

Rudrapal Singh vs Rex, Through Shankar Singh on 11 April, 1950

Equivalent citations: AIR1950ALL609

ORDER

Chandiramani, J.

1. The applicant Rudrapal Singh was convicted by a Magistrate, 1st class, Rae Bareli, on 19th April 1949, under Section 417, Penal Code, and sentenced to a fine Rs. 500/-. His appeal was dismissed by the learned Sessions Judge.

2. The prosecution case was that the applicant Rudrapal Singh owed some money to the complainant Shankar Singh, that the demand was made many times and eventually the applicant sent an insured cover for Rs. 400/- to Shankar Singh from Mazgaon post office, Bombay the insured cover was received on 25th May 1946, at the Rahwan post office within whose Circle the complainant resided. According to the practice of the post office, covers insured for more than Rs. 100/- are delivered at the post office itself, Shankar Singh took delivery of it on 27th May 1946, and signed the acknowledgment. The cover was opened in the presence of the post master and some other persons and it was found to contain 13 currency notes of Rs. 10/- each and a letter. The cover when received was in proper condition. It did not appear to have been tampered with. The seals were intact and the weight corresponded with the weight noted on the cover. All these facts were brought to the notice of the postal authorities. In the normal course an inquiry was conducted by these authorities. The applicant himself was informed in Bombay that the insured cover contained only Rs. 130/-. The applicant himself protested that he had sent currency notes worth Rs. 400/- and not Rs. 130/- and later on filed a civil suit and actually obtained an ex parte decree for the amount against Shankar Singh in Bombay. The complainant prosecuted the applicant for an offence under Section 417, Penal Code. The applicant's defence was that he had sent Rs. 400/- and he was not responsible for the shortage and there was no cheating. The defence was not accepted and both the Courts below have believed the prosecution story that the applicant Rudrapal Singh actually sent only Rs. 130/- and not Rs. 400/-, as he purported to have done, and that this constituted an offence under Section 417, Penal Code.

3. The learned counsel for the applicant sought to challenge the findings of fact recorded by the Courts below, but no good reasons has been shown why this Court should interfere with such a finding of fact. It is clearly established that applicant sent in fact in the insured cover not Rs. 400 but only Rs. 130.

4. It has been urged on behalf of the applicant that even if all the facts are accepted no offence under Section 417, Penal Code, has been committed. Reliance has been placed on Kunju v. Emperor, A.I.R.

(14) 1927 Mad. 199: (28 Cr. L. J. 70) and Tula Ram v. Emperor, A. I. R. (11) 1924 ALL. 205 : (26 Cr. L. J. 209), both single Judge decisions, wherein it was held that sending waste paper, or khilafat bonds, in an insured postal cover instead of Government currency notes is no offence under Section 417, Penal Code, nor does it constitute an attempt at cheating. Both these decisions and some others were considered by a Bench of the Allahabad High Court in Narain Rao v. Rex, A. I. R. (35) 1948 ALL. 433: (49 Cr. L. J 577). The view expressed in the two cases specifically mentioned was not accepted. In the case before the Bench, the accused debtor purported to send to the complainant, his creditor, Rs. 70/- in currency notes in an insured postal cover and the cover was actually found to contain currency notes of Rs. 7/- only. It was held that the act of signing the acknowledgment and the consequent misuse of the acknowledgment by the accused was likely to cause embarrassment and even actual danger or harm to the complainant in mind and property, and it could not be regarded as a probability or a remote possibility and the accused was guilty of the substantive offence of cheating under Section 417, Penal Code, and not merely of the offence of an attempt to cheat. In view of this Bench decision it is obvious that the applicant is really guilty of the offence under Section 417, Penal Code, and he has therefore been rightly convicted,

5. The application is accordingly dismissed.