

CALCUTTA HIGH COURT

Radha Ballav Pal

Vs

Emperor

(Bartley ,J.)

04.01.1939

JUDGMENT

Bartley, J.

1. The appellants in this case - Radha Ballav Pal and Ram Chandra Shee - have been convicted under Section 420 read with Section 120-B, I.P.C., and on seven separate counts under Section 420, I.P.C., They have been sentenced under the conspiracy charge to imprisonment and fine. The case against the appellants arose from a scheme of so-called insurance launched by what was known as Bharat Circulating Society. This society published widely in the press and elsewhere what is called a new attractive scheme which will confer money benefits on the policy-holders in the shape of twelve times the money each one had contributed. The main points of what may be called the prospectus were as follows: On receipt of Rs. 5 only the company will issue an acknowledgment receipt and will register the payee as one of the policy holders. The company will issue two fresh policies of the same value covering the original policies. In this way circulation will be going on by the issue of fresh policies. The company expects that the number of policies will be multiplied more and more and that once benefited, the policy holders will not hesitate to renew their applications over and over again thus ensuring limitless prospect of expansion and thereby it is expected that no difficulty will be experienced for payment to the policy-holders in the manner stated above. The first payment will be one after the expiry of sixty days from the date of payment, and the payment will continue for twelve months. Thus each policy-holder will get Rs. 60 in fourteen months.

2. This original scheme was supplemented by the issue of two other kinds of policies. They were known as the 'B' and 'C' schemes. Under the 'B' scheme an investment of Rs. 5 brought in a sum of Rs. 30 in six monthly instalments. Under the other scheme a policy of Rs. 5 brought in Rs. 15 within three months. Numbers of people were induced to invest sums of money in the scheme and numbers of agents were employed on lavish terms as to commission and bonus to popularize it. It has been found by the learned Magistrate that a number of original investors were repaid and indeed the direct evidence in this case established that out of Rs. 91,000 realized from the public Rs. 45,000 was paid out to investors. The further findings of the learned Magistrate are that a few minutes of intelligent consideration of the various schemes put forward by the society is enough to show anybody not of subnormal intelligence that the scheme is bound to fail. It appeared too absurd according to the learned Magistrate for these schemes to work with any

success; but there are always to be found among the general public large numbers of gullible and stupid people ready to risk small sums of money in wild Cat schemes in the expectation that the promises made will be fulfilled and they will get rich quickly. Many of them hoped, in this case that at any rate, even if the schemes ultimately broke down, this would not occur until their dues had been repaid. The learned Magistrate further found that so far as the general public, who purchased the policies, was concerned, it may be said that some of them did so, because they were too obtuse to realize the weakness of the schemes which were advertised, while others were actuated by a wild hope that somehow their own money might be repaid to them with the promised profits before the crash came.

3. In view of these findings of fact it seems to us to be extremely difficult to hold that an offence either of conspiracy to cheat or of substantive cheating, can possibly be made out in the present case. The charges framed against the appellants were firstly, that they were parties to a criminal conspiracy to commit an offence of cheating by deceiving the unwary members of the public and thereby dishonestly inducing them to deliver sums of money amounting to Rs. 5 or multiples thereof, as purchase price of the policies promised to be issued under the schemes "A," "B" and "C" aforementioned. The subsequent charges of cheating were with regard to a number of items of cash said to have been delivered by various people in consequence of the deceit consisting of representations and conduct specified in the conspiracy charge. These overt acts were stated to be the starting of a bogus company known as the Bharat Circulating Company; the circulation of literature containing misleading statements; the appointments of agents and payments to investors, purporting to be in accordance with the terms of the original policies. I refer to this matter for the purpose of emphasizing that the prosecution did not and do not rely, for the purpose of bringing home the specific charges of cheating to the appellants, upon any deceitful representation said to have been made to any of the depositors beyond what is contained in the original prospectus. We have found in the evidence a statement as to certain representations made by the appellants to would-be-depositors which, if accepted as true, might possibly support a specific case of cheating in respect of the person to whom they were said to have been made. But, as no reliance has been placed upon that evidence, we are not further concerned with it.

4. In order to establish the charge of cheating, the prosecution are bound to show that the original prospectus itself, Ex. 4 in the case, contains such false representation as are calculated to, and actually did deceive the prospective investors and thereby fraudulently and dishonestly induce them to invest money in the company and that as a result thereof it was wrongly lost to particular investors. Now on a fair reading of the prospectus itself it cannot possibly, we think, be held that it contains any such fraudulent and deceitful representation. The first point taken in connexion with it is that the Society is described as Government Registered No. 5934, registered under Act 11 of 1932. It appears however as a matter of fact that the Society was actually registered under that Act. The representation is therefore not a false representation. Next the prospectus sets forth that on a receipt of Rs. 5 the Company will issue an acknowledgment receipt and register the payee as a policy holder. It will then issue further two fresh policies of the same value covering the original policies. In this way circulation will be going on by the issue of fresh policies. The company expects that a number of policies will be multiplied more and more and that no difficulty will be experienced of payment to the policy-holders in the manner stated above.

5. The representation thus made undoubtedly is that the investors will be paid from-the money provided by other investors However absurd such a representation may be, it can hardly be said

to amount to a, false representation within the meaning of Section 415, I.P.C., and even if such can be the case, the findings of the learned Magistrate in the Court below militate against the view that anybody could really have been deceived by the terms of the prospectus. It appears to us that the proper view to take of the present case is that it is one of those snowball schemes which was speculative in the highest degree and probably unworkable. It was not dishonest or fraudulent in the sense that it either represented to the public something which was not true or concealed from them something: which should have been disclosed. We are not prepared to hold that any appeal to the gambling instinct of humanity must per se amount to cheating and in the present case we are not satisfied that the elements of the offence have been made out. In this view of the matter, the present appeal must be allowed, the conviction of the appellants and sentences passed upon them must be set aside and they will be acquitted and discharged from their bail.

Henderson, J.

6. I agree. The difficulty in establishing the charge as framed in this case is illustrated by the way in which the prosecution was conducted. Ex. 4, the prospectus, is the only evidence upon which a charge of conspiracy could be based. We have read that document and it does not purport to put forward anything more than a gambling scheme; the element of uncertainty being found in the time, the scheme would be able to run. The prosecution has not been able to produce any single witness who purchased a ticket as a result of reading this prospectus and who is in a position to establish that he had been cheated. All that the evidence amounts to is that the witnesses would not have taken tickets if they had known that they were going to lose. That of course applies to every gambling transaction.

7. The only element which could amount to cheating is to be found in the depositions of some witnesses with regard to subsequent interviews which are said to have taken place with the appellants in the office of the Company. For example, P. W. 20, Jitendra Nath Ghose, a pleader of Alipore Court, after reading the prospectus went to the Company's office. He solemnly says that he was told by the appellants that the Government had guaranteed to pay off the money due on any policy. Of course, if this evidence is true, the appellants were guilty of a specific act of cheating. But inasmuch as no such specific charge was framed, I can only suppose that the prosecution themselves do not attach the slightest weight to it. Not merely was this witness severely shaken in cross-examination, but it is quite incredible that a pleader would believe such a silly statement. There can be no doubt at all that this evidence is all false and I do not regret that no charge was based upon it. The case really lies within a very narrow compass and rests solely upon the question whether there is any element of deception in Ex. 4. I can only say that there is nothing in the document itself or in the evidence of any of the witnesses to support such a conclusion.