of the same kind being tried together, as required by the Code of Criminal Procedure. As a result of the trial the first and the fourth accused were acquitted. Accused Nos. 2 and 3 were convicted. They were sentenced in the aggregate to rigorous imprisonment for two years and were imposed fines totaling Rs. 15,000 each. The convicted accused appealed to the High Court. The State Government also appealed against the acquittal of accused No. 4. The High Court maintained the conviction and sentences of accused Nos. 2 and 3 and further set aside the acquittal of accused No. 4 who on conviction was sentenced to rigorous imprisonment for two years but no fine was imposed on him. The convicted accused have now filed these appeals by special leave.

The case started on the complaint of one Bansilal who was a partner in a firm Jawarmal Ramkaran of Kalbadevi, Bombay. It had five or six partners. This firm deals as Bankers and Commission Agents. The accused are connected with another firm the name of which is Ramnarayan Rajmal Rathi. The first accused (Laxminarayan Ramchandra) and the second accused (Murlidhar Daga) were partners of this firm and were doing business at Jhaveri Bazar, Bombay. The third accused Motilal, who is the brother of accused No. 2 was working as a Munim in the firm. Accused No. 4, Madan Lal, is a nephew of accused Nos. 2 and 3 and was working as a clerk. The third firm which is involved in the narration of facts was called Satyanarayan Shyamsunder Firm at Tejpur, Assam. Accused No. 4 is a partner of that firm. In the High Court the first firm is shortly described as J. R. firm, the second as R. R. Firm and the third as S. S. Firm. We shall adhere to these abbreviations in this judgment.

It is an admitted fact that the R. R. Firm had dealings with the J. R. Firm for several years and had borrowed in the past large sums of money from the J. R. Firm. In September, 1959, accused No. 3 approached Bansilal representing that the R. R. Firm had to supply cloth to certain constituents in Assam and that the R. R. Firm needed money for this purpose. Accused No. 3 offered to the J. R. Firm a commission of 2 as on every Rs. 100 and 6 1/2 per cent. interest. It appears that Bansilal wanted that some security should be furnished and accused No. 3 promised that the railway receipts, invoices and the hundies drawn upon the S. S. Firm would be handed over as security. For a time things went on quite regularly and honestly. As many as 110 hundies and railway receipts were tendered and the liability was also met. This involved a sum of no less than Rs. 1,20,000. Later,

however, the R. R. Firm began to inflate its invoices and to draw hundies for exaggerated amounts. When these hundies and the invoices reached the S. S. Firm they were returned. The hundies and the railway receipts were then returned and the Bank got back the goods from the railway authorities. The parcels were opened and surveyed. It was found that the goods represented by the invoices were not in the parcels and that cloth very much less in value was actually despatched. In other words, it was apparent that the RR. Firm was inflating the invoices and drawing up exaggerated hundies although cloth which was being sent was very much less in value. In other words, the drawing of the money on the security of the invoices and hundies from the J. R. Firm was an act of cheating pure and simple because if the J. R. Firm knew that the invoices and hundies were worthless or at any rate not of sufficient worth they would not have advanced such large sums of money to the R. R. Firm. It may be mentioned here that in this way 40 invoices and hundies were found to be inflated and they involved a sum of Rs. 1,10,000 or thereabouts.

The matter might not have come to a head but for an event which made the R. R. Firm incompetent even to pay the hundies if tendered to them. A petition in insolvency was filed against them and they were declared insolvent on December 30, 1959. The first hundi and invoice which was rejected by the S. S. Firm was as far back as October 8, 1959. Although the R. R. Firm wrote to the J. R. Firm that the hundies may be tendered to them for payment no action appears to have been taken. In this way the offence of cheating which really arose when the inflated invoices and hundies were tendered representing not the full value in terms of bales was made out. Accused Nos. 2 and 3, who were partner and Munim, respectively were held to be responsible for this cheating. Accused No. 1 was acquitted because he was only a financing partner and had no knowledge about these happenings. His acquittal was allowed to remain because the State did not appeal against his acquittal. Accused No. 4, who was only a clerk, was also acquitted by the court of trial on the ground that he had made no representation to the J. R. Firm and thus was not guilty of any offence. It may be stated here that no charge of conspiracy was made. If it had been, other considerations might have applied. Since accused No. 4 was directly charged with cheating some representation on his behalf had to be made out. It is on this point that the court of trial and the High Court have differed, the court of trial having held that there was no such representation and the High Court, taking the view, on evidence, which we shall consider presently, that accused No. 4 must be held to be equally guilty.

In this appeal it is practically admitted that the offence was committed although Mr. Nuruddin Ahmed described it as technical because (a) Bansilal knew what was being done, (b) this ruse was adopted so that the other partners of the J. R. Firm may not object, and (c) but for the intervention of insolvency the hundies if they had been presented for payment to the R. R. Firm would have been met. He draws our attention to the fact that as many as 110 invoices and hundies were regular and also met by the R. R. Firm. He pleads for a mitigation of the sentence on his ground. As regards accused No. 4, Mr. Nuruddin Ahmed submits that his case has been wrongly viewed by the High Court which has read too much into his actions and has thus erroneously held that he was responsible for cheating the J. R. Firm. Mr. Nuruddin Ahmed also draws our attention to what the High Court did during the hearing of the appeal. It appears that it was represented to the High Court that accused No. 2 was willing to bring the money in payment of his share of the losses caused to the J. R. Firm. The High Court adopted an unusual procedure by adjourning the appeal and affording accused No. 2 an opportunity of tendering his share of the amount. Accused No. 2 brought a sum of Rs. 35,000 and deposited it in Court. It appears from the High Court judgment that it had assured his counsel that the question of reduction of sentence would be heard after the amount was deposited. When the amount was deposited the matter was heard again. The High Court found it difficult to reduce the sentence. It returned the balance of the amount after retaining the gross

amount of fine imposed upon accused No. 2 in the case. Mr. Nuruddin Ahmed contends that the High Court should have reduced the sentence and taken over the money which had been deposited for payment to the complainant. He contends also that the High Court was in error in deducting the amount of fine when no question of reduction of sentence was to be considered. We shall say something about the procedure adopted in the High Court presently.

We may begin first by considering the case of the fourth accused. Evidence shows that he was a mere clerk in the R. R. Firm. No doubt he is a nephew of accused Nos. 2 and 3 but there is nothing to show that he took any part in the negotiations or in the making out of the inflated invoices and hundies. We have already said that no charge of conspiracy was made and his action as a mere clerk is capable of a different interpretation unless we can attribute to him an intention to cheat the J. R. Firm as did the other accused. On this part there is no evidence whatever. The only evidence is that being a clerk he wrote some of the invoices and took to the J. R. Firm. There is also evidence that at the instance of the J. R. Firm he drew up some pay-in-slips which were later submitted, not by him, but by the J. R. Firm to the Bank with the hundies. In our judgment this evidence falls short of the requirements of the law. No representation was made by the fourth accused to induce the J. R. Firm to part with the funds. If a charge of conspiracy had been made this evidence might have been relevant under s. 10 of the Evidence Act but as no charge of conspiracy was made the charge of cheating by the fourth accused had to be made out on good and proper evidence. There is nothing to show that the fourth accused knew that the hundies were not going to be met or that the invoices were in fact inflated. In the absence of any such proof it is difficult to hold (as did the High Court) that accused No. 4 was also guilty of the offence of cheating. None of the invoices which were written by the fourth accused was found to be inflated. The bad invoices were apparently written by someone else and he was only instrumental in taking them to the J. R. Firm as the servant of the R. R. Firm. Even if he wrote some of the bad invoices or the pay-in-slips some more evidence was needed before it could be held that he was instrumental in cheating the J. R. Firm. On these grounds he was entitled to an acquittal and the High Court erred in setting it aside in the appeal of the State Government. We accordingly allow his appeal and order his acquittal. He need not surrender his bail which was granted by this Court. The bail bond is canceled.

This brings us to the question of the sentence of the remaining accused, viz., accused Nos. 2 and 3. From what we have said above it is quite clear that these accused seem now to admit that they were guilty of cheating the J. R. Firm. Their case is that Bansilal knew that the invoices and the hundies were inflated, but that is no excuse because Bansilal was not the only person involved. There was the J. R. Firm who as Bankers and Commission Agents would never have lent such large sums of money if they knew that the invoices and hundies did not represent the proper value of the goods. It is also to be noticed that Bansilal denies all this and the suggestion of the second and the third accused that he knew everything is merely an assertion. It appears to us that having found a financier who was willing to lend money on the security of invoices and hundies, the second and the third accused engineered a plan under which a larger sum could be borrowed than what could be if the true facts were known. In other words, they devised a method under which inflated invoices and false hundies would enable them to get at larger loans that the actual value of the goods represented. There was thus cheating and their conviction must be held to be proper. We do not think that the offence can be described as merely technical. It was quite clearly a bold attempt to get more money through false documents which were to form security for the loans. It is true that in some way they might even have paid this money if the hundies had been tendered to them but there is nothing to show that they were in a position to meet the liability because the insolvency which supervened clearly indicates that they were not in possession of funds. It is their insolvency or lack of funds which must have induced them to adopt this method.

Having, therefore, held that the offence against them is proved we are now to consider the question of sentence in the case. We pointed out that the High Court adopted an unusual course in the case. In fact a similar course was suggested to us at the hearing by submitting that we should increase the fine and reduce the sentence to the period undergone. In other words, the accused were adopting the same method which they did in the High Court, namely, that they will pay the amount which they have wrongly realised from the J. R. Firm and this may be taken in mitigation of the punishment imposed on them. In our opinion, it is very wrong for a court to enter into a bargain of this character Offences should be tried and punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence. But the court should never be a party to a bargain by which money is recovered for the complainant through their agency. We do not approve of the action adopted by the High Court and for the same reason we would refrain from accepting the suggestion of Mr. Nuruddin Ahmed that we should increase the fine with a view to reducing the sentence of imprisonment.

We, however, think that in this case, but for the supervening insolvency the accused might have paid back the money to the J. R. Firm. The fact that they were on this occasion and also in the High Court willing to pay shows that if the matter had not been concluded against them by the insolvency they might even have attempted to satisfy the J. R. Firm. There were influenced by the ease with which they could borrow money and therefore tempted to depart from the strict path of honesty to meander into an offence of cheating. Taking this into consideration we think that although we cannot condone such offences there is room for reduction of the sentence of imprisonment imposed upon these two appellants. We reduce their sentence to one year's rigorous imprisonment. The sentence of fine imposed on them shall stand. With this modification the appeal of the second and the third accused will stand dismissed. Their bill is cancelled and they shall surrender forthwith.

Sentence reduced and Appeal dismissed.##

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