

Amritlal Ratilal Mehta and Another

Vs

State of Gujarat

Criminal Appeal No. 222 of 1973

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

16.11.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. To appreciate the question posed in the present appeal, it is necessary to set out in full the two charges framed against the two appellants. They were as follows :

I, Chandrakant T. Mashla, Judicial Magistrate 2nd Court, Baroda, hereby charge you

(1) Amritlal Ratilal Mehta

(2) Gajanan Bhikhabai Gandhi both of Baroda as follows :

That both of you Amritlal Ratilal Mehta and Gajanan Bhikhabai Gandhi on or about December 21, 1965, as Baroda cheated the Central Excise Department, Baroda in furtherance of common intention to cheat the Government of excise duty of Rs. 11,450 (eleven thousand, four hundred and fifty) by dishonestly making false declaration in gate passes numbers 105, 104, 103, all dated December 21, 1965 which were prepared and written by accused 1 and signed by accused 2 stating therein :

"Repaired Motor with our replacing stator or Rotor" and thereby dishonestly induced the Central Excise Inspector to allow the clearance of Electric Motor Nos. 614193, 614194, 614196 respectively without payment of Central Excise duty on the dutiable parts namely Rotors Numbers 41-40-42 which were manufactured by M/s. Joyto Ltd., Company, Baroda and were replaced by the said company in the above Electric Motors and thereby got the clearance of the above Electric Motors without payment of Central Excise Duty, causing thereby wrongful loss of Rs. 11,450 to the Central Excise Department and thereby both of your committed offence punishable under Section 420 read with Section 34 of IPC within cognizance of J.M.F.C., Baroda.

And also that both of you at about the same time and place furtherance of common intention in your capacity as employees of M/s. Jaity Ltd., Baroda wilfully and with an intention to defraud the Central Excise Department Baroda, made false entries in the gate passes as mentioned above belonging to your employer and thereby committed an offence punishable under Section 477-A, read with Section 34, IPC and within cognizance of J.M.F.C., Baroda. And thereby direct that you both be tried for the above offences by 2nd Court, J.M.F.C., Baroda.

2. The learned Judicial First Class Magistrate, Baroda who tried the case acquitted both the accused of the charge under Section 420 read with Section 34 IPC but convicted them under Section 477-A read with Section 34 IPC and sentenced them to pay fines of Rs. 100 and Rs. 500 respectively. The learned Magistrate was of the view that neither of the accused intended to cheat and make wrongful gain but that they made a false entry in the gate passes with a view to help their employer. The two accused preferred an appeal to the Extra Additional Sessions Judge, Baroda. The learned Sessions Judge acquitted them of the charge under Section 477-A read with Section 34 IPC also. The learned Sessions Judge found that the gate passes were prepared by the accused under a mistake and that the worst that could be said against the two accused was that they acted inadvertently or negligently. The learned Sessions Judge took the view that the expression "intent to defraud" denoted some element of dishonesty and that the appellants acted neither wilfully nor with the intent to defraud the government. The state of Gujarat filed two appeals, the first against the order of acquittal recorded by the learned Judicial First Class Magistrate, Baroda on the charge under Section 420 read with Section 34 IPC and the second against the order of acquittal recorded by the learned Extra Additional Sessions Judge, Baroda on the Charge under Section 477-A read with Section 34 IPC. The appeal against the order of acquittal on the charge under Section 477-A read with Section 34 IPC was dismissed summarily on March 13, 1972 by J. M. Sheth and A. A. Dave. JJ. The appeal against the order of acquittal on the charge under Section 420 read with Section 34 IPC was allowed on February 27/28, 1973 by J. M. Sheth, J. and the two accused were sentenced to pay fines of Rs. 300 and Rs. 500 respectively. It is against this judgment of J. M. Seth, J. That the present appeal has been preferred by special leave to this Court.

3. The principal submission of Shri Frank Anthony, learned Counsel for the appellants was that in view of the findings of fact recorded by the Sessions Judge on the charge under Section 477-A read with Section 34, which had become final as a result of the dismissal of the appeal by Sheth and Dave, JJ., the charge under Section 420 read with Section 34 IPC must automatically fail. The learned Counsel submitted that the judgment of the High Court convicting the appellants under Section 420 read with Section 34 IPC was patently wrong. We are inclined to agree with the submission of Shri Frank Anthony.

4. The learned Judge of the High Court was of the view that the acquittal on the charge under Section 477-A was not a bar to a conviction under Section 420 as the ingredients of the two offences were different. According to the learned Judge, the gist of the offences under Section 477-A was that the false entries must have been made wilfully and with intent to defraud whereas the essence of the offence under Section 420 was that the accused should have acted dishonestly. We are afraid that the learned Judge entirely misdirected himself. The question here is not whether the ingredients of the two offences are the same or substantially the same. That question would be relevant if the plea was one *autrefois* acquit or *autrefois* convict. The question is not even of 'issue estoppel' properly so called as there were no separate trials. The question really is about the binding force and the conclusive nature, at later stage of a case, of a finding of fact finally determined at an earlier stage of the case. The question is not *res integra*. In *Bhagwat Ram v. State of Rajasthan* ((1972) 2 SCC 466) and *State of Rajasthan v. Tarachand Jain* ((1974) 3 SCC 72), it had been held by this Court, an earlier finding which had attained finality is binding in the subsequent proceedings in the case. The question about the binding force of a finding at an earlier stage would depend on the question as to what the allegations were, what facts were required to be proved and what findings were arrived at. The question thus is not whether the ingredients of the two offences are the same but whether the facts alleged and required to be proved in the particular case to establish the offences are basically the same. The charges set out by us at the outset show that the essential allegation which was required to be proved in respect of the two charges was whether the gate

passes were made 'dishonestly' so far as the charge under Section 420 was concerned and "with intent to defraud" so far as the charge under Section 477-A was concerned. A finding that the gate passes were made inadvertently and negligently was destructive of both the charges. If for the purpose of the offence under Section 477-A, the Court found that the entries made by the accused in the gate passes were made inadvertently and negligently but not wilfully or with a view to defraud and that finding became final, it would not be open to the Court, later to find, on the charge under Section 420, that the entries on the gate passes were made not inadvertently and negligently, but dishonestly. On the facts of the present case, we hold that the finding of fact to the effect that the gate passes were made inadvertently and negligently and not wilfully or with intent to defraud which led to the acquittal having become final, operate for the benefit of the accused and lead to their acquittal on the charge under Section 420 also. The finding that the gate passes were made inadvertently and negligently, as we said, was destructive of the charges under both Section 420 and Section 477-A. The appeal is therefore allowed. The appellants are acquitted. Their bail bonds will be cancelled. Fines if paid will be refunded.

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