

Kapoor Chand Maganlal Chanderia

Vs

Delhi State (Administration)

Criminal Appeal No. 152 of 1975.

(A. P. Sen, E. S. Venkataramiah JJ)

16.04.1985

JUDGMENT

A. P. SEN, J. -

1. While we strongly deprecate the conduct of the appellant in altering the affidavit sworn by him at Dar-es-Salaam on July 5, 1966 countersigned by the Third Secretary, High Commission for India, Tanzania by substituting in ink the word 'permanently' for the words 'for three years' for securing customs clearance for his Mercedes Benz 200 Saloon Car, Model 1965, bearing registration No. KGA 111 which he had brought along with him in July 1966 as part of his personal baggage, free of duty, under the international convention known as Carnet De-Passage Tripe-trique, under which he could retain the car only for a maximum period of one year, which may prima facie make out a case for framing of a charge under Section 420 read with Section 511 of the Indian Penal Code, 1860, we do feel that no useful purpose would be served by subjecting the appellant to another prosecution punishable under Section 420 read with Section 511 of the Code after a lapse of nearly 20 years.

2. There can be no doubt that the appellant was guilty of impropriety by scoring out the words 'for three years' and substituting in ink the word 'permanently', but the appellant was candid enough to admit that he had done so under the reasonable belief that he could utilize the unused affidavit that he had sworn at Dar-es-Salaam for the aforesaid purpose of getting customs clearance. But the fact remains that the Chief Controller of Imports and Exports refused to grant the request as a result of which the appellant expatriated the said Mercedes Benz car out of India within the prescribed period of one year as prescribed under the Tripe-trique convention. Prior to 1966, the appellant was a British citizen of Indian origin having extensive business interests at Mombasa in Tanzania and several other countries of the world. He had a family holding in Messrs. Atul Drug House Limited, Bombay and came on a temporary visit for a period of three years to survey the business situation and to make a decision about his future stay in the country. After his arrival in India, he was on July 9, 1966 appointed a Managing Director thereof. Apparently he found that his involvement in Messrs. Atul Drug House Limited as a Managing Director required his presence in India for quite some time and accordingly applied to the Joint Chief Controller of Imports and Exports for the issue of an import licence to keep the said car for more than one year. That request of his was turned down by the Chief Controller of imports and Exports on the ground that he had not come to India for permanent settlement. Thereafter, the appellant intimated the Chief Controller that he had reconsidered his decision and decided to stay in India permanently. The Chief Controller had required the appellant to submit amongst other documents an affidavit countersigned either by the High Commission for India in Tanzania or the Indian Embassy at Nairobi in Kenya or a notary public. Undoubtedly, the appellant committed a foolish act by substituting in ink the word

'permanently' for the words 'for three years' in the affidavit submitted by him presumably because he thought that he would be required to go back to Tanzania to swear such an affidavit which was just a mere formality. The appellant could as well have sworn an affidavit before a notary public at Bombay and submitted it along with his application for customs clearance.

3. The appellant for this act of indiscretion has already suffered a prosecution launched by the Central Bureau of Investigation in the Court of the Additional Chief Presidency Magistrate, Bombay for commission of an alleged offence punishable under Section 420 of the Indian Penal Code. The aforesaid affidavit which he had furnished to the Chief Controller of Imports and Exports was a document filed by the prosecution in that case and put in evidence to substantiate the charge that he made a false declaration before the Assistant Collector of Customs, Bombay that he was a tourist and had come to Bombay to stay for a period of six months and thereby the Assistant Collector was misled by the declaration so made although the appellant knew full well that he had sworn an affidavit before the Third Secretary, High Commission for India at Dar-es-Salaam that he was taking up an appointment as a Director of Messrs. Atul Drug House Limited and it would therefore necessitate him to remain in India for a period of three years at least. The prosecution further alleged that he made a representation to the Chief Controller of Imports and Exports, New Delhi to issue him a customs clearance and when he was asked to produce affidavit in support of his claim, he scored out the words 'for three years' from the said affidavit and added in ink the word 'permanently' which amounted to forgery for which a case was pending in the Delhi Court.

4. The appellant pleaded his innocence and denied the commission of the alleged offence. His plea in defence was one of false implication. He stated that the prosecution had been launched by the Central Bureau of Investigation in 1969 i.e. long after the Mercedes Benz car had been exported out of India before July 29, 1967 i.e. the period of one year allowed under the Tripe-trique regulation, at the instigation of his business rival Shah, the other Managing Director. After a trial the learned Additional Chief Presidency Magistrate by his judgment dated April 7, 1973 acquitted the respondent holding that the prosecution had failed to establish the charge under Section 420 of the Indian Penal Code beyond all reasonable doubt. He further held that the dispute between the two groups viz. the Shah family on the one hand and the Chanderia and Khimsia families on the other, to gain control over the management of Messrs. Atul Drug House Limited arose in 1968 and that the appellant was falsely implicated at the instigation of Shah, the other Managing Director, who was on friendly terms with Wagh, Director of Enforcement.

5. The Delhi Special Police Establishment had in the mean while filed a challan against the appellant in the Court of the Judicial Magistrate (First Class, Delhi on February 10, 1971 for commission of an alleged offence punishable under Sections 420 and 471 read with Section 467 of the Indian Penal Code. By his order dated May 14, 1973, upon an inquiry under Section 207-A(4) of the Code of Criminal Procedure, 1898 the Judicial Magistrate (First Class), Delhi being of the view that the aforesaid affidavit was a valuable security, framed charge against the appellant under Sections 420, 467 and 471 read with Section 467 of the Indian Penal Code directing him to stand his trial in a Court of Session. In revision, the Additional Sessions Judge, Delhi by his order dated May 22, 1973 made a reference under Section 438 of the Code for quashing of the charge under Sections 467 and 471 read with Section 467 of the Indian Penal Code taking a contrary view. Accepting the reference, a learned Single Judge of the Delhi High Court by his order dated August 26, 1974 set aside the order of committal passed by the learned Judicial Magistrate and quashed the charge framed against the appellant under Sections 467 and 471 read with Section 467 of the Indian Penal Code and remanded the case to the Metropolitan Magistrate, Delhi with the direction that he should proceed to try the appellant for commission of an alleged offence punishable under Section 420 read

with Section 511 of the Indian Penal Code.

6. Learned counsel for the appellant with his usual fairness frankly concedes that the plea of autrefois acquit under Section 403 of the Code or the rule against double jeopardy guaranteed under Article 20(2) of the Constitution are not available to the appellant since the offences are not substantially the same but separate and distinct. He however contends that the substitution in ink of the word 'permanently' for the words 'for three years' in the affidavit was an honest but a foolish act and therefore no useful purpose would be served in directing another prosecution of the appellant for an alleged offence punishable under Section 420 read with Section 511 of the Indian Penal Code. The contention must, in our opinion, be accepted.

7. Although we commenced this order by observing that the act of the appellant in altering the affidavit may prima facie make out a case for framing of a charge under Section 420 read with Section 511 of the Indian Penal Code, he has come forward with an explanation, namely, that he was under an honest belief that he could utilize the unused affidavit lying with him and it cannot be said that the explanation so offered was not a reasonable explanation. If that be so, the act complained of may or may not amount to an offence punishable under Section 420 read with Section 511 of the Indian Penal Code, 1860. It would not subserve the interests of justice when admittedly the Chief Controller of Imports and Exports was not cheated, nor was there an attempt to cheat him. This is amply borne out by the fact that the Mercedes Benz car brought by the appellant, free of duty, under the Tripe-trique convention was repatriated by him out of India before July 29, 1967 i.e. within the period of one year prescribed thereunder. For aught we now, the appellant did not have any dishonest intention.

8. In the facts and circumstances of the case, we do not think that it would be expedient, in the interests of justice, to maintain the order of the learned Single Judge by which he has remanded the case to the Metropolitan Magistrate, Delhi with the direction that he should proceed to try the appellant for commission of an alleged offence punishable under Section 420 read with Section 511 of the Indian Penal Code. The adoption of such a course after a lapse of nearly 20 years would not only entail a fresh trial but subject the appellant to undue harassment and ultimately may result in an acquittal.

9. In the result, the appeal succeeds and is allowed. The order passed by the High Court is set aside and the proceedings now pending before the Metropolitan Magistrate, Delhi are quashed.

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