Vasudeo Kulkarni vs Surya Kant Bhatt And Anr. on 2 March, 1977

Equivalent citations: AIR1977SC1760, (1977)79PLR470, (1977)2SCC298, [1977]3SCR102, 1977(9)UJ322(SC), AIR 1977 SUPREME COURT 1760, (1977) 2 SCC 298, (1977) 2 SC WR 317, 1977 ALLCRIC 323, (1977) 3 SCR 102, 1977 SCC(CRI) 343, 1977 UJ (SC) 322, AIR 1977 SUPREME COURT 1331, (1977) 2 SCC 304, 1977 4 CRI LT 237, (1977) 2 SCWR 337, 1977 CRI APP R (SC) 136, 1977 ALLCRIC 320, 1977 SCC(CRI) 349, (1977) 3 SCR 109, 79 PUN LR 470, 1977 SC CRI R 192, 1977 UJ (SC) 288

Author: P K. Goswami

Bench: P.K. Goswami, P.N. Shinghal

JUDGMENT

P K. Goswami, J.

1. The appellant, an advocate of 25 years' standing was charged under Section 120, Indian Penal Code. He was acquitted by the trial court holding the matter to be of civil nature. The High Court of Madhya Pradesh on appeal at the instance of the complaint (the first respondent herein) set aside the acquittal and convicted the appellant under Section 420 I.P.C. and sentenced him to rigorous imprisonment for two years and to a fine of Rs. 600/-. in default rigorous imprisonment for six months.

2. The complainant is the son of one Dinubhai, a senior partner of Dinubhai & Co., with its head office in Bombay and a branch office in Indore. There were two partners, namely, the complainant's father and one M C. Mehta. Mehta ceased to be a partner in the firm with effect from July 5, 1960 A civil suit was instituted by Dinubhai-against Nai Duniya, Indore, a daily newspaper, impleading N.C. Mehta also as a co-defendant. The suit was decreed against Nai Duniya but was dismissed against M.C. Metha with costs amounting to Rs. 612/- awarded to him. The complainant was acting as a junior to the appellant in this suit as well as in several other suits filed by the firm against others. It is alleged by the complainant that about February 3, 1965 the appellant made a demand from him, along with other amounts, of a sum of Rs. 612/- being the costs awarded to Mehta in the aforesaid suit by making a representation that he had already deposited the amount in court from his own funds Depending upon this statement, the complaint proceeds, the complainant paid a sum of Rs. 1000/- which included the amount of Rs. 612/- towards the costs awarded.

3. The firm appealed against the decree and it appears a compromise was entered with Mehya whereby Mehta relinquished his claim for costs of Rs. 612/ . This happened on March 10, 1967. On that very date the appellant returned to Dinubhai the sum, of Rs. 612/- by a crossed cheque stating that "this appeal is just now disposed of by the Hon'ble High Court Indore I am therefore expected to remit this sum to you". Even so, the complainant, Dinubhai's son, lodged a complaint in the court of the Additional District Magistrate, Indore City, on September 21, 1967, bringing a charge of cheating against the appellant by citing the only witness in the complaint being the Record Keeper of the High Court, Dinubhai, his father, was not even mentioned as a witness in the complaint nor was he later examined in the case.

4. In the trial the complainant examined himself and one Vijaykumar a clerk in the office of the High Court. The letter has proved from the records' of the first appeal in the High Court that the costs of Rs. 612/- awarded to the defendant, Mehta, in the suit had not been deposited on behalf of the complainant's father, Dinubhai.

5. The complainant reiterated his allegations in the complaint and further stated that after the compromise with Mehta which had taken place on March 10, 1967, he perused the record of the case and came to know that the appellant had not deposited any money of the costs to Mehta in the court. He, however, admitted that after appellant had sent a cheque of Rs. 612/- to his father at Bombay.

6. In the course of cross-examination his attention was invited to his following statement given before the Magistrate under Section 200, Criminal Procedure Code : Thereafter when Shri V.V. Kulkarni told me the aforesaid thing I knew and had knowledge of the fact that he had not deposited Rs. 612.00 in the court. Still Shri Kulkarni deceitfully demanded Rs. 612.00 from me.

In the printed paper book before this Court at page 3, paragraph 6, there is an error in adding the word "not" before the word "knowledge". This is clear from the original High Court paper-book which we have examined.

7. The trial court found that it was a case of accounting between the parties and was a matter of civil nature. The trial court thus acquitted the appellant. The High Court on appeal, as mentioned earlier, reversed the acquittal and convicted and sentenced the appellant under Section 420 I.P.C. Hence this appeal by special leave.

8. The complainant, who had earlier quarrelled with his father and later for some reason or other parted company with the appellant, who was his senior' lodged the complaint even without the knowledge of his father who had already received the amount of Rs. 612/- for which the complainant was said to have been cheated. The statements of accounts filed in the case clearly show that at different times the firm was liable to pay certain expenses and fees to the appellant and at other times the appellant was holding some money on client's account. The letter of Dinubhai (Ex. D-8) dated October 27, 1966, to the appellant is revealing in this respect. The letter states, inter alia, that -

indeed you have worked and you must receive your fees. There may be lot of recoveries now due and may I request you to recover your fees out of the recoveries.

You are aware that I have ventured to put Suryakant with your support at Indore and there can be no idea ever in existence to offend you. I think we are best friends and there should be no hitch in that at all.

X X X X X May I therefore request you to please carry out all the recovery proceedings and take all your dues you think reasonable from the amounts so recovered.

9. Similarly the letter from the complainant (Ex. D-39) to the appellant of March 20, 1967, written under instructions of Dinubhai was as follows :

> (1) That you have submitted the last statement of account in 16-8-1966 showing the cash on hand of Rs. 488.60 P. remaining with you for future expenses.
>
> (2) My client paid to you Rs. 300/- (Rupees three hundred) on 3-1-1967. Thus, you had Rs. 788.60 (Rupees seven hundred eighty eight and Np. sixty) can on hand with you.
>
> (3) It is, therefore, requested that kindly give the detailed statement of account to my client, as it is required for the purposes of Income Tax.

On the top of that we find from the copy of the plaint (Ex. D-10) in Civil Suit No. 8 of 1968 B filed by Dinubhai against the appellant on February 16, 1968, claiming a decree for the amount of Rs. 11492.85 after acknowledging the receipt of Rs. 612/-, the subject matter of the cheating case para 3 of the plaint. It is, therefore, crystal clear that the appellant's relationship with the complainant's father was that of a lawyer and a client and anything outstanding from one or the other party was a matter of accounting between them. The complainant has no part to play on his own and his prosecution of the appellant even without examining his father as a witness is absolutely unauthorised and uncalled for.

10. Even the receipt (Ex. P-1) upon which the High Court principally relied goes to show that a sum of Rs. 350.90 had already been spent by the appellant and it is only on February 11, 1965, the date of the receipt, that this money was received by him from the complainant on behalf of Dinubhai, Even this receipt (Ex. P-1) shows that a round figure of Rs. 1000/- was paid to him leaving Rs. 37.10 as "cash for expenses". By no stretch of imagination it can be said that any deception was practised upon the complainant on February 11, 1965, when the latter parted with the one thousand rupees including the amount of Rs. 612/- towards the costs payable to Mehta. Apart from this the costs of Rs. 612/- were indeed a liability of Dinubhai to Mehta and not a fictitious claim. There was accounting between the parties and even the correspondence shows that there have been adjustments between the parties from time to time. That being the position dishonest intention which is the principal ingredient of an offence under Section 420 I.P.C. is lacking in this case.

11. Even on merits it is clear that after receipt of the statement of account from the appellant on February 10, 1965, the complainant knew quite well that there had been no deposit of Rs. 612/- as costs in the court. There, was, therefore, no occasion for making a statement to the complainant to represent that the appellant had already deposited Rs. 612/- in the court on account of the costs payable to ehta. Apart from that since the amount was actually payable by the firm to Mehta, there was no need for making any representation to the complainant for obtaining this amount. It is even probable that this amount had been received towards payment of costs even without making any representation as alleged. The High Court has un necessarily given exaggerated importance to the typed receipt (Ex. P-1) of February 11, 1965, signed by the appellant wherein against the amount of Rs. 612/- it was recited that "the costs of Shri Mehta in the matter of Nai Duniya, deposited by me in the court from my person". It is suggested by the appellant in the course of cross examination of the complainant that this receipt was not typed by the complainant and the appellant only signed it in good faith in the usual course. The complainant, however, denied the suggestion. There is also no evidence to show as the who typed the receipt or who even dictated the contents in the receipt. Whatever be the actual position, we are not prepared to hold that the complainant's allegation of wilful and dishonest representation by the appellant is at all corroborated by the recital in the receipt. On the other hand, the history of the relationship between the parties together with what has been set out above from the correspondences clearly lead to the conclusion that the trial court was perfectly justified in holding that it was a matter of civil nature and the offence under Section 420 I.P.C. was not at all established.

12. The High Court, therefore, had no reason whatsoever in appeal against acquittal to interfere with this conclusion which is clearly justified on the evidence. This is a case in which the High Court was clearly wrong in spelling out dishonest intention on the part of the appellant taking a view different from that of the trial court.

13. It is not likely at all that the amount of Rs. 612/- was paid because of any representation by the appellant but because the same was a known liability of the complainant's father as costs in favour of Mehta. What was grievously missed by the High Court is that the transfer of money from the complainant to he appellant was not for a fake cause, nor did the passing of the money depend crucially on the representation, assuming it was made, that the amount had been already deposited by the appellant out of his personal funds. The High Court has positively failed to take count of the relationship between the client and the lawyer which was a chain of mutual adjustment of accounts involving ascertainment of fees and all legitimate and sundry expenses. It is true that a lawyer's account should be clear and clean and above suspicion of manipulation but that there may arise some omissions and commissions in the account cannot give rise to a criminal charge for which strong and unimpeachable proof will be necessary.

14. Principally the trial court entered the verdict of acquittal on the ground that "the position was very clear to the complainant that no deposit towards the costs awarded 10 M.C. Mehta had been made by the accused" and "as such the possibility that the complainant was fully aware of the real position about the alleged deposit cannot be ruled out". The above conclusion of the trial court rests on the complainant's position as a junior lawyer assisting the appellant in the particular suit and the in other cases; the complainant's, own admission before the Magistrate in his statement recorded

under Section 200, Criminal Procedure Code that he (complainant) "knew and had knowledge of the fact that he (the appellant) had not deposited Rs. 612/- in the court", and the statement of account of February 9, 1965, received by the complainant on February 10, 1965, showing that the deposit of Rs. 612/- had not been mentioned.

15. It is, therefore, impossible for the High Court to hold, on the evidence on record, that "it is difficult to agree with the learned Magistrate that Suryakant must have known and did actually known that no deposit had been made". The High Court even did not refer to the statement of the complainant in his initial deposition which was put to him in the course of cross examinations.

16. The Magistrate also gave importance to the fact that the complainant's father,on whose behalf alone the complainant was acting, should not have been examined as a witness. The Magistrate also considered the unusual delay in lodging the complainant as one of the grounds for "treating their real controversy to be of civil nature".

17. It is true that in an appeal against acquittal, the High Court may reappreciate for itself the entire evidence and reach its own conclusion, but it is equally well settled that when the said conclusion is country to that of the trial court, the High Court has a further duty to satisfy itself that the grounds given by the trial court for acquittal are palpably wrong or manifestly erroneous, shocking one's sense of justice. Thar, as a an original court trying the case for the first time, the High Court would have entered a verdict of conviction, is not the test in an appeal against acquittal. The High Court spelt out dishonest intention from the appellant's refund of the amount by cheque on March 10, 1967. on settlement between the parties in appeal. This is an entirely wrong approach as the mens rea for the charge of cheating has to be considered on the date of the fraudulent or dishonest representation which was allegedly on February 8, 1965, two years earlier.

18. Having examined the reasons given by the trial court for the acquittal and having ourselves perused the entire evidence, we are clearly of opinion (hat this is not a case where it is even remotely possible to characterise the reasons for acquittal as palpably and unerringly shaky, in which case alone, there would be justification for interference by the High Court. We are also unable to say that the reasons given by the High Court are demonstrably cogent and weighty to enable it to interfere with the acquittal.

19. At the conclusion of the argument by Mr. Khan on behalf of the complainant pressing for conviction of the appellant, Mr. Panjwani, appearing on behalf of the State, fairly enough, did not think it proper to support the judgment of the High Court.

20. In the result the appeal is allowed. The judgment of the High Court is set aside. The appellant who has been on bail shall be discharged from his bail bond.