

Rama Shankar Shukla vs Rikhab Kumar Jain on 13 February, 1951

Equivalent citations: AIR1952ALL428, AIR 1952 ALLAHABAD 428

ORDER

P.L. Bhargava, J.

1. This is an application in revision by Shri Rama Shankar Saukla, a lawyer practising before the Income-tax and Sales.tax Officers in Kanpur.

2. Shri Rikhabh Kumar filed a complaint against the applicant, on 18-6 1949, charging him with an offence, punishable under Section 420, Penal Code. It was alleged in the complaint that Shri Shukla had induced the complainant to pay him Rs. 1,100 on the assurance that he had some influence with the Income-tax Officer, Kanpur, and that he would exert that influence to secure some relief in the assessment of income-tax on the complainant; but the applicant did nothing of the kind and it was subsequently discovered that Shri Shukla had no such influence over the Income-tax Officer.

3. The Magistrate, who took cognizance of the offence, recorded all the evidence produced in support of the prosecution and also examined Shri Shukla. Then he proceeded to hear arguments on behalf of the complainant and Shri Shukla and dismissed the complaint and discharged the accused. The learned Magistrate observed in his judgment that, after a careful consideration of the evidence on the record, he had come to the decision that no prima facie case was made out against the accused, who must consequently be discharged. He, however, further observed:

"The entire evidence and facts of the case boil down to practically this that the complainant and the accused made the illegal and void agreement between themselves that the latter shall exercise his influence over the Income-tax Officer Kanpur in obtaining some relief to the former in matters of assesement of income-tax. The accused, however, did not exercise the alleged influence he had over the Income-tax Officer and, as it turned out later, he had no influence over the said Income-tax Officer. The complainant filed this complaint under Section 420, Penal Code, with regard to the money he paid to the accused for the illegal act referred to above."

After thus summarising his conclusions on the evidence the Magistrate stated the legal position thus:

"There can be certainly no controversy about the legal aspect of this complaint and it must fail. If two cheats conspire to cheat a third party and later one of the two falls

out, he cannot be said to have cheated the other cheat. The complainant was essentially doing an improper act in engaging the accused to exercise undue influence on the Income tax Official and thus affect his decision. The contract could not be enforced in a civil Court for being void and opposed to public policy."

4. The complainant then filed a revision in the Court of the District Magistrate of Kanpur; and the revision came up for hearing before the Additional District Magistrate of the same place who did not agree with the view point of the trial Court that, even if the applicant had paid Rs. 1,100 to the accused, it was an illegal and void agreement and so no offence was committed. He was of the opinion that there was sufficient prima facie evidence against the opposite party for a charge being framed against him. Accordingly, he remanded the case to the trial Court with a direction that further inquiry should be made in the case and necessary action should be taken according to law.

5. Against this order of the Additional District Magistrate this revision has been filed. Learned counsel for the applicant has, in the first place, contended that inasmuch as the complaint filed by Shri Rikhabh Kumar is based upon an illegal contract, in respect of which a civil remedy is barred, it is not open to the complainant to prosecute his co-conspirator. This argument assumes the correctness of the finding of fact recorded by the learned Magistrate that between the complainant and the accused there was an illegal and void agreement of the nature alleged in the complaint. If the applicant had induced the complainant to part with a sum of Rs. 1,100 on the assurance that he would exert his influence over the Income-tax Officer so as to persuade him to assess the complainant in a particular manner, the Magistrate had only to see what offence, if any, had been committed by the applicant and for what offence he should be charged. Learned counsel for the complainant has pointed out that the applicant could have been charged for all or any of the offences punishable under Sections 420, 163 or 409, Penal Code. If the facts proved by the evidence constituted the offence with which the applicant was charged or any other offence, it was immaterial whether the offence involved an illegal or void contract, which could not be enforced in a civil Court.

6. It is not possible to lay down as a general proposition of law that in each and every case where cheating is based upon a void and illegal agreement there can be no criminal prosecution for cheating. The offence of cheating has been thus defined in Section 415, Penal Code:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

The essential ingredients of the offence of cheating, therefore, are (1) deception of any person and (2) (a) fraudulently or dishonestly inducing that person to deliver any "property to any thereon; or to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or

property. If the essential ingredients of the offence of cheating are made out the prosecution and conviction of the accused is possible, irrespective of the fact whether cheating is based upon a void or illegal contract.

7. Learned counsel for the applicant has in support of his argument relied upon a decision of the Bombay High Court reported in *Emperor v. Jani Hira*, 15.I. C. 793 (Bom). In that case A agreed to let her daughter on hire to B for concubinage for a period of one year in consideration of B paying her Rs. 70. B paid A Rs. 85 in advance. Subsequently A refused to deliver her daughter to B or to return the sum of Rs. 85 advanced by him. On these facts, A was convicted of cheating. There it was held that the conviction could not be sustained, as a party should not be allowed to prosecute on a charge of cheating when he would not be entitled to obtain from a civil Court any relief for breach of the contract. It appears from the report that there was no evidence to show that there was any fraudulent or dishonest intention on the part of the accused when she took the advance of Rs. 35 from the complainant. On the other hand, it appeared that at that time she intended to let the complainant have her daughter and only changed her mind later. Consequently, the conviction for the offence of cheating was bad in law. A contrary view was, however, taken by a Division Bench of the Oudh Chief Court in *Emperor v. Raghunath*, A. I. R. (28) 1941 Oudh 3 where it was held that a criminal prosecution for cheating can be based on a contract which cannot be enforced in a civil Court. This view is in consonance with the view taken by me above. I, therefore, see no force in the first contention put forward on behalf of the applicant.

8. In the next place, it has been contended on behalf of the applicant that the Additional District Magistrate could not have set aside the order of discharge unless it was found to be manifestly perverse. The judgment of the trial Court, read as a whole, leaves no room for doubt that the Magistrate accepted the prosecution case as set out in the complaint; but having regard to the fact that the cheating was based upon a void and illegal contract, which could not be enforced in a civil Court, he held that the prosecution could not proceed. For the reasons stated above, that view Cannot be sustained. In view of the facts disclosed in the evidence, the learned Additional District Magistrate was justified in holding that there was sufficient prima facie evidence for a charge being framed against the applicant. That being so, there can be little doubt that the order of discharge was manifestly perverse, which was rightly set aside by the learned Additional District Magistrate.

9. In the third place, learned Counsel for the applicant has argued that the most important piece of evidence against the applicant was the statement of the complainant, who was in a position of an accomplice; consequently his statement could not be admitted in evidence or relied upon. In such cases the complainant is undoubtedly an important witness and even as an accomplice he is a competent witness. No doubt, there is a presumption that an accomplice is unworthy of credit, unless his evidence is corroborated in material particulars; but it is incorrect to say that his evidence is inadmissible. In this case, we find that in order to corroborate the complainant's evidence a number of witnesses were examined and his evidence is corroborated in material particulars. Babu Lal Munim (P. w. 2) was examined to prove an entry in the account-books of the complainant, which showed a payment of Rs. 1,100 to the applicant. There were two other witnesses, Bal Mukund and Bharat Singh (p. Ws. 3 and 4), who stated that in their presence the applicant had admitted having obtained the money from the complainant, and had also promised to return the same. The

Income-tax Officer was examined as P. W. 6, who stated that the complainant had made a complaint to him against the applicant. There was one more witness, the Bank manager, who proved that on the particular day on which the amount of Rs. 1,100 was paid by the complainant to the applicant a sum of Rs. 1,000 was withdrawn by the complainant. The evidence of the complainant was, therefore, admissible and rightly relied upon.

10. Lastly, it has been argued on behalf of the applicant that the Magistrate having recorded the entire evidence and based his decision thereupon, there was no necessity of any further inquiry and consequently the order of the Additional District Magistrate directing a further inquiry was improper. It is true that the entire evidence in support of the complaint had been recorded by the Magistrate; but, on that evidence, he having come to the conclusion that the complainant and the accused had entered into an illegal and void agreement, could not discharge the applicant--he had to frame a charge and to proceed with the trial. The learned Additional District Magistrate, being of the opinion that there was prima facie evidence for a charge being framed against the applicant, was perfectly justified in making an order that the trial Court should, after further inquiry, take necessary action according to law; or, in other words, proceed with the trial according to law.

11. Having regard to all the circumstances appearing on the record, I am of opinion that the order made by the learned Additional District Magistrate was perfectly correct; and there is no reason whatsoever to interfere with the same. The revision, is accordingly, rejected. The stay order is vacated. Let the record of the case be returned to the Court concerned without any delay.