

Jageshwar Singh Rastogi

Vs

State of Madhya Pradesh

Criminal Appeal No. 193 Of 1972

(P. S. Kailasam, O. Chinnappa Reddy JJ)

29.11.1978

JUDGMENT

KAILASAM, J. –

1. This appeal is by special leave against the judgment of the High Court of Madhya Pradesh in Criminal Appeal No. 332 of 1971 convicting the appellant under section 420, IPC and Section 5(1)(d) of the Prevention of Corruption Act sentencing him to one year's RI and a fine of Rs. 200 and six months' RI respectively. The appellant is the Principal of Basic Institute, Raisen. Sahariya, PW 12, was Divisional Forest Officer, Raisen. He wanted to purchase a Binocular for his department. He had a talk with the appellant about the Binocular. The appellant told PW 12 that he had purchased a Binocular for his Institute and he will get the quotations for Sahariya also. Several quotations Exs. P-2, P-3 and P-4 were received on March 28, from Surrender Brothers. Another quotation was received from another firm Kumar Bros. An order Ex. 5 was placed for the purchase of Binoculars to Surrender Brothers. On March 31, 1964 the appellant met Sahariya and gave him the Binocular, Article B and also the quotation, Ex P-6 and the bill P-7. A cheque Ex. P-8 was issued in favour of Surrender Brothers and the amount was received by one 'J. Singh' who is the partner of Surrender Brothers. The case of the prosecution is that the appellant cheated Sahariya by making a representation that Surrender Brothers was a firm dealing with Binoculars and that the price quoted was the proper one as he had himself purchased for the Institute. It is conceded and the High Court has found, that it has not specifically stated as to what profit the appellant made in the deal. The High Court found that the price of the Binocular which was supplied at Rs. 586.00, is not the proper price. As another Binocular had been supplied at Rs. 380 to the Institute the High Court came to the conclusion that the appellant must have had at least normal dealer's profit. We are unable to agree with this reasoning and the conclusion arrived at. The evidence of PW 10, Professor Srivastava, who examined the Binoculars and gave his opinion of Ex. P-15, has pointed out that the casing in Article B which is supplied to Sahariya, PW 12, was of Brass while that supplied to the Institute in Article A of Aluminium. Another difference was that there was Chromatic defect in Article A, whereas there was no such defect in Article B, Article A was made in Japan while Article B does not show the names of the country of its make. There are differences between Articles A and B and it would be hazardous to say that the price paid by Sahariya was more than the market price. The High Court has also not found that the prosecution has succeeded in proving that Sahariya was induced to pay higher price than the worth of the article. In the circumstances, the prosecution has not succeeded in establishing the offence of cheating.

2. The charge under Section 5(1)(d) is equally unsustainable. The case of the prosecution is that the principal induced PW 12 to place an order for Binoculars and believing the representation made by the Principal, he placed the order. We do not see how Section 5(1)(d) would be applicable. The

representation that was made by the appellant was as a friend or as a person known to PW 12. In the circumstances, we feel that the charge under Section 5(1)(d) is unsustainable. The result is that the conviction under Section 420, IPC and Section 5(1)(d) of the Prevention of Corruption Act, are set aside. The appeal is allowed and the accused is acquitted.

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