H.K. Bhedwar Vs Rao Saheb C.S.R. Rao

Court: Calcutta High Court

Date of Decision: May 22, 1923

Acts Referred: Penal Code, 1860 (IPC) â€" Section 415, 417

Citation: 74 Ind. Cas. 76

Hon'ble Judges: Cuming, J; C.C. Ghose, J

Bench: Division Bench

Judgement

C.C. Ghose, J.
In this case a Rule was issued, calling upon the Chief Presidency Magistrate of Calcutta to show case why the order

dismissing the petitioner''s complaint should not be set aside and why further enquiry into the said complaint should not be made and process

issued against the opposite party u/s 417, Indian Penal Code, or such other further order made as to this Court might seem fit and proper.

2. The facts giving rise to the application on which the Rule was issued, are as follows: The petitioner is a licensed Bookmaker of the Calcutta Real

Turf Club and has a permanent book for the season 1922-1923 within the first enclosure of the Calcutta Race Course. On the assurance of the

opposite party, who is a Deputy Director of Commercial Intelligence, employed under the Government of India, that he would pay up his losses, if

any, punctually on the settling flay, the petitioner allowed the opposite party to take bets on credit on the 9th of December 1922. The debts due to

the petitioner by and from the opposite party in respect of bets on credit amounted to a sum of Rs. 1,591. The opposite party failed to pay the said

sum of Rs. 1,591 on the then following settling day and accordingly the petitioner decided not to allow to the opposite party any more credit until

the said sum was paid off in full. Thereupon the opposite party sent to the petitioner on the 15th December 1922, a crossed cheque for Rs. 1,501

on the Indian Industrial Bank. The said cheque was sent in the evening after banking hours. The opposite party assured the petitioner that the said

cheque would be paid on presentation and on such assurance the petitioner allowed the opposite party to take bets with him on credit on the 16th

December 1922, and in respect of such bets taken on credit on the 16th December 1922, the opposite party became indebted to the petitioner to

the extent of Rs. 3, 450. The cheque referred to above was presented for payment on the 18th December 1922, when it was dishonoured. The

opposite party was thereupon communicated with and he gave a fresh cheque for Rs. 5,041 to cover his losses on the 9th and the 16th of

December and assured, the petitioner that there would be no difficulty whatsoever in getting the said cheque cashed. It appears that the petitioner

relied on the assurance of the opposite party and allowed him to take further bets on credit on the 23rd and 26th. December 1922. The opposite

party became indebted to the petitioner in a further sum of Rs. 752. Meanwhile, the said, cheque for Rs. 5,041 was presented for payment on the

28th December 1922 when it was dishonoured. The petitoner thereafter made various efforts to obtain payment of the two sums of Rs. 5,041 and

Rs. 752 but without success. Eventually, on the 1st March 1923, the petitioner applied to the Chief Presidency, Magistrate of Calcutta for process

against the opposite party u/s 417, Indian Renal Code, for having cheated him in respect of the said cheques. The learned Magistrate came to the

conclusion that on the facts no case or cheating had been made out and accordingly dismissed the petitioner''s'' application u/s 203, Criminal

Procedure Code.

3. On behalf of the petitioner it has been contended before us that the opposite party by representing to him that the cheques in question would be

honoured and thereby the dues up to the 16th of December would be satisfied, induced -the petitioner to accept his bets on credit, i.e., bets which

the opposite party would otherwise have had to pay in cash, and"" that the petitioner by accepting such bets on credit lost a sum of Rs. 752 which

would otherwise have come to his till. It is argued, therefore, that the opposite party has deceived the petitioner and has fraudulently or dishonestly

induced the petitioner to take bets on credit from him, which he (the petitioner) would not have done, if he were not so deceived, and which act

has caused him a loss of Rs. 752.

4. In my opinion, although it is quite clear that the petitioner was deceived and thereby induced to take bets on credit from the opposite party, lam

unable to say that the act which the petitioner was induced to do by reason of such deception has, caused or was likely to cause damage or harm

to him in body, mind, reputation or property; It does not follow that if the petitioner had refused to take bets on credit from the opposite party, the

latter would of a certainty have had to-offer bets by paying cash. The opposite party might not have offered any bets at all. In order to bring home

the offence of cheating against the opposite party, the petitioner would have to show that his case comes within the four corners of Section 415,

Indian Penal Code; and in this I think the petitioner has failed. The analogy suggested on behalf of the petitioner about a person obtaining goods or

money by means of a cheque which he knows will not be paid, and thereby being guilty of the offence of cheating, does not, in my opinion, hold

good in this case.

5. I would accordingly discharge this Rule.

Cuming, J.

6. The facts of the case out of which this application for revision has arisen are these:

The petitioner, Mr. H.K. Bhedwar is a licensed Book-maker of the Royal Calcutta Turf Cub and operates in the first enclosure. The opposite

party is a Deputy Director of Commercial Intelligence. The petitions allowed the opposite party to bet with him, on the 9th December and as a

result of this the opposite party lost Rs. 1,591. The opposite party did not meet his obligations on settling day and so the petitioner refused to allow

him to bet on credit.

7. The opposite party then gave petitioner a cheque for Rs. 1,591 on December 18th. In consideration of receiving the cheque the petitioner

allowed the opposite party to bet with Kim on credit on December 16th the petitioner allowed this on the understanding that the cheque for Rs.

1,591 would be met on presentation. The opposite party lost on the 16th December a further sum of Rs. 3,450. On the 18th December the

petitioner presented the cheque for Rs. 1,951 payment of which was refused there being no funds to meet it. The opposite party represented to the

petitioner that the had put his account in order and gave him on the 22nd December a fresh (Cheque for Rs. 5,041 to cover his losses on the 9th

and 16th. The cheque was made over to the petitioner on the 22nd December after Banking hours. On the strength of the cheque the petitioner

allowed the opposite party to bet with him on credit on the 23rd and 26th December when the 2 opposite party lost a further sum of Rs. 752. This

cheque also was dishonoured on presentation.

8. The petitioner''s case is that the opposite party has cheated him. That the opposite party knew quite well when he issued the cheques he did that

they would not be met and that by giving these cheques to the petitioner which he knew would not be honoured he deceit ed the petitioner, as the

result of which deception loss we s caused to the petitioner. The petitioner laid a complaint against the opposite party charging him u/s 417, Indian

Penal Code, with cheating. The learned Chief Presidency Magistrate dismissed the complaint on the ground that no criminal offence was disclosed.

The point to be here decided is, whether, accepting the facts as alleged by the petitioner and holding that the opposite party knew quite well that

the cheque would not be met, the offence of cheating has been committed^ Obviously, if the facts Ã¯Â¿Â½are true the opposite party did deceive the

petitioner and by so doing induced him to do an act which he would not otherwise have done, namely, allowed him to bet with him on credit. The

question then tote decided is whether the allowing of the opposite party to bet on credit is an act which caused or was likely to cause damage or

harm to the petitioner in mind, body or reputation. Mr. Mukherjee contends that it has cost the petitioner the loss of Rs. 752 which the opposite

party lost to the petitioner on the 23rd and 26th of December. His argument is that if the opposite party had not been allowed to bet on credit he

would have wagered the same amount in cash, that hence the petitioner would have received Rs. 752 in cash and he had lost that amount, and so

has suffered loss. I do not think, however, we are entitled to assume for one moment that if the opposite party had not been allowed to bet on

credit he would have made the same wagers in cash. It is at the most a possibility and I should say, on the facts hardly a probability. It cannot be

said that the petitioner is any the worse off that he was before, because the opposite party as the result of the deceit lost Rs. 752 to him and has

not yet paid it. It has been suggested in argument that the petitioner might as the result of bets on one horse give longer odds on some other horse

and so suffered loss. In the petition there is no suggestion of this and it seems at the best remote contingency hardly capable of proof.

9. The question is not free from difficulty but after a careful consideration I am of opinion that it cannot be said that allowing the opposite party to

bet on credit was an act which caused loss or damage to the petitioner.

10. The learned Presidency Magistrate was, therefore, right in the view he took that no criminal offence had been disclosed and I would discharge

this Rule.