

Prem Chand vs State on 27 February, 1952

Equivalent citations: AIR1953ALL381, AIR 1953 ALLAHABAD 381

ORDER

Wali Ullah, J.

1. The applicant, Prem Chand, has been tried and convicted of an offence under Section 420, Penal Code. The sentence passed upon him is one of six months' rigorous imprisonment and a fine of RS. 100, in default one month's further rigorous imprisonment. Both the conviction and the sentence of the applicant have been confirmed by the appellate Court.

2. It appears that the applicant, who is a member of the District Board of Etawah, sold by public auction, leaves of Khajur trees standing on the roadside between Debiapur and Phaphund. This was done by him on 11-9-1948, without any authority from the District Board. Ramadhin P. W. was the highest bidder. He purchased the leaves and paid Rs. 76 then and there. What he describes as a Kachchi Rasid, EX. P. 1, was given to Ramadhin, A proper receipt from the District Board, however, was promised to him after the amount had been deposited in the office of the District Board. Later it came to the knowledge of Ramadhin that the applicant had no authority to sell the leaves of the Khajur trees. After making some attempt to obtain a regular receipt from the District Board and failing to secure it, Ramadhin appears to have made a complaint to the District Magistrate on 15-2-1949. Apparently, on knowing of this, the applicant seems to have deposited the amount of RS. 76 in the office of the District Board on 21-1-1949.

3. Both the learned Magistrate as well as the learned Sessions Judge, who heard the appeal, have found that the applicant had acted dishonestly in inducing Ramadhin to believe that he (the applicant) had authority to sell and, thus under that deception, he induced Ramadhin to purchase and to part with RS. 76.

4. The defence taken by the applicant was that he had acted bona fide under the belief that he had been ordered to auction the leaves of Khajur trees. The learned Magistrate, however, rejected this plea and held that the applicant must be considered to have known clearly that he had no authority to auction the leaves. This finding of the learned Magistrate was in substance affirmed by the learned Judge. Further the learned Judge observed in his order :

"The auction of leaves appears to have been carried out after due publicity and receipt for price also appears to have been given with a view that no one may have any suspicion that anything was being done improperly."

5. On the facts, it seems to me that there is nothing that can be said in favour of the applicant.

6. Learned counsel for the applicant has strenuously contended that, on the facts found in this case, no offence of cheating was committed. His arguments have centred round the question whether or not there was any damage caused or was likely to be caused to Ramadhin on account of the unauthorised auction held by the applicant. Learned counsel has cited quite a number of rulings of different Courts including some cases decided by this Court. It seems to me, however, that the question whether loss or damage is likely to occur to the person deceived, in a particular case, has to be determined with reference to the facts and circumstances of that particular case. It is not a question which can be determined with reference to any particular view of the facts taken in a particular case. It is obvious that loss or damage spoken of in the latter part of Section 415 which defines "cheating" must be loss or damage which is the proximate result of the act. It must be a natural consequence of the act complained of. It is a mere possibility and not a necessary consequence of the act, such loss or damage, even if it actually occurs, would not satisfy the element of damage which is one of the essentials of the offence of cheating as defined under Section 415, Penal Code. All the cases cited by learned counsel in this connection are cases which, if they are carefully analysed, would show that nothing more than this was laid down that damage or loss or harm, or risk of damage or loss, must be a proximate result of the act complained of. It should not be too remote or too vague to be directly attributable to the act complained of. If in a particular case, the element of damage is merely contingent i. e., not a necessary consequence obviously that element of the crime would be wanting. It seems to me quite clear that on the facts found by the two Courts below the applicant in the present case has been rightly convicted of the offence under Section 420, Penal Code.

7. The question of sentence, however, in this case, deserves serious consideration. The applicant, as mentioned above, is a member of the District Board. Eventually the entire sum of RS. 76 was deposited by the applicant in the District Board office on 21-2-1949, five months after the auction sale. It may be that the applicant made the deposit after he had come to know that a complaint with regard to this amount had been made to the District Magistrate by Ramadhin, but the net result obviously was that the District Board did not actually suffer in a pecuniary sense. The applicant was sentenced to six months' rigorous imprisonment and a fine of Rs. 100 by the learned Magistrate. As said above, this was maintained by the learned Sessions Judge in appeal. The learned counsel for the applicant has stated that the applicant has done about one month in gaol. He was granted bail by a learned Judge of this Court on 16-4-1951, when the realisation of fine was also stayed. As the result of this conviction, the applicant is bound to suffer not only so far as his membership of the District Board is concerned, but also in his reputation generally. It seems to me that the sentence of six months imprisonment plus a hundred rupees fine is too severe in the circumstances of the case. I think the ends of justice will be met by reducing the sentence of imprisonment to the period already undergone and maintaining the sentence of Rs. 100 fine. In default of the payment of fine, he will undergo, as ordered by the Courts below, one month's rigorous imprisonment. The amount of fine must be deposited within a month of today.