

Ishwarlal Girdharilal Parekh

Vs

State of Maharashtra and Others

Criminal Appeal No. 109 of 1966

(C. A. Vaidialingam, V. Ramaswami – I JJ)

01.05.1968

JUDGMENT

VAIDIALINGAM J. –

In this appeal, by special leave, on behalf of the appellant, the fifth accused in Special Case No. 9 of 1963, in the Court of the Special Judge for Greater Bombay, Mr. A. S. R. Chari, learned causal, challenges the order, dated November 24, 1965, passed by the High Court of Bombay, in Criminal Revision Application No. 232 of 1965.

There are five accused, in Special Case No. 9 of 1963. The appellant and accused No. 4, are partners of an industrial concern known as "Premier Industries". Accused No. 1 is an income-tax consultant, and accused Nos. 2 and 3 are clerks in the income-tax department. The substance of the prosecution case against these five accused is that they formed a conspiracy to cheat the income-tax authorities in respect of the income-tax assessment of the Premier Industries for the assessment year 1960-61, and, in pursuance of the said conspiracy, committed offences under section 420 of the Indian Penal Code, and section 5(1) (d) read with section 5(2) of the Prevention of Corruption Act, 1947 (II of 1947) (hereinafter called "the Act"). They have also been charged with an offence under section 468 of the Indian Penal Code alleged to have been committed by them in furtherance of the said conspiracy.

The allegation relating to the commission of the offence under section 420 of the Indian Penal Code is comprised in charge No. 2. That charge ends up by saying that by the various acts mentioned therein, the appellant, along with accused No. 1, who is the income-tax practitioner, and accused No. 4 dishonestly or fraudulently induced the income-tax No. 4 dishonestly or fraudulently induced the income-tax authorities and obtained assessment order for less income-tax than due by accused Nos. 4 and 5, and that all the three of them have committed an offence under section 420 of the Indian Penal Code. It is not necessary to refer to the other charges.

The appellant raised an objection to the framing of a charge under section 420 of the Indian Penal Code. According to him, the charge should really have been framed under section 417, on the ground that the assessment order in this case is not "Property". He also raised an objection that the assessment order is not "Valuable security".

The Special judge, by his order dated February 3, 1965, rejected the preliminary objections raised by the appellant. He held that the assessment order was "Property" and that it was also "Valuable security". Therefore, he held that the charge framed under section 420 of the Indian Penal Code was correct. There were certain other objections raised by the appellant, viz., that sanction had not

been obtained under section 196A of the Code of Criminal Procedure that where the offence itself was alleged to have been committed in Pursuance of the conspiracy and was the subject matter of charge of conspiracy could still be maintained, and that the period of conspiracy had been artificially fixed in the charge. These objections have also been overruled by the Special Judge.

The appellant carried carried the matter in revision before the High Court of Bombay. The learned judge, by his order dated November 24, 1965, which is under attack, has confirmed the order of the Special judge. Here again, the High Court has taken the view that the assessment order is "Property" and it is also "Valuable security" under section 30 of the Indian Penal Code. The High Court is further of the view that the allegation, contained in the material charge, do prima facie disclose an offence, under section 420 of the Indian Penal Code. Certain other objections, raised before the High Court, were also negatived.

Mr. A. S. R. Chari, learned counsel for the appellant, has again reiterated the same objections. Except for the question, relating to the charge framed under section 420 of the Indian Penal Code, we make it clear that we are not expressing any opinion regarding the other points raised by Mr. Chari. If any other objections are available to the appellant or any other accused, he or they will be perfectly entitled to raise the same during the course of the trial.

The argument regarding the invalidity of the charge framed under section 420 runs as follows : The essential ingredients of an offence under section 420 of the Indian Penal Code is that the person cheating must thereby dishonestly induce the parson deceived to deliver any property or to make the whole or any part of a valuable security. We are not referring to the other matters contained in section 420 of the Indian Penal Code. The issue or delivery of an order of assessment by an Income-tax Officer is not in consequence of the cheating committed by a party, though it may be that the computation of income, as found in the assessment order, may be the result of cheating practiced by the accused. Therefore, the accused cannot be considered to have, by cheating, dishonestly induced the Income-tax Officer to deliver the assessment order, because that is issued to a party as a matter of routing. The assessment order cannot also be considered to be "Property" within the meaning of section 420 of the Indian Penal C

Mr. G. L. Sanghi, learned counsel for the State, has supported the views expressed by the High Court.

We are not inclined to accept the contentions of Mr. Chari that there is any error or illegality in framing a charge under section 415 of the Indian Penal Code. As to whether the prosecution is able to make out its case or not is a different point. We are only concerned at this stage to consider as to whether, under the circumstances, a charge under section 420 could have been framed.

It is well-known that, under the Indian-tax Act, liability to pay income-tax arises on the accrual of the income and not from the computation made by the taxing authorities in the course of assessment proceedings, and that it arises at a point of time not later than the close of the year of account. It has also been laid down, by this court, that assessments particularise the total income of an assessee and the amount of tax payable. But it is not as if that the assessment order is valueless, as is sought to be made out. The question that arises for consideration in this case is whether there is any "delivery of property", or at any rate, whether the Income-tax Officer has been induced "to make a valuable security".

"Movable property" is defined in section 22 of the Indian Penal Code, "document" and "valuable

security" are defined in sections 29 and 30 of the Indian Penal Code, respectively. Under the scheme of the Income-tax Act, it is clear that the assessment order determines. The assessment order has to be served on the assessee. The tax is demanded by the issue of a notice under section 29; but the tax demanded is on the basis of the assessment order communicated to an assessee. The communicated order of assessment received by an assessee is, in our opinion, "property", since it is of great importance to an assessee, as containing a computation of his total assessable income and as a determination of his tax liability. In our view, the word "property", occurring in section 420 of the Indian Penal Code, does not necessarily mean that the thing, of which delivery is dishonestly desired by the person who cheats, must have a money value or a market value in the hand if the person cheated, but becomes a thing of value i

Once the assessment order is held to be "property", the question arises as to whether there is a "delivery" of the same to the assessee by the Income-tax Officer. It is argued that the order is communicated in the usual course and that, irrespective of any "cheating", the officer is bound to serve the assessment order. This argument, though attractive, has no merit. Communication or service of an assessment order is part of the procedure of the assessment itself. But it can be held that, if the necessary allegation are established, the accused have dishonestly induced the Income-tax Officer to deliver the particular property, viz., the assessment order as passed by him in and by which a considerably low amount has been determined as the total income of the assessee, on the basis of which the amount of tax has been fixed. Nor are we impressed with the contention that the deception, if at all, is practiced, not when the assessment order is delivered, but at the stage when the computation of the total income is

An offence under section 420 of the Indian Penal Code will also be made out, if it is established that the accused have cheated and, thereby dishonestly induced the Income-tax Officer to make a "valuable security". This takes us to the question : "Is the assessment order a 'valuable security' ?" We have already referred to section 30 of the Indian Penal Code defining "valuable security". The assessment order is certainly a "document" under section 29 of the Indian Penal Code. The order of assessment does create a right in the assessee, in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent. Therefore, an order of assessment is a "valuable security" under section 420 of the Indian Penal Code. Therefore, if the cheating employed by the accused resulted in inducing the Income-tax Officer to make wrong assessment order, it would amount to inducing the Income- tax Officer to make a "valuable security".

Considering the question from either point of view, as indicated above, it follows that the framing of a charge for an offence under section 420 of the Indian Penal Code is correct. The appeal, accordingly, fails and is dismissed.

Appeal dismissed.

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