

P.V. GOVINDAN NAIR

v.

STATE OF KERALA

(Supreme Court Of India)

HON'BLE MR. JUSTICE SHAH HON'BLE MR. JUSTICE GROVER

Criminal Appeal No. 106 Of 1967 From Crl.R.P.136 Of 1966 Of Kerala High Court | 27-11-1968

1. An institution styled the "Co-operative for American Relief Everywhere" known by the name "CARE" has its headquarters in Delhi, and branches in various States in India. The object of the institution is to distribute gift articles donated by the American citizens to the needy and poor in India. Distribution of articles is carried out by the Regional Directors of Food Supplies in the various States. The Branch office of CARE in Madras distributes articles through recognized social organisations. The articles are entrusted to the organisations under an assurance of their due application from the person to whom the articles are entrusted for distribution. The organisation to which the articles are entrusted for distribution has to furnish a written assurance in, a prescribed form, with an undertaking to distribute the articles amongst the poor and to furnish a distribution plan of the manner of distribution of articles and also a certificate regarding distribution.

2. One R. Sreenivasan was the Manager of the Madras Branch of CARE. The appellant approached Sreenivasan in August 1960 and represented to him that he had taken up charge as Honorary Secretary of the Kerala Sarvodaya Samithi in Thiruvangad, Tellicherry hereinafter called 'the Samithi' and that it was an organisation established for rendering social service and he requested Sreenivasan to arrange for supply of gift articles from the CARE to the Samithi for distribution amongst the poor people of the area which was served by the Samithi. The appellant signed an assurance form on August 16, 1960, undertaking to distribute the articles entrusted to him on behalf of the Samithi.

3. Sreenivasan recommended that the name of the Samithi be placed on the list of approved organisations for supply of articles to be distributed by CARE. Out of a consignment of milk powder received by CARE in November 1960, 200

cartons were allotted to the Samithi for distribution. Sreenivasan arranged to despatch those 200 cartons to the Samithi. The cartons were sent by rail from Madras to Tellicherry, and the railway receipt was sent to the appellant by registered post. The appellant received the Railway Receipt at Tellicherry on January 9, 1961, and arranged to release the consignment on the same date. He furnished a distribution plan and a certificate of distribution. In March 1961 the CARE received another consignment of milk powder and according to instructions received from Delhi 200 cartons of milk powder were allotted to the Samithi. The consignment was sent from Madras to Tellicherry by rail and the railway receipt was sent to the appellant by registered post. The appellant received the consignment and submitted a certificate of distribution in May 1961. But he sold 100 cartons out of this consignment to one Mohammad Sali of Cannanore for Rs. 12,000/-. One K. Kelappan, Chairman, Kerala Sarvodaya Mandal, having received information that the articles allotted by CARE were being received in the name of a non-existent Samithi and were being sold in the market, addressed a letter on May 15, 1961, to the Director of CARE in India, New Delhi. The Director sent the information to the Superintendent, Crime Branch, Trivandrum.

4. Investigation was then commenced and a charge-sheet was lodged against the appellant for offences under S.406, 420 and 467 I.P. Code. The appellant was tried before the Assistant Sessions Judge, Tellicherry, on three charges:

"Firstly, with having in or about August 1960 pretending to be the Honorary Secretary of a bogus institution which he styled as the Kerala Sarvodaya Samithi, Tellicherry, cheated the Manager, CARE, Madras and induced him to despatch by rail during the period between January 8, 1961 and April 13, 1961 to the address of the Secretary of the aforementioned bogus Samithi milk powder an offence punishable under S.420 of the Indian Penal Code;

Secondly, with having on or about the 9th day of January 1961, and in the course of the same transaction forged a certain document purporting to be a receipt for delivery of movable property, to wit, Goods Invoice Receipt for delivery of milk powder by signing the same as Honorary Secretary of the Kerala Sarvodaya Samithi, Tellicherry, and made use of the said document to take delivery of milk powder booked to the address of the aforementioned Samithi an offence punishable under S.467 of the Indian Penal Code; and

Thirdly, with having at or about the same time and place and in the course of the same transaction dishonestly used or disposed of the milk powder taken supply of by him from the CARE Organisation by selling them for value instead of distributing the powder to the poor and needy as he was bound to do under the terms of the supply an offence punishable under S.406 of the Indian Penal Code."

The Assistant Sessions Judge substantially accepted the case for the State and convicted the appellant of the offences under S.406 and 467 I.P. Code and acquitted him of the offence of S.420 I.P. Code. He

sentenced the appellant on each of the two charges to suffer rigorous imprisonment for three years and directed the sentences to run concurrently.

5. Against the order of conviction and sentence the appellant appealed to the Court of Session, Tellicherry. The Sessions Judge agreed with the view of the Trial Court about the false representations made by the appellant and the receipt of goods by the appellant. But in the view of the learned judge the appellant had committed offences punishable under S.420 and S.467 I.P. Code. The learned judge accordingly converted the conviction of the appellant for the offence under S.406 into one for the offence under S.420 I.P. Code and maintained the conviction under S.467 I.P. Code. He also maintained the sentences passed for the offence under S.467 and for the offence under S.420 I.P. Code he imposed a sentence of rigorous imprisonment for three years and directed it to run concurrently with the other sentence.

6. Against the order passed by the Court of Session, Tellicherry, a revision application was filed before the High Court of Kerala. The High Court substantially agreed with the appreciation of evidence by the Courts below and held that on the facts proved offences under S.467 and 420 I.P. Code were committed by the appellant, and that the Session Court had power to convert in appeal the conviction for the offence under S.406 into a conviction for the offence under S.420 I.P. Code and dismissed the revision application.

7. In this appeal, counsel for the appellant contended in the first instance that the Trial Court having acquitted the appellant of the offence under S.420 I.P. Code it was not open to the Court of Session, in an appeal filed by the appellant, to convict him of the offence under S.420 I.P. Code, even by altering the conviction for the offence under S.406 I.P. Code. Secondly, it was contended that no offence under S.467 I.P. Code, on the facts found, was made out.

8. It is unnecessary for the purpose of this case to decide the first point. As we have already stated the appellant has been convicted for the offence under S 467 I.P. Code and sentenced to suffer rigorous imprisonment for three years. Whether additional sentence which is to run concurrently with the sentence imposed under S.467 I.P. Code may be inflicted under S.406 or S.420 I.P. Code is entirely immaterial. We, therefore, turn to the question whether an offence under S.467 I.P. Code is made out on the finding recorded by the Trial Court and confirmed by the Court of Session and the High Court.

9. The charge against the appellant was that on or about January 9, 1961, he had forged a certain document purporting to be a receipt for delivery of milk powder by subscribing his signature thereto as Honorary Secretary of the Samithi a non-existent organisation and had made use of the said document to take delivery of the milk powder booked to the address of the Samithi and had thereby committed an offence under S.467 I.P. Code. There, is no doubt on the finding that CARE intended to distribute the milk powder through the agency of the Samithi. The Samithi is found on the evidence to be a nonexistent body and the appellant could not hold the office of Honorary Secretary of the Samithi which he claimed to represent. By false representations he had obtained milk powder intended to be distributed free of charge among the poor and the needy, and had disposed it of in the market for a price. On the evidence, all the courts below have held that the appellant had signed Exts. P-43 and P-44, the relevant documents dishonestly and fraudulently. He purported to sign them as Honorary Secretary of the Samithi which he knew did not exist and of which he could not hold any office. Unless he signed the documents in the capacity of the Secretary of the Samithi he could not obtain delivery of the consignments of the milk powder despatched by the Madras Office of CARE. By signing the documents Exts. P-43 and P-44, and obtaining delivery of the consignments he made wrongful gain to himself and there is no doubt that he did so with intent to defraud CARE. The documents which he signed are valuable securities within the meaning of that term under S.30 of the Indian Penal Code.

10. The argument urged on behalf of the appellant, that when a person signs his own name and makes a representation that he is an agent of a non-existent body he does not in law commit the offence of forgery, cannot be accepted. S.463 defines "forgery". In so far as it is relevant, the section provides:

"Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property,...or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 464 sets out what the making of a false document is. In so far as it is material, it provides:

"A person is said to make a false document

First Who dishonestly or fraudulently makes signs, seals, or executes a document or part of a document or x x x x, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed x x x x x"

There are two Explanations to the section. Explanation 1 enacts that a man's signature of his own name may amount to forgery. Explanation 2 enacts, insofar as it is relevant, that the making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person may amount to forgery. On the plain terms of the section, it cannot be said that, because the appellant has subscribed his own signature on the documents Exts. P-43 and P-44 which facilitated the taking of delivery of the consignments of milk powder, he has not made a false document. The Samithi which he claimed to represent did not exist; the appellant, however, represented that he was the Secretary of that fictitious body and he had authority from that body to receive the consignments of milk powder. By making a document in the name of a fictitious Samithi and by setting up that he was a Secretary of that Samithi the appellant made a false document. He did so fraudulently and dishonestly.

11. The judgment of the Andhra High Court in *In re Venkatasuryanarasimha* AIR. 1955 Andhra 82 relied upon by counsel for the appellant in support of the contention that in some what similar circumstances the High Court of Andhra held that the accused had not made a false document may be considered. In that case the accused had issued several bills in the names of fictitious persons to cover up certain sales. He was tried for the offence under S.465 I.P. Code. The Trial Magistrate held that the accused by issuing receipts in the names of persons who did not exist and later attempting to burn the original bills did not commit an offence either under S.465 or under S.201 I.P. Code. According to the learned Magistrate the bills issued by the accused were not in law false documents within the meaning of S 464 I.P. Code. The District Magistrate exercising revisional jurisdiction directed further enquiry by the Magistrate. Against that order a revision application was filed to the High Court of Andhra. The High Court observed that by issuing bills in the names of fictitious persons the accused could not be deemed to have made false document within the meaning of S.464 IP.. Code. The learned judge observed that under the first clause of S.464 what is material is that the accused person must make a document with the intention of causing it to be believed that it was signed by or by the authority of someone else, while he knows that it was not so made or authorised by that person, and that the accused had not made the bills purporting to be made by the authority of some person. It was further observed that the intention in issuing the bills may be fraudulent and he may be punishable for some other offence. But "to bring it with in the four corners of S.464 " the false document must be created with a view to make it appear that it was made by some other person who the accused knows did not make it. The principle of that case has no application to the present case. The appellant has expressly represented himself to be the Secretary of the Samithi which to his knowledge did not exist. Documents Exts. P-43 and P-44 are, therefore, made in alleged exercise of authority from that fictitious person, and they are made dishonestly and with the intention of causing it to be believed that the documents were made by a real person and intending to be believed that they were so made by it. The case clearly falls within the second Explanation to S.464 I.P. Code. The offence of forgery punishable under S.467 I.P. Code is therefore made out.

11. If, as we have already stated, the appellant is guilty of the offence of S.467 IP. Code it is a matter of no moment whether he has also committed the offence under S.406 or the offence under S.420 IP. Code or both the offences.

12. The appeal fails and is dismissed.