

State of Kerala

Vs

A. Pareed Pillai and Another

Criminal Appeal No. 71 of 1969

(J. M. Shelat, H. R. Khanna JJ )

28.04.1972

JUDGMENT

KHANNA, J. -

Three brothers Pareed Pillai, Kader Pillai and Mohammed Pillai, partners of A. Pareed Pillai and Bros., Alwaye as well as K.M. Kurien, Assistant Goods Clerk in the Southern Railway at Alwaye were tried in the court of Special Judge, Trichur for an offence under Section 120-B, Indian Penal Code on the following charge :

"That you (1) Shri A. Pareed Pillai, (2) Sri A. Kader Pillai (3) Sri A. Mohammed Pillai and (4) Sri K. M. Kurien, accused 1 to 4 between December 1962 or earlier and June 1963, at Alwaye agreed to do an illegal act or acts, to wit, accused Nos. 1 and 2 to present forwarding notes in respect of coconut oil tins to be booked without actually tendering tins with coconut oil, but only some empty tins, accused No. 4 to issue railway receipts in respect of such forwarding notes and accused No. 1 to present the railway receipts in support of hundies drawn on others in the Federal Bank Ltd., Alwaye and obtain value of the hundies and accused No. 3 to get empty tins transported and stored at the Alwaye Railway Station. The said acts were done in pursuance of the agreement between you. These acts constitute offences punishable under Section 5(2) of Act II of 1947 and Section 5(2) of the Act 1947, read with Section 109 of the Indian Penal Code, Section 420 of the Indian Penal Code, read with Section 109 of the Indian Penal Code, Section 107 of the Indian Penal Code, and Section 197, read with Section 109 of the Indian Penal Code. You have therefore committed an offence punishable under Section 120-B of the Indian Penal Code, and within my cognizance."

In addition to the above, there were eight charges (charges 2 to 9) against Kurien accused for an offence under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act. Five charges (charges 10, 12, 13, 15 and 16) were framed against Pareed accused for an offence under Section 109, Indian Penal Code, read with Section 5(2) of the Prevention of Corruption Act. Likewise, there were three charges (charges 11, 14, and 17) for an offence under Section 109, Indian Penal Code, read with Section 5(2) of the Prevention of Corruption Act against Kader accused. Three charges (charges 18, 19 and 20) were framed under Section 420 Indian Penal Code against Pareed Pillai accused. Charges 18 and 19 were also framed against Kader and Mohammed accused for offence under Section 420 read with Section 34, Indian Penal Code. Charge No. 21 was for an offence under Section 420, read with Section 109, Indian Penal Code against Kader and Mohammed accused. Charge No. 22 was for an offence under Section 197, Indian Penal Code against Kurien

accused, while charge No. 23 was for an offence under Section 197, read with Section 109, Indian Penal Code, against Pareed and Kader accused. The Special Judge acquitted Mohammed, accused No. 3. Pareed, accused No. 1, was convicted under Section 120-B, Indian Penal Code, Section 5(2) of the Prevention of Corruption Act, read with Section 109, Indian Penal Code and imprisonment for a period of three years on the first count, rigorous imprisonment for a period of three years and a fine of Rs. 5,000 on the second count and rigorous imprisonment for a period of one year on the third count. The substantive sentences of imprisonment were ordered to run concurrently. In default of payment of fine, Pareed accused was sentenced to undergo rigorous imprisonment for a period of six months.

2. Kader, accused No. 2, was convicted for offences under Section 120-B, Indian Penal Code, Section 5(2) of the Prevention of Corruption Act, read with Section 109, Indian Penal Code, Section 420, read with Section 34, Indian Penal Code and Section 420, read with Section 109, Indian Penal Code, and was sentenced to undergo rigorous imprisonment for a period of one year on each of the four counts. All the sentences were ordered to run concurrently.

3. Kurien, accused No. 4, was convicted under Section 120-B, Indian Penal Code, Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act and Section 420, read with Section 109, Indian Penal Code, and was sentenced to undergo rigorous imprisonment for a period of three years on each of the first two counts and rigorous imprisonment for a period of one year on the third count. The sentences were ordered to run concurrently.

4. On appeal the Kerala High Court acquitted Pareed and Kader accused and set aside their conviction on all the counts. The conviction of Kurien accused was maintained only for the offence under Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act. The sentence of rigorous imprisonment for a period of three years on that count was confirmed.

5. Appeal No. 71 of 1969 was filed by the State of Kerala against the acquittal of Pareed and Kader accused. It may be stated that appeal No. 31 of 1969 was filed by Kurien accused against his conviction under Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act, while appeal No. 73 of 1969 was filed by the State of Kerala against Kurien accused praying for his conviction for offence under Section 120-B, Indian Penal Code as well as for offence under Section 420 read with Section 109, Indian Penal Code. Both appeals 31 and 73 were not pressed and as such were dismissed on January 19, 1972. We are thus left with appeal No. 71 of 1969 only.

6. The prosecution case is that the business of firm A. Pareed Pillai and Bros. (hereinafter referred to as the firm) was to sell coconut oil and to send it by rail to different places in India. It had been engaged in this business for over 15 years. The firm had an account with the Federal Bank Ltd., Alwaye (hereinafter referred to as the bank) and was allowed overdraft facilities to the extent of Rs. 50,000 and discounting facilities to the extent of Rs. 5,00,000. The firm had furnished securities to the satisfaction of the bank authorities for these facilities. Pareed was a shareholder of the Bank. It is stated that as a result of dealing in forward contracts, the firm suffered losses in the end of 1962 and the beginning of 1963. As the limit of overdraft facilities was reached, the partners of the firm with the help of Kurien accused resorted to the device of obtaining railway receipts of oil tins from Kurien accused without actually delivering oil tins for booking. The four accused accordingly entered into a conspiracy and in pursuance thereof, Pareed and Kader accused presented forwarding notes to Kurien accused without producing coconut oil covered by the forwarding notes. Kurien accused on the basis of those forwarding notes issued railway receipts. Thirteen demand drafts drawn on various parties were sent to the bank. In support of those demand drafts, thirteen railway

receipts were also sent to the bank. Those railway receipts related to the period from February 2, 1963 to April 24, 1963. The goods in respect of those railway receipts were, however, not consigned to the railways. To avoid detection, it is stated, Mohammed accused sent about 3,000 empty tins to the railway goods shed on or about the night of February 23, 1963 and stacked them in such a manner that they were surrounded by a few tins full of coconut oil.

7. The case of the prosecution further is that on May 25, 1963, P.W. 1 V.C. Chacko, Inspector of Accounts, Southern Railway made a surprise check at Alwaye railway station. Chacko found that Kurien accused had issued thirteen railway receipts during the period from February 2, 1963 till April 24, 1963, to the firm in respect of 3,525 tins of coconut oil for being consigned to different stations. Although the loading register revealed that no tin of coconut oil in respect of the above thirteen railway receipts had been dispatched from Alwaye railway station, there were found only 43 tins containing coconut oil and 2,807 empty tins at the railway station. Similar malpractices were found on respect of railway receipts issued in favour of the firm from Chalakudi and Irinjalakuda railway stations. We are not, however, concerned with the railway receipts issued from Chalakudi and Irinjalakuda railways stations in the present appeal which relates only to the case covered by the thirteen railway receipts issued by accused No. 4 at Alwaye railway station. Report, dated May 30, 1963, was sent by the Assistant Commercial Superintendent of Southern Railway Olavakkot to railway Police Cochin Harbour on the basis of facts which had come to light as a result of the surprise check by Chacko. A case was registered on the basis of the above report.

8. The investigation of the case revealed that the bank credited in the account of the firm the amounts of the thirteen demand drafts drawn on the parties to whom the coconut oil tins mentioned in the thirteen railway receipts relating to the above mentioned demand drafts were to be sent. The amounts were credited in the account of the firm on the presentation of the demand drafts although the demand drafts were not accompanied by the railway receipts. The railway receipts in accordance with the practice prevailing for a number of years used to be sent by the firm to the bank subsequently.

9. After the thirteen railway receipts in question were received by the bank, the bank sent the thirteen demand drafts along with the railway receipts to the bank branches in different cities for realising the amounts of the demand drafts. Two out of those demand drafts were Nos. 1582-A and 1582-B drawn of Ramkumar Mataprasad, Raniganj. Govindram Khaitan (P.W. 29) is a partner of that firm. Demand draft 1582-A was for an amount of Rs. 1,26,000, while demand draft 1582-B was for an amount of Rs. 21,600. The railway receipts in respect of these two demand drafts were No. 956437, dated February 13, 1963, for 350 tins and No. 956505, dated February 25, 1963, for 350 tins. The amount of those two demand drafts totalling Rs. 33,600 was paid by the firm Ramkumar Mataprasad. The oil tins mentioned in the railway receipts were, however, not received by Ramkumar Mataprasad as those tins were not consigned to the railways by the firm of accused-respondents. As regards the remaining eleven demand drafts, the amounts thereof were not received by the bank from parties on whom the demand drafts were drawn. Credit entries in respect of those eleven demand drafts for an aggregate amount of Rs. 1,69,569.20 were consequently reversed by the bank in the account of the firm. Proceedings for the recovery of the amount which thus became due to the bank were also initiated by the bank. The case of the prosecution so far as the offence of cheating, with which alone we are now concerned, was that Pareed and Kader accused had made false representation in respect of the booking of the tins of coconut oil and thereby induced the other parties to act to their detriment.

10. At the trial the plea of Pareed and Kader accused was that the demand drafts used to be sent to

the bank. The bank thereafter discounted those demand drafts and credited the amounts thereof in the overdraft account of the firm. The railway receipts in respect of those demand drafts used to be handed over to the bank only after the goods were booked. The practice of discounting the demand drafts by the bank even before the production of the railway receipts was stated to have been in vogue since a long time and had the approval of the authorities of the bank. After the present case was registered, the bank, according to the above accused, called back all the outstanding demand drafts and debited them in the account of the firm. Pareed and Kader accused denied having sent any empty tins to Always railway station.

11. The trial judge, as stated above, accepted the prosecution case regarding the complicity of Pareed, Kader and Kurien and convicted and sentenced them as above. On appeal the High Court maintained the conviction of Kurien accused only for the offence under Section 5 of the Prevention of Corruption Act. It was held by the High Court that the evidence about the transport of empty tins to Always railway station on behalf of the firm of the accused was not convincing. It was further held that the representation which was made by Pareed and Kader accused related solely to the supply in future of tins of coconut oil. As there was no cogent evidence to show that the accused did not have the intention to fulfill their promise to supply coconut oil tins at the time of making the representation, the offence of cheating against them was held not to have been proved.

12. The first contention which has been advanced in this Court on behalf of the appellant-State is that the accused-respondents cheated the bank inasmuch as they induced the bank authorities to credit the amounts of demand drafts in the account of the firm by representing that the oil tins relating to those demand drafts had been consigned to the railways. In this connection, we find that P.W. 9 Vidyadharan, who was the accountant of the bank, has deposed that the bills discounted at the bank were two types, documentary bills and clean bills. When a bill was backed by a collateral document, it was called documentary bill. The other bills were termed clean bills. When a bill was produced and accepted for discount, the proceeds were credited to the part's account. The firm of the accused, according to the witness, furnished securities to the satisfaction of the bank for the discounting facilities. Railway receipts were normally accepted for discount and were classified as documentary bills. The discounting of the bills was sanctioned by the agent of the bank. It is further in the testimony of the witness that the demand drafts were given first and the railway receipts was given only subsequently. The firm of the accused-respondents alone was given the concession to produce railway receipts subsequently. The fact that the firm of the accused had been given the credit for the amounts of demand drafts without railway receipts was mentioned in the weekly returns sent to the head office of the bank. The witness has added that the above practice was in vogue since 1959.

13. P.W. 11 Narasimhan Potti was the agent of the bank. According to him, the firm of the accused-respondents was the principal constituent of the Always branch of the bank. The amounts of the demand drafts issued by the firm used to be credited in the account of the firm without production of the railway receipts. The railway receipts used to be produced initially after two or three days of the production of demand drafts, but subsequently this period was extended up to 25 or 26 days. The witness has also added that the above practice was being followed with the knowledge of the Managing Director. It is also in the testimony of the witness that there was no requisition from the accused-respondents to credit the amounts in their account without the production of the railway receipts.

14. K. P. Hormis (P.W. 20) was the Managing Director of the bank. According to this witness the firm of the respondents had 251 shares of Rs. 20 each in the bank. Pareed accused had 110 shares

while his wife had 101 shares in the bank. The wives of Pareed, Kader and Mohammed accused had assets and gave guarantee to the bank for the facility afforded to the firm. Equitable mortgage of four properties was also created in favour of the bank in that connection. Some vehicles like a lorry, three scooters and a standard car too were hypothecated in favour of the bank. The witness has admitted that as a result of enquiry it came to his notice that the practice of crediting the demand drafts without the railway receipts had been in vogue.

15. The evidence on record thus reveals that the practice followed by the bank in the case of the firm of the accused-respondents since 1959 was to give credit to the firm for the amounts of demand drafts without the production of the railway receipts. This was, indeed the finding of the High Court.

16. It would follow from the above that it was not in pursuance of any representation regarding the consignment of oil tins to the railway that the bank gave credit to the firm of the accused for the amounts of the demand drafts. On the contrary, the amounts of demand drafts were credited in the account of the firm immediately on receipt of the demand drafts even though they were not accompanied by the railway receipts. The railway receipts were, no doubt, to be sent by the accused to the bank subsequently, but there is no cogent evidence to show that at the time when the accused sent the demand drafts they did not have the intention to send subsequently railway receipts in respect of oil tins which were actually delivered to the railways. The material on record indicates that more than 5,000 oil tins were dispatched to various stations from Alwaye railway station on behalf of the firm of the accused-respondents during the period from February 2, 1963 to April 24, 1963. Those oil tins were appropriated by the railway authorities towards the railway receipts of earlier dates and were sent to various stations. The fact that more than 5,000 oil tins were despatched on behalf of the firm of the accused to the various stations during the above period is hardly consistent with a dishonest intention on their part. It may be that the accused could not keep up the delivery of the oil tins to the railways and no tins could be despatched in respect of the said thirteen railway receipts but that fact can give rise only to a civil liability of the accused. It is not sufficient to fasten a criminal liability on them. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.

17. So far as the presence of empty tins at the railway goods shed is concerned, those tins, according to the prosecution case, were transported under the direction of Mohammed accused. Mohammed was acquitted by the trial court and his acquittal was not challenged in appeal. Pareed and Kader accused played no part in the transport of those tins to the railway goods shed. The High Court has disbelieved the evidence regarding the transport of the empty tins on behalf of the firm. We see no cogent ground to take a contrary view by reappraising that evidence.

18. We are, therefore, of the view that the material on record does not warrant interference with the finding of the High Court on the charge of cheating in so far as it related to the credit given by the bank of the amount of eleven demand drafts in question in the account of the firm. It may also be observed that the bank has got collateral security in respect of the overdraft and discounting facilities to the firm of the accused-respondents and we have not been referred to any material to show that the said security would not be sufficient to reimburse the bank for the amount due to it.

19. It has been contended on behalf of the appellant-State that even if the accused-respondents were not guilty in respect of the other demand drafts, they were guilty of the offence of cheating in so far as the two demand drafts honoured by the firm of Ramkumar Mataprasad of Raniganj were

concerned. It does not appear from the judgment of the High Court that any separate or specific argument was addressed in respect of those two demand drafts. Looking to all the facts, we are of the opinion that the demand drafts which were drawn on the firm of Ramkumar Mataprasad cannot be taken in isolation. The material on record shows that the thirteen demand drafts in question, including the two demand drafts drawn on Ramkumar Mataprasad, were sent to the bank by the firm of the accused-respondents in accordance with the practice which had been in vogue for a number of years of sending the railway receipts subsequent to the issue of demand drafts. The evidence adduced in the case, as already stated earlier, does not warrant the conclusion that the accused-respondents had no intention at the time of the issuing of the demand drafts that the oil tins for the price of which the demand drafts were issued would not be consigned to the railways. On the contrary, as stated earlier, during the period in question more than 5,000 oil tins were despatched to different stations on behalf of the firm of the accused. The material on record further indicates that even in the past there has been occasion when the firm of Ramkumar Mataprasad honoured the demand draft and requested that the goods might be despatched subsequently. This would appear from the telegram, dated August 4, 1961 sent by the aforesaid firm to the firm of the accused. It is not in the evidence of Govindram Khaitan (P.W. 29), who is a partner of Ramkumar Mataprasad, that the said firm would not have paid the amounts of the two demand drafts if it had known that the oil tins had not been despatched.

20. The view taken by the High Court in acquitting the accused-respondents has not been shown to us to be unreasonable. We, therefore, dismiss the appeal.

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