Roshan Lal Khetri Vs S.Z. Ahamed

Court: Calcutta High Court

Date of Decision: April 22, 1936

Acts Referred: Penal Code, 1860 (IPC) â€" Section 420

Citation: 164 Ind. Cas. 996

Hon'ble Judges: Henderson, J; Cunliffe, J

Bench: Division Bench

Judgement

Cunliffe, J.
In this matter, we issued a Rule nisi calling upon the Magistrate who tried this case, to show cause why the acquittal of the

respondent u/s 420 of the Indian Penal Code should not be set aside. The reason we took this course was that on the facts found by the learned

Magistrate, it seemed to us quite obvious that he had wrongfully applied the law in relation to obtaining money under false pretences by means of

issuing a cheque to the lender which turned out to be without effect and was dishonoured by the Bank. It was not a case of a man discharging a

past liability or endeavouring to discharge it by optimistically giving a post-dated cheque in the hope that his financial position would improve. It

was, on the facts found by the Magistrate, a case, as 1 have indicated, of cash being obtained on the production of a cheque which could not

possibly be honoured by the Bank upon which it was drawn. But when we came to consider the question of making the Rule absolute, my learned

brother reminded me and also reminded Counsel who appeared for the respondent that the action we took was in contravention of a very well-

known principle referred to in a decision by Sir Lawrence Jenkins which lays down that acquittals should not, except in exceptional circumstances,

be interfered with suo motu, by an Appellate Court without, of course, a full investigation of the facts. In this particular case, the facts found were

strenuously denied. The respondent''s case as I understand it, was that the money that he obtained from his landlord was money obtained not by

swindling him but furnished to him by the landlord as a money lender to a client. It is quite obvious that we cannot go into these facts without having

a new investigation in the trial Court which is usually set on foot by the Crown and the Crown alone. In these circumstances, we think that we were

mistaken in issuing this Rule nisi and that the acquittal, wrong as we still think it was both in fact and in law, must stand, because there should be a

certain integrity about acquittals which prevent them from being lightly interfered with. One does not wish to be harsh about the attitude of the

person who is the petitioner here. But it is quite obvious that his interest in the question of this Court dealing correctively with the decision of the

trial Court is really for the purpose of obtaining his money and not purely from a sense of public-spirited justice. He is not to be blamed for that.

On the other hand, he is not to be looked upon as a guide to the Court. In these circumstances, the Rule must be discharged.

Henderson, J.

2. I agree.

3. The learned Magistrate clearly misunderstood the decision upon which he relies and decided the point of law wrongly in his judgment. But it

would be a most dangerous thing to say that whenever a Magistrate happens to be so unfortunate as to make a mistake in law that the accused

person should be put in peril again ; for it may well be that although the Magistrate has decided a law point wrongly in favour of the accused, he

may also have decided the facts wrongly in favour of the prosecution. Clearly an acquittal is not to be set aside merely because bad reasons are

given for it. Before we can be induced to take such a course, we must be satisfied that the acquittal is wrong altogether apart from the reasons

given by the trial Magistrate.

4. In the present case we have read the written statement filed by the opposite party and it is at once apparent that if his case is true, be is not guilty

of any offence at all. The determination of the case will, therefore, largely depend upon the weight to be given to the document executed by the

opposite party and the circumstances in which this was done. It is, therefore, impossible for us to say whether the acquittal is a bad one without

going into the facts. As soon as I have said that, it becomes clear that the case is one of those in which, according to the long and well-settled

practice of this Court, we must decline to interfere in revision.