

Jibrial Diwan

Vs

State of Maharashtra

(M.M. Punchhi, K.Venkatswami JJ)

24.07.1997

ORDER

1. Having heard learned counsel for the appellant, we called upon Mr. D.M. Nargolkar, learned counsel for the State of Maharashtra requiring him make submission to support the judgment under appeal. He candidly admitted that he was unable to do so. We appreciate the fair stance he has adopted. In support of the same, we record our reasons.

2. Shri Azhar Hussain, PW 2 was a Minister at the relevant time in the State of Maharashtra. He had planned a cultural show whereat some artists were invited. The case of the prosecution is that two letters Exh. 28 and Exh. 29 were prepared on the letter head of the Minister, whereupon invitations were written to invite Raja Murad, and Javed Khan, PWs. These letters were allegedly forged for these did not bear the signature of the Minister. The show was held on the day scheduled. The invites came on the basis of those forged letters. Later, a controversy was raised. The matter was investigated by the CBI. Charges were laid against the appellant as also one Patel, accused No. 2. The second accused stand acquitted by the trial Court. His acquittal has been maintained by the High Court. The allegation against the acquitted accused was that he had forged those letters. That part of the prosecution case on account of the acquittal of the second accused has become sealed. The role of the appellant was that he had delivered those two forged letters to the recipients. For that act, even though he was acquitted by the trial Court, the High Court has convicted him for offence under Section 417, Section 471 read with Sections 465 IPC and awarded him sentences as disclosed in the judgment under appeal.

3. It bears repetition that the appellant was not the forger of those documents. Section 471 enjoins that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 465 provides that whoever commits forgery, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Now the words 'dishonestly' and 'fraudulently' have been defined respectively in Sections 24 and 25 of the Indian Penal Code. 'Dishonestly' has been defined to mean that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. The word 'fraudulently' has been defined to mean that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. This Court in Dr. S. Dutt Vs. State of U.P. AIR 1966 SC 523 has explained the words 'intent to defraud' as being not synonymous with the words 'intent to deceive'. It requires some action resulting in a disadvantage which but for the deception the person defrauded would have avoided. Here by the delivery of forged letters, there is neither any wrongful gain to anyone nor any wrongful loss to another. The act of the appellant could not thus be termed to have been done dishonestly. Likewise

the appellant cannot be said to have any intention to defraud because his action resulted in no disadvantage to any one which but for the deception the person defrauded would have acted otherwise. The basic ingredients of the act done 'dishonestly' or 'fraudulently' being missing, the charge under Section 471 read with 465 IPC was totally misplaced and the High Court fell into an error in convicting the appellant on those charges.

4. So far as the conviction under Section 417 is concerned, the High Court has ignored the definition of 'cheating' provided in Section 415 IPC. The High Court has gone to hold that accused cannot be held guilty for offence under Section 420 IPC because there was no cheating of any valuable or property involved in the act or omission of the appellant. It has just been concluded therefrom that the appellant would, therefore, be guilty for offence under Section 417 IPC. What is deducible is that the High Court perhaps thought that the act or omission of the appellant was not covered in the first part of offence of 'cheating' as defined in Section 415 IPC. If so, the act or omission of the accused could not in any event fall in the later part because we fail to see how the act or omission of the appellant caused or was likely to cause harm to any person in body, mind or reputation. Thus the conviction of the appellant for offence under Section 417 was also totally out of place and the verdict on that score deserves reversal.

5. For the foregoing reasons, we unhesitatingly allow this appeal, set aside the impugned order of the High Court and acquit the appellant of all charges. Before concluding the matter, we compliment Mr. Nargolkar for being candid in conceding the acquittal of the appellant at the outset for which we have added the above justification.