

Shaikh Alimuddin Ahmed

Vs

State of West Bengal

and

Kali Prosad Poddar

Vs

State of West Bengal

Criminal Appeal Nos. 172 and 232 of 1968

(S. M. Sikri, P. Jagmohan Reddy JJ)

22.03.1971

JUDGMENT

P. JAGANMOHAN REDDY, J. -

1. Special leave has been granted by this Court to the Appellant Shaikh Alimuddin Ahmed (Criminal Appeal 172 of 1968) against the summary dismissal by the High Court of Criminal Revision Petitions filed by them in which they challenged the order of the Presidency Magistrate, 6th Court, Calcutta, committing them to stand trial in the Sessions Court for offences under Section 120B-420 Indian Penal Code. The circumstances in which the Appellants were committed to the Sessions Court arose out of a complaint filed by Bindhu Bhusan Bhattacharjee alleging that Ramgopal Neotia of Geekay Corporation, Sudhir Chatterji a salesman of the Indian Automobiles in conspiracy with Appellants Alimuddin Ahmed and Kali Prosad Poddar sold a secondhand Bedford Diesel Chasis representing it to be a new one. It appears that Shaikh Serajuddin had purchased in the name of his son the Appellant Alimuddin a Bedford Diesel chasis on hire purchase basis from India Automobiles through a firm of financiers known as Geekay Corporation. The transaction was put through on May 31, 1960 when Rs. 29404/60 was paid by the Geekay Corporation to India Automobiles in full payment of the lorry. It also appears that the Appellant had a body built thereon for Rs. 1850. It is however asserted that since no road permit was granted to Alimuddin, the vehicle could not be registered and consequently about 15 months thereafter the same lorry was sold to the complainant by the Salesman, Sudhir Chatterji of the Indian Automobiles through the same Finance Corporation which canceled the agreement with Alimuddin and entered into an agreement with the complainant instead. By this transaction the complainant was able to purchase the same vehicle, with the body which was originally built for Alimuddin Ahmed and for which the complainant paid Alimuddin by cheque Rs. 1850. The complainant thereafter obtained a Road permit and plied the lorry between Calcutta and Ranchi till about March 1962. By this time he had done about 16000 miles and when the engine began to give trouble he sent it for repairs to M/s. Howrah Motor Accessories. It was then he came to know that the engine of the lorry was not a new one and needed to be rebored. Later when the complainant committed defaults in payment of installments, M/s. Geekay Corporation took possession of the lorry after which a complaint was lodged with the

Deputy Commissioner of Police against Sudhir Chatterji and Ramgopal Neotia under Section 120 read with 420, Indian Penal Code for conspiracy and cheating in having sold him an old vehicle by misrepresenting it as a new one. After investigation a challan was filed by the police on February 27, 1964 against Ramgopal Neotia and Sudhir Chatterji in which the Appellant Alimuddin Ahmed, the Appellant's father Serajuddin and Appellant Kali Prasad Poddar were cited as witness. While this challan was pending against the said accused the complainant filed on January 25, 1965 a petition for the issue of warrants for the arrest of Jyotirmoy Mukherjee, Kali Prasad Poddar, Shaikh Sarajuddin and Shaikh Alimuddin Ahmed alleging that as there was a prima facie case against them under section 120B read with Sections 420 and 467, Indian Penal Code they should be arrested. On this application the Magistrate directed the Investigation Officer to submit his report and on February 9, 1965 he rejected that petition on the ground that having regard to the Police report no further orders were necessary. The complainant filed another application with similar prayers against the appellant Alimuddin Ahmed and Poddar on March 11, 1965 and on the same day that petition was also rejected. The complainant perhaps believed that perseverance pays, for he filed a third petition on April 17, 1965 which was also rejected. The fourth attempt was not however direct, in that he apparently persuaded the Public Prosecutor and the Investigating Officer to move the Court which they did on May 20, 1965. An application was presented for amending the challan by including the name of Alimuddin Ahmed and Poddar as accused and for submitting the amend challan. The Magistrate after pursuing the amended challan on May 26, 1965 ordered them to be summoned for offences under Section 120B read with 420, I.P.C. whereupon Ramgopal Neotia and Poddar filed two separate Criminal Revision in the High Court challenging this order. On April 28, 1967 the High Court allowed the Criminal Revision Petitions and set aside the order of the Magistrate on the ground that a supplementary charge-sheet could not be filed by the Investigating Officer as in its view "Any further investigation into the offence would trench on the cognizance that has already been taken by the Magistrate". While quashing the supplementary charge-sheet the High Court observed that "If in the course of the inquiry that has been started the Magistrate finds evidence to indicate that these 2 persons named in the supplementary charge sheet are guilty, he would be quite competent to summon them after the conclusion of the inquiry and to direct their prosecution". In the result it directed the discharge of Appellants Poddar and Alimuddin Ahmed. After the High Court's order the Magistrate while committing Neotia and Chatterji for being tried by the Sessions Court on February 12, 1968 directed the summoning of Alimuddin Ahmed and Poddar and on May 10, 1968 on the same material on which Neotia and Chatterji were committed, committed them to answer the charges referred to above. Against this order both the appellants filed separate Revision Petitions which were summarily rejected by the High Court.

2. In this Appeal the simple question is whether on the admitted facts as presented by the prosecution is there a prima facie case against the appellants to answer the charge for which they have been committed. The complainant had purchased the vehicle from India Automobiles through the Agency of a Finance firm Geekay Corporation. In the sale of this vehicle to him appellant Alimuddin is said to have helped the other accused.

3. The case against Kali Prasad Poddar is that he had given a sale note Ex.15 on behalf of India Automobiles causing it to be believed that it was issued by an authorised dealer of the Hindustan Motors manufacturers of Bedford Trucks at a time when it had ceased to be so. It is therefore alleged that the sale letter being a document which created a right to a valuable security the accused by issuing such a document committed an offence under Section 467 read with 471, I.P.C.

4. It is not disputed that when the vehicle was sold to Alimuddin by India Automobiles, they were the authorised dealers of Hindustan Motors Ltd. The modus-operandi in purchasing a vehicle under

the hire purchase agreement was that the intending purchaser would negotiate with the hire-purchase financier and on signing the agreement and complying with the requirements as to initial payment the purchase amount of the vehicle would be paid by the Financial to the dealer. After the amount is received by the dealer he would issue a sale note but under the agreement the ownership of the vehicle would vest in the hire purchase financiers and would continue to do so till such time as the last of the installments is paid. It is in evidence that Alimuddin paid five installments to Geekay Corporation and since he could not get the Road permit the vehicle was not taken away but left in the godown of Indian Automobiles and subsequently as already noticed, on the request of Alimuddin Ahmed the vehicle was sold to the complainant and a sale note Ex.15 was given by Sudhir Chatterji. There is absolutely no evidence against the Alimuddin that he had any way induced the complainant or has been a party to any conspiracy to cheat him. In this case we refrain from even saying that there is evidence to support the prosecution of cheating but assuming that there is prima facie evidence to support the commitment of a charge of conspiracy and cheating against Neotia and Sudhir Chatterji, there is none at all against the Appellants. It is contended that the evidence of the complaint and PWs 3 to 6 would show that the accused must have been aware of the conspiracy and have furthered it by being a party to the sale transaction. All that the complainant PW 1 states about Alimuddin is that he gave a cheque for Rs. 1850 Ex.8 towards the cost of the body built in favour of Alimuddin. When he asked Sudhir Chatterji he said it was Alimuddin who built the body of the lorry. Now this statement does not implicate the Appellant in any way because even if true it was not made by him. The further statement of the complainant that the engine is an old one is hearsay because he says that he was told that the engine was old. He also says that he knew Kali Prasad Poddar of India Automobiles but he had no talk with him. PW 2 does not in any way implicate the Appellants. PW 3 says that he had earlier seen the lorry sold to the complainant with Serajuddin as he was told that he wanted to sell the vehicle, that Serajuddin demanded Rs. 26,000 for it but he did not want to purchase it as it was an old lorry. The witness also stated that there was a number - plate on the lorry when he saw it at Serajuddin's, but there is nothing to show whether it was a trade number - plate which all dealers are entitled to exhibit after complying with the provisions of the Motor Vehicles Act or was it a plate bearing the number given on the registration of the vehicle. In any case there was no attempt to show that the vehicle sold to the complainant was at all Registered before. If it was nothing would have been easier to establish that past PW 4 is an Assistant in the office of the Registrar of Companies at Calcutta. He says that there is no Company in the name of India Automobiles registered in their office but there is a company known as Indian Automobiles (1960) Ltd., registered on February 19, 1960. PW 5 is an old employee of the India Automobiles. According to him, India Automobiles sold vehicles even after India Automobiles (1960) Ltd., came into existence because it had some stocks to dispose of. The vehicle sold to the complainant, he says was delivered from the Casipur godown of Indian Automobiles and it is the same vehicle which was originally sold to Alimuddin Ahmed. He further stated that Ex.16 sale note was sent to the Financier and that if there is a second sale they issue fresh sale letter at the request of the transaction with Alimuddin was taken back and canceled when issuing the second sale letter. PW 6 is a Sales Executive of Hindustan Motors Ltd. According to him India Automobiles were their Agents and were authorised to sell Bedford Trucks up to December 31, 1960. From January 1, 1961 India Automobiles (1960) Ltd., was appointed as their Agents. In so far as unsold vehicles are concerned he said the agreement between the dealers and their firm covered this but he does not know what that agreement was as he is a new employee.

5. This evidence, without any attempt to appreciate or weigh it, to determine it is believable or not, does not in any way implicate either of the Appellants. Notwithstanding the change in the dealership from India Automobiles to the Limited Company of the same name there was no impediment for the

former to sell the unsold vehicles in its godown or to give sale notes in respect thereof to customers who purchased them. The complainant on his own showing knew that a body had built thereon for which he had to pay Rs. 1850 to Alimuddin and which he paid by cheque. Even on his showing he knew that the mileage recorded at the time of the purchase of the vehicle was 400 miles and admits that "A new car may be sold after running at the place of sale for 1000 miles". That he would have been put on inquiry if it was a second-hand vehicle is also apparent from his evidence. There is in our view not an iota of evidence that a second-hand vehicle which is merely hearsay. The attempt of the complainant to involve the Appellants is nothing but harassment and we consider this to be a fit case in which the Commitment Order should be quashed, which we do. The Appeals are accordingly allowed.

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