

CALCUTTA HIGH COURT

Paresh Nath Koyal

Vs

Emperor

(Ellis ,J.)

12.04.1946

JUDGMENT

Ellis, J.

1. Paresh Nath Koyal, petitioner in Rule No. 1281, Rash Behari Banerjee petitionee in Rule No. 1317, and Panchanan Banerjee, petitioner in Rule No. 1318, were placed on trial along with another person, Krishnadhan Chatterjee before Mr. Lala Jogesh Chandra, Assistant Sessions Judge, 24-Parganas and a jury of 5 persons. It was charged against them that between 20-12-1948 and 17-1-1944, at Naihati, at Alipore and at other places, they were parties to a criminal conspiracy to cheat the complainant Ram Gopal Agarwala, and that in pursuance of that conspiracy they forged documents for the purpose of cheating Ram Gopal Agarwala, and made use of the same in prosecution of their common object of cheating him. The 3 petitioners were found guilty, and were duly convicted in accordance with the verdict of the jury. They preferred an appeal to the Sessions Judge, and the appeals were dismissed. Krishnadhan Chatterjee was found not guilty by the jury and was acquitted.

2. The case for the prosecution may be briefly stated as follows. Ram Gopal Agarwala, the complainant, is the son-in-law of one Narayan Das Agarwala, and looks after Narayan Das' cloth shop at Naihati in the absence of his father-in-law at his native village of Eajapur in the United Provinces. Not far away from Narayan Das' shop, the petitioner Panchanan Banerjee had a pucca house; some 7 or 8 years ago Panchanan proposed to sell the house to Narayan Das for Rs. 11,000 but Narayan Das was unwilling to pay the price. In the year 1943 Earn Gopal went to his native village, and when he returned in December he was informed by Fakir, one of the employees of the cloth shop, that Panchanan's house was again in the market, and that Panchanan was prepared to sell it for Rs. 13,000 with brokerage of Rs. 750 to be paid to the petitioner Rash Behari for effecting the sale of the house at that figure. Narayan Das was approached and his consent was obtained. The house was to be purchased for Rs. 13,000 and Eash Behari was to get Rs. 750 as brokerage. Both Panchanan and Eash Behari impressed on Earn Gopal and Fakir that the proposed sale must be kept a dead secret because Panchanan's sister's husband Abinash Chandra Chatterjee was also anxious to purchase the house at a less figure.

3. Both Panchanan and Rash Behari represented to Ram Gopal that it was desirable, in order to prevent Abinash from getting scent of the proposed sale, to have the bainapatra, and

subsequently the kabala executed and registered at the Alipore registration office and they demanded that Rs. 2000 be paid over as earnest money in order that a mortgage debt due to Krishnadhan and Balaram Mukherji might be satisfied before the house was sold. Ram Gopal agreed to this, and on 20-12-1943 these two petitioners brought Ram Gopal and Fakir, accompanied by Haren Bose, an old employee of Ram Gopal's landlord, to Alipore to the Sherista of Paresh Koyal, who was known to them from before. There the draft of the Bainapatra was prepared with reference to a copy of a mortgage bond executed by Panchanan in favour of Krishnadhan Mukherjee and Balaram Mukherjee. From this draft a fair copy was prepared and was executed, and on its execution Ram Gopal paid BS. 2000 to Panchanan. Thereafter the parties went to the registration office where in the presence of the Sub-Registrar execution was admitted, and the payment of the consideration money. The Bainapatra was registered, and the registration receipt was made over to Ram Gopal to enable him to withdraw the deed from the registration office. According to the terms of the Bainapatra, the kabala was to be executed within 1 month of the execution of the bainapatra. As he had been pressed to keep the proposed sale a secret lest Abinash Chandra Chatterjee should come to hear of it, Ram Gopal made no enquiries of his own in regard to the property he was to buy, but he did urge Panchanan and Rash Behari to show him some documents of title and possession in regard to the house. In order to satisfy him, Rash Behari, while paying rent, managed in collusion with the landlord's officer to secure a dakhila in the name of Panchanan; he also was able to obtain two parchas in Panchanan's name. Ram Gopal, being a Marwari and not conversant with Bengali transactions of the nature of the bainapatra and the kabala, had asked Haren Bose to look into the matter for him along with Fakir, and to them Panchanan and Rash Behari displayed the false dakhila and parchas and thereby led them to believe that Panchanan was in possession of the house and was paying rent therefor.

4. Thereafter Rash Behari and Panchanan began to put pressure on Ram Gopal to pay the balance of the consideration money and so expedite the execution of the kabala. An employee of the cloth shop at Naihati was sent to Narayan Das at Rajapur, and brought back Rs. 9400 on 14-1-1944. And on the next day Fakir left Naihati for Alipore with Panchanan and Rash Behari, and paid over Rs. 220 so that the petitioner Paresh might purchase the stamp, and get the kabala written out and ready for execution on 17th January. On 17th January, Ram Gopal, Haren Bose and Fakir Nath left Naihati for Alipore with Panchanan and Rash Behari. Ram Gopal carried Rs. 11,100 with him. They repaired to the sherista of the petitioner Paresh Koyal; Paresh said that the kabala had been prepared, and read out its contents. Panchanan called on Ram Gopal to pay the balance of the consideration money; and Panchanan, Rash Behari and Paresh all urged him to pay the balance of the money in Paresh's sherista to avoid the publicity of the registration office. Deducting some Rs. 132 due by Panchanan to Ram Gopal's cloth shop, Ram Gopal then paid over Rs. 10,868 to Panchanan; and Panchanan made over to Ram Gopal the mortgage bond torn in token of redemption, the dakhila in his name and the parchas mentioned before. Panchanan signed the kabala; Haren Bose, Paresh and Rash Behari witnessed it. Panchanan and Paresh then took off the kabala to the registration office and asked Gopal to come when he was summoned; a few minutes later Paresh returned, informed Ram Gopal that the kabala had been presented for registration, and asked him for Rs. 63 for expenses in connection with the registration. Ram Gopal paid over the amount, and Paresh went back to the office. Some time later, he returned with Panchanan, informed the party that the kabala had been registered, and produced a receipt which purported to bear the seal of the registration office. He got Panchanan to affix his signature to the receipt, and handed it over to Ram Gopal so that he could withdraw the kabala from the

registration office. The sudden disappearance of the conspirators roused the suspicions of Ram Gopal, Haren Bose and Fakir. They went to the registration office, and there learnt that no kabala for Rs. 13,000 had been registered on that-day, and that the receipt which they held was not receipt for the withdrawal of the kabala. Ram Gop'al then went to the Police and discovered that the house had been sold long ago to Abinash Chatterji, the husband of Panchanan's sister.

5. The material defence taken was that Panchanan's kabala in favour of Abinash was a benami document; that the bainapatra was drawn up with reference to that document; that after the bainapatra had been executed, Ram Gopal gave out that unless Abinash joined in the transaction, he would not buy the house; Panchanan did not agree to this proposal, whereupon Ram Gopal demanded the return of the earnest money; Panchanan refused to return this, and so has been implicated in the false case. Paresh denied that any stamp was purchased on 15th January, or any kabala written or executed on 17-1-1944. It was charged against the three petitioners that between 20-12-1943, and 17th January at Naihati, Alipore and other places, they were parties to a criminal conspiracy to cheat the complainant Ram Gopal Agarwala, and to forge documents and to use the same for the purpose of cheating, and that the offences of cheating, forgery and using forged documents were committed in pursuance of that conspiracy, whereby the petitioners committed offences under Section 467/471, and 420, read with Section 120B, Penal Code. Against the petitioner Panchanan were laid specific charges of cheating the complainant by dishonestly inducing him to deliver the sum of Rs. 2000 as earnest money for executing the kabala-an offence under Section 420 of the Code; of fraudulently suppressing the fact that he had already sold the house in question to Abinash Chandra Chatterjee, and by means of a fraudulent misrepresentation inducing the complainant to deliver to him the sum of Rs. 10,860-an offence under Section 420 of the Code; and dishonestly and fraudulently using as genuine the forged rent receipt which purported to be a valuable security knowing or having reason to believe the same to be forged, thereby committing an offence under Section 471/467 of the Code. Paresh was charged with cheating the complainant by dishonestly inducing him to deliver to him the sum of Rs. 63; and it was also charged against him that he dishonestly and fraudulently used as genuine the forged receipt for the registration of the kabala, thereby committing an offence under Section 471/467 of the Code.

6. Mr. Chatterjee, appearing on behalf of the petitioner Paresh, claimed first of all that the whole trial was vitiated by the failure of the prosecution to obtain sanction under Section 196A, Criminal P.C. His argument on this head was adopted by the learned Advocates appearing for the other two petitioners. The point is one which was raised for the first time before the learned Additional Sessions Judge on appeal from the conviction recorded by the learned Assistant Sessions Judge, and was dealt with in the following way: This objection has been raised for the first time in this Court and it cannot be allowed to prevail. Where in a criminal trial no objection is taken on the ground of Section 196A, Criminal P.C. Sub-section (2) as in the present case, at any stage of the enquiry or trial, the verdict of the jury and a conviction based thereon cannot be held to be illegal merely because the previous consent of the local Government had not been taken before the prosecution started.

And the learned Additional Sessions Judge referred to the cases reported at Hanif v. Emperor and to the observations of Costello J. in Abdur Rahman v. Emperor . Mr. Chatterjee has contended that the conspiracy charged against the petitioners is one to commit offences under Sections 467 and 471 of the Code, both these offences are non-cognisable, and therefore under the provisions of Section 196A, Criminal P.C., no Court could take cognisance of the offence of criminal

conspiracy unless the Provincial Government had, by order in writing, consented to the initiation of the proceedings. It may be at once conceded that if the object of the conspiracy was to commit forgery, or fraudulently or dishonestly to use as genuine a forged document, there could be no prosecution for the offence of criminal conspiracy without the sanction of the Provincial Government under Section 196A, Criminal P.C. But in this case, as Mr. Talukdar who has appeared for the Crown has pointed out, the main object of the criminal conspiracy was to cheat Ram Gopal. That was the 'dominant object' of the conspirators-as he terms it and the forgery of certain documents and their use as genuine were not committed for their own sake but in furtherance of the conspiracy to cheat Ram Gopal and to obtain money for him. We find ourselves in agreement with, and accept, Mr. Talukdar's submission on this head. The object of the criminal conspiracy to which the petitioners were parties was to commit a cognisable offence which did not require sanction under Section 196A, Criminal P.C.; the forging of documents and use of the same in furtherance of the main object of cheating the complainant Ram Gopal were subsidiary objects of the conspiracy, the machinery by means of which the main object was to be achieved, and though by themselves they involve the commission of non-cognisable offences, inasmuch as the main object of the conspiracy was to commit a cognisable offence, we hold that sanction under Section 196A, Criminal P.C., is not necessary; vide *Ramachandra Rango v. Emperor*¹

7. Mr. Chatterjee has next contended on behalf of the petitioner Paresh that the trial has been vitiated in that two separate and distinct conspiracies have been charged together, which is illegal. He claims that there was conspiracy up to 20-12-1943 in which Paresh had no part; thereafter there was a second conspiracy, and Mr. Chatterjee concedes that if the evidence with regard to this second conspiracy be believed, then Paresh must have been a conspirator. Mr. Ganguli, on behalf of the petitioner Panchanan, speaks of two different parts or stages of the conspiracy. We think that this is a more correct appreciation of the position. We do not accept Mr. Chatterjee's contention that there was first of all one conspiracy to cheat Ram Gopal out of the Rs. 2000 which he paid over for the execution of the Bainapatra-a conspiracy in which Paresh had no part-and thereafter a second and distinct conspiracy, in which Paresh had a part, to cheat him out of the balance of the money for the purchase of the house. There was one conspiracy-and that was the conspiracy to cheat Ram Gopal-in which there were two stages. And if the evidence of P.W. 11 be believed, and we see no reason to disbelieve it, Paresh was a party to that conspiracy, the first as well as the second stage.

8. It has next been urged by Mr. Chatterjee that the directions of the learned Assistant Sessions Judge as to the character of the document? in favour of Panchanan's brother-in-law Abinash are not sufficient, and in particular it is claimed that he ought to have pointed out to the jury that there is no evidence as to who paid the money that was the consideration for the document, and no evidence as to who had custody of the document. Mr. Ganguli, on behalf of Panchanan, has associated himself with this argument. The learned Assistant Sessions Judge has dealt with the question of this kabala at length in his charge to the jury, it is true that he does not in so many words address the jury directly on the two points raised, but he does so indirectly in his discussion of the relevant evidence on the benami or swanami character of the deed, and we consider that his directions are adequate and no exception can reasonably be taken to them. Mr. Chatterjee's other criticisms are directed more to the form than to the substance of the charge. He complains that it is unduly long and verbose, that the individual cases have not been considered, that the charge has not been paragraphed, and that the learned Assistant Sessions Judge failed to

refer to certain important points in the case. We have considered these points and are not prepared to find that there is any evidence (substance?) in them.

9. On behalf of the petitioner, Panchanan a special point was taken in regard to the charge of cheating as laid against him. It was urged on his behalf that there was no false representation before the execution of the bainapatra, and that so far as the bainapatra is concerned, Panchanan complied with all that was required of him; he might therefore be liable civilly, but no criminal charge could be held against him. We are not prepared to find that there is any substance in this argument. The charge as laid against this petitioner was that he cheated Ram Gopal Agarwala and dishonestly induced him to deliver to the petitioner the sum of Rs. 2000 as earnest money for the execution of the kabala, by fraudulently suppressing the fact that he had already sold the house in question to Abinash Chatterji. The petitioner cannot be allowed to argue that when he accepted the sum of Rs. 2000 as earnest money for the execution of the kabala he did intend to execute the same and fulfilled all that was then required of him, completely ignoring the fact that it was because he represented to Raml Gopal that he was in a position to sell the house, suppressing the fact that he had already disposed of it to Abinash, he was able to induce Earn Gopal to pay the earnest money. We are therefore satisfied, on a full consideration of all the submissions that have been made to us on behalf of the petitioners that they have been rightly convicted and that there are no grounds for interfering with their convictions. As regards sentences, we see no reason to differ from the learned Sessions Judge when he says that leniency would be misplaced in a case of this nature. The Rules are accordingly discharged, and the convictions and sentences maintained. The petitioners will surrender to their bail forthwith and serve out their sentences.

Blank, J.

I agree.

Cases Referred.

1('39) 26 A.I.R. 1939 Bom. 129 (135)