Legal Remembrancer Vs Manmatha Bhusan Chatterjee, Hridoy Narain and Others

Court: Calcutta High Court

Date of Decision: Aug. 21, 1923

Acts Referred: Penal Code, 1860 (IPC) â€" Section 415
Railways Act, 1890 â€" Section 42(2)

Citation: (1924) ILR (Cal) 250

Hon'ble Judges: Suhrawardy, J; Richardson, J

Bench: Division Bench

Judgement

Richardson, J.
I now come to the controversial part of the case. At the trial evidence was led to show the part which each of the accused

played in the alleged criminal conspiracy. On that evidence the Courts below came to substantially the same conclusions of fact. They differed as to

the result. The learned Sessions Judge, overruling the learned Magistrate, held that the facts found did not disclose the offences charged. The

accused make no admissions as to the facts and the appeal before us has so far been argued with reference only to the questions, mainly questions

of law, arising out of the difference of opinion between the two Courts. For the purposes of the present discussion therefore, we assume, without

deciding that the facts have been correctly found by those Courts.

2. To simplify matters, I will deal mainly with the cases of Manmatha and Ram Din Lal. As against Manmatha it is found that in various ways, by

manipulating his special ledger, or by making unauthorized entries in other documents, he procured the supply to the B.P. Singh colliery of more

wagons than the colliery was entitled to under three letters of authorization issued by the Coal Transportation Officer to three different consumers.

Without entering into unnecessary details it is found that in one or more instances Manmatha:

(1) altered the original entries in his ledger relating to a letter of authorization so as to increase the supply authorized by the Coal Transportation

Officer, e.g., by substituting two wagons daily for two weekly, the number actually authorized.

(2) altered the original entries as in (1) and supported the alteration by adding a reference to a fictitious non-existent letter of authorization, to which

a false number and date were assigned.

(3) passed an indent for wagons in excess of the number actually authorized.

(4) interpolated in the allotment sheet, with which he had no business to meddle, an entry showing wagons allotted to the colliery which had not in

fact been allotted.

(5) altered the class for which the supply of wagons was authorized by changing X into super X.

(6) omitted to post in his special ledger wagons actually allotted and supplied.

3. It is found that Ram Din Lal, the manager of the colliery, must have been in league with Manmatha, or otherwise he would not have submitted

indents for wagons in excess of the number specified in the letters of authorization of which in the ordinary course he had received copies.

4. As regards the checker Bisseswar, it is found that in several instances he co-operated with Manmatha in procuring unauthorized wagons for the

colliery. It is also found that the broker Hridoy Narain was a party to the conspiracy.

5. On these findings it is contended for the Crown that the accused, more especially Manmatha and Ram Din Lal, were rightly convicted by the

Magistrate: under both the charges.

6. There is no doubt about the existence of a criminal conspiracy as defined in Section 120A of the Code provided the overt acts committed by

the two checkers amount to cheating. But before considering the definition of that offence in Section 415, there are one or two preliminary

observations to be made.

7. In the first place, I have no doubt that this prosecution was launched because the authorities of the East Indian Railway Company strongly

suspect that the checkers, Manmatha and Bisseswar, were bribed by the colliery. If the facts have been correctly found, I sympathise largely both

with this suspicion and with the desire that the parties concerned should be brought to book. Bribery and corruption and under hand practices of

all kinds are constant enemies to civil progress. But it has still to be stated that bribery is not proved. It is conceded for the Crown that there is no

tangible evidence of money passing from the colliery to the checkers and that so far the case rests on suspicion only. The observation, it is hardly

necessary to add, does not excuse the accused if their proved acts constitute an offence under the Code.

8. Secondly, it is not suggested that the conduct of the accused caused any loss of money to the East Indian Railway Company. The colliery paid

for the use of the wagons supplied to them at the usual rates. The Railway Company therefore was not defrauded. But a fraud was committed

upon the Defence of India Act and Regulations and it was also argued for the Crown that the conduct of the checkers was dishonest in the sense

that they intended to procure some wrongful gain or advantage for the B.P. Singh colliery at the expense of other collieries. No point was made for

the defence in this connection and for the purpose of the first charge I will take it that on the facts found the checkers acted fraudulently or

dishonestly or both fraudulently and dishonestly as those words are used in the Code.

9. Thirdly, as to the frame of the charges, so far as they speak of the East Indian Railway being cheated, Mr. Sanyal for the defence took the

exception that an inanimate object cannot be cheated or have a reputation. But the charges also refer to the Company and, however loose the

language may be, no one could have supposed that the expression East Indian Railway meant the lines of rail and not the Company. Further we

were told, and I will assume that there is evidence on the record, which if accepted, shows that responsible officers of the Company in its Asansol

office were deceived and induced either to allot wagons to the B.P. Singh colliery which would not otherwise have been allotted or to make out

wagon chalans for the colliery which would not otherwise have been made out. If that be so, the evidence is sufficient to support the allegations in

the charges that the Railway Company was by reason of deceit induced to act in a certain way. A Corporation, such as a Railway Company, is an

artificial person, and its acts are those of the agents who act for it and in its name. It would, however, have been more regular if the charges had

been specific in this respect [see Billinghurst v. Blackburn 27 C.W.N. 821, 849].

10. I come now to the two forms of cheating defined in Section 415. They are as follows:

(i) ""Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person is said to

cheat.

(ii) ""Whoever by deceiving any person 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.

11. In the first of these forms cheating is punishable u/s 420, which says--""Whoever cheats and thereby dishonestly induces the person deceived to

deliver any property to any person... shall be punished with imprisonment, etc.

12. In the second form the offence is punishable under the more general Section 417--""Whoever cheats shall be punished with imprisonment, etc.

13. As to the charge which assigns cheating in the first form, the question principally discussed was whether the taking of the wagons to the colliery

siding in order that they might be loaded by the colliery with coal was a delivery of property to the colliery within the meaning of the definition.

14. As to the colliery siding, there is no evidence that it belongs to the colliery; on the contrary the evidence is that several collieries may use the

same siding. In that state of the record we must, I think, assume that the colliery sidings belong to the Railway Company and not to the collieries. It

follows that the wagons never leave railway land.

15. Railway wagons are no doubt ""property"". They are the property of the Railway Company. In my opinion, however, they are not as property

delivered to a colliery merely by being taken to the colliery siding. No doubt the colliery are entitled to load the wagons but the amount of control

exercised for that purpose seems to be of a very limited character. It is said that collieries sometimes exchange wagons but the evidence on this

point is unsatisfactory and it is certainly not shown that the practice if it exists at all is authorized. On the materials available I am unable to say that

the wagons ever go out of the possession and control of the Railway Company.

16. Though some reference was made in the argument to R. v. Kilham (1870) L.R. 1 C.C.R. 261--cf. R. v. Chapman (1910) 4 Cr. App. Ref.

276--we have not considered whether the delivery of the wagon chalans to the colliery amounted to a delivery of property within the meaning of

the section. The case against the accused has not been put or investigated in the Courts below on that basis. The charge says that wagons, the

property of the Railway Company, were delivered to the colliery. In my opinion the charge so framed is not substantiated and the accused are

entitled to an acquittal upon it.

17. There remains the charge of cheating in the second form. In that form the offence does not necessarily involve fraud or dishonesty. The words

of the definition are undoubtedly wide and if pushed to the full limit of their meaning might embrace acts which the man in the street would hardly

regard as criminal offences. That observation, however, raises a question of the appropriate punishment in the particular case rather than of

construction.

18. Clause 392 of Lord Macaulay''s draft corresponds to the first part of Section 415. The second part would appear to have been added at

some later date after the Code had left his hands and the hands of the Indian Law Commissioners. The illustrations throw no light on what is meant

by damage or harm in body, mind or reputation and so far as such damage is concerned the offence is not very appropriately placed in the Chapter

of the Code relating to offences against property. An essential ingredient of the offence is the damage or harm caused or likely to be caused in the

said respects or in property. Generally speaking, a criminal offence consists in an act done by the accused with a specific criminal intent, or state of

mind, constituting the mens rea. Difficulties connected with the notion of causation, common enough in other branches of the law, such as tort,

seldom arise. It is true that negligence is sometimes punishable as an offence because it causes or is likely to cause hurt or injury to another (cf.

Sections 279 and 280 and 284-287 of the Code). But cheating in the second form has this additional peculiarity. The damage is to be caused by

the person deceived to himself. Indirectly it may be, the damage is to result from the deceit, but immediately it is to result from the induced act of

the person deceived. This no doubt explains why the word ""injury"", defined in Section 44 of the Code as ""any harm whatever illegally caused to

any person in body, mind, reputation, or property"" was not employed in Section 415.

19. It does not appear to be necessary that the resulting damage or likelihood of damage should have been within the actual contemplation of the

accused when the deceit was practised. But authorities in this Court lay down:

(i) that the person deceived must have acted under the influence of the deceit: Ramanath v. Rule (1905) 2 C.L.J. 524, Milton v. Sherman 22

C.W.N. 1001,

(ii) that the facts must establish damage or likelihood of damage: Baburam Rai v. Rule ILR (1905) Calc. 775, and

(iii) that the damage must not be too remote: Mojey v. Rule I.L.R.(1890) Calc. 606, Kishori Lal Chatterji v. Rule 9 C.W.N. 764, Mahadev v.

Dhonraj 12 C.W.N. 751.

20. On the point of remoteness of damage, there seems no sound reason why a definition which presupposes wilful deceit on the part of the

accused should be too narrowly interpreted. The word ''cause'' doubtless excludes damage occurring as a mere fortuitous sequence, unconnected

with the act induced by the deceit, except as every event is connected with preceding events in an unending chain. On the other hand the definition,

as it stands, is wide enough to include all damage resulting or likely to result as a natural consequence of the induced act. In Mojey''s case,

however, the learned Judges said: ""We think that the damage or harm must be the necessary consequence of the act done by reason of the deceit

practised, or must be necessarily likely to follow therefrom""--I take it that these expressions mean at their lowest that the damage must be the

direct natural or probable consequence of the induced act.

21. In the present case, there is no question on the facts found that the act of the Railway Company in allotting an excessive or disproportionate

number of wagons to the B.P. Singh colliery was induced by the deceit practised by the accused or some of them. The difficulty is as to the

element of damage.

22. A corporation cannot well suffer damage in mind or body and the charge maintains that the Railway Company suffered damage not in property

but in reputation. I will concede that an incorporated Company may have a reputation for the good conduct of the business or undertaking of the

Company and that the Company''s reputation may be quite distinct from that of any of its officers, however highly placed. Under the definition,

however, it is clearly not sufficient to say merely that the malpractices of the two checkers brought or tended to bring the administration of the

Company into discredit. The question is whether the allotment of the excess wagons to one colliery caused or was likely to cause, within the

meaning of the definition, damage to the Company in reputation. It was argued very plausibly for the Crown that under the Indian Railways Act,

1890, Section 42(2), ""a Railway Administration shall not make or give any undue or unreasonable preference to, or in favour of, any particular

person"", that the East Indian Railway Company sets great store on its reputation for impartiality and that this reputation was affected or endangered

by the allotment of the wagons. I will not say positively that the Railway Company suffered no damage to its reputation but in view of the

authorities I am disposed to conclude that this damage was too remote. It appears to me that the damage here complained of is indirect and

ulterior rather than the direct natural or probable consequence of the action which the Company was deceived into taking. The direct consequence

of one colliery getting more than their fair share of wagons is that other collieries must suffer the disadvantage of getting less than their fair share. If

it be said that a suit might have been brought against the Company for damages for undue preference, such a possibility u/s 415 would come under

the head of damage or likelihood of damage to property and not of damage to reputation. A charge alleging damage or likelihood of damage to

property would, I think, have been easier to support: than the charge framed. For in my opinion in a case of the present description it is rather in

the region of property than in that of mind and reputation that the natural and probable consequences should be looked for.

23. There is another aspect of the matter which ought not to be neglected. We are dealing with a criminal charge and the evidence adduced and

the circumstances disclosed should be sufficient to satisfy the Court or a Jury that the damage complained of was caused or was likely to be

caused. In this case is there any more reason to say that the Company''s reputation for impartiality suffered than to say that their reputation for

efficiency of supervision suffered? We are dealing with a great Railway Company. Would any reasonable person suppose that the Company or the

head officers or managers of the Company in Calcutta were parties to or connived at the special favour shown to the B.P. Singh Colliery? The

general feeling would I think be that if a complaint were made to the Company, the Company would do its best to mend matters. The act of the

Company would be attributed to mistake due to carelessness or pressure of business or, as the allegation here is, to the Company being misled by

its subordinate staff. Error of this kind may occur in all business which is done on a large scale and a margin would be allowed for in judging of the

conduct of the business. Our attention was directed at any rate to some part of the evidence adduced bearing on the alleged injury to the

Company''s reputation. We were told that two articles appeared in the newspaper ''"Commerce"'' but they were not placed before us. We were

shown an anonymous letter received in the Calcutta office. The oral evidence consisting of the opinions of certain witnesses on the subject is of

more than doubtful admissibility. Without some further examination of the materials on the record and further argument I should hesitate to assert

that the allotment of the excess wagons to the B.P. Singh colliery caused or was likely to cause any appreciable damage to the Company''s

reputation.

24. On the whole I come to the conclusion that the Sessions Judge was right in acquitting the accused on both charges.

25. It was said in argument that it was difficult to make dishonest clerks account for their actions. If a state of thing exists which imperils the due

administration of the Railway Company, it would not I think be beyond the resources of the Legislature to devise a remedy [Cf. Sage v. Eicholz

[1919] 2 K.B. 171 and Section 477A of the Penal Code.]

26. In the result I am of opinion that this appeal should be dismissed.

27. Appeal No. 4 is governed by similar consideration and must also be dismissed.

Suhrawardy, J.

28. I agree.