(1913) 06 BOM CK 0020

Bombay High Court

Case No: None

Emperor		APPELLANT
	Vs	
Balkrishna Waman Kulkarni		RESPONDENT

Date of Decision: June 26, 1913

Acts Referred:

- Penal Code, 1860 (IPC) - Section 467

Citation: (1913) ILR (Bom) 666

Hon'ble Judges: Shah, J; Batchelor, J

Bench: Division Bench

Judgement

Batchelor, J.
This is an appeal by the Government of Bombay, and the appeal arises in the following circumstances:

2. One Dattatraya Anant Kulkarni was an officiating kulkarni of a certain village between February 1908 and September 1911. Between 11th April and 25th July 1911 he collected a sum of Rs. 189 from the village rayats for certain irrigation cesses. Receipts were given by Dattatraya Anant to the paying rayats, but in fact Dattatraya misappropriated these moneys. He has been on his own trial convicted on his plea of guilty. He admits his guilt also when examined as a witness in the trial of this respondent.

3. In September 1.911 this Dattatraya Anant was transferred to another village. He handed over charge to one Dattatraya Hari, who is a witness in the respondent''s case. He did not hand over the account books and other papers. In December 1911 the present respondent Balkrishna Waman, who was a petition-writer known to Dattatraya Anant, learnt that the rayats, whose money had been misappropriated, were on the point of complaining against Dattatraya Anant in regard to the misappropriations. He, therefore, warned Dattatraya Anant and proposed that he, the respondent, should forge certain challans in order to protect the fraud which

Dattatraya Anant had committed. The point about these challans was that, in the essential parts of them, they constituted receipts from the Taluka Treasury acknowledging payments made into the Treasury by the village Kulkarni. In pursuance of this arrangement Dattatraya Anant wrote the body of the challans, while the endorsements and signatures of the Taluka Treasury officials were forged by the respondent. It is these endorsements and signatures which, if genuine, constitute a receipt in the hands of the village Kulkarni.

4. Mr. Bodas for the respondent has addressed us on the question of fact but it appears to me that the facts as I have stated them are upon the evidence so unquestionably established that I do not think it necessary to discuss them. The learned Sessions Judge and both the Assessors agreed that these facts were established and it appears to me impossible to contend otherwise. On the footing, therefore, that these are the facts proved we have to consider what should be the result in law. The respondent was charged with having forged these acquittances by making false endorsements on the challans and with forging the signatures of the taluka officials. There was another charge, but with that we are not now concerned. On this charge of forgery u/s 467 the learned Sessions Judge was of opinion that the respondent was, in spite of the facts proved as stated, entitled to an acquittal, and he based that view on the requirement contained in the defining Section 463 that if a person, who makes a false document, is to be guilty of forgery he must make that document inter alia "with intent to commit fraud or that fraud may be committed." The learned Judge''s view is that no such intent can be ascribed in a case where the fraud has already been fully committed. Though the Sessions Judge does not appear to have made any examination of the Indian authorities on this point, the decisions of the Allahabad High Court undoubtedly favour his opinion. I refer particularly to Empress of India v. Jiwanand (1882) 5 All 221, Empress v. Mazhar Husain (1883) 5 All. 553 and to the decision by Edge, C.J., in Queen-Empress v. Girdhari Lal (1886) 8 All. 653. For my own part, however, I am, with very great respect, unable to follow the Allahabad High Court in these decisions, Exactly the contrary view has been taken in Lolit Mohan Sarkar v. Queen-Empress 1894 22 Cal. 313 where the learned Judges expressly dissent from the reasoning of the Allahabad Court, and also in Emperor v. Rash Behari Das (1908) 35 Cal. 450 where Mr. Justice Woodroffe said: "In my opinion, even if the intention with which the false entries were made was to conceal a fraudulent or dishonest act previously committed, the intention would be to defraud and the case would fall within Section 477A of the Indian Penal Code." For myself I should be content to base my judgment on my agreement with Mr. Justice Woodroffe, and to say that I concur in thinking that the concealment of an already practised fraud is a fraud. Since, however, the authorities are in this direct conflict, it may be desirable to pursue the matter a little further. The Calcutta view has also commended itself to the High Court of Madras: see Queen-Empress v. Sabapati (1888) 11 Mad. 411. In Bombay I do not find that there is any authority precisely covering the point now in issue. In Queen-Empress v. Ganesh Khanderao (1886) 13

Bom. 515 the case of Queen-Empress v. Vithal Narayan is reported and that at least shows that West and Nanabhai, JJ., adopted that description of fraud which was given by Mr. Justice Le Blanc in Haycraft v. Creasy (1801) 2 East 92, that is to say: "By fraud'' I understand an intention to deceive; whether it be from any expectation of advantage to the party himself, or from ill-will towards the other is immaterial." A description as broad as that would undoubtedly bring the present respondent within its scope.

5. A somewhat more restricted description of the term ''fraud,'' which there is a very natural reluctance to attempt to define, is given by Sir James Stephen in his History of Criminal Law of England where the learned Judge observes: "there is little danger in saying that whenever the words ''fraud'' or ''intent to defraud'' or ''fraudulently'' occur in the definition of a crime two elements at least are essential to the commission of the crime, viz., first, deceit or an intention to deceive or in some cases mere secrecy; and, secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent, I may add, is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage.... A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that that advantage should not have had an equivalent in loss, or risk of loss, to some one else; and if so, there was fraud. In practice" says the learned author in words which seem particularly apt to our present purpose "people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent." (Vol. II, p. 121.)

6. Applying this canon to the facts disclosed in this trial, there can, I think, be but one result. The intention to deceive is too obvious to need farther explanation; and it is, at least to my mind, equally indisputable that the author of the deceit derived from it an advantage which he would not have had if the truth had been known. The respondent himself took the benefit of the Rs. 25 fee which was paid to him by Dattatraya Anant. I mention that rather to complete the narrative than because I consider the circumstance material. What is material, in my view, is to consider what, if any, advantage accrued to Dattatraya Anant from the deceit, since the respondent''s object was rather to further Dattatraya Anant''s interests than his own. In this aspect the illicit or undue advantage is, I think, apparent. The truth was the series of misappropriations by the Kulkarni, and had they been known his criminal liability was established; the advantage derived from the deceit was the concealment of this criminal liability.

7. Moreover, having regard to the observations in Derry v. Peek (1889) 14 App. Cas. 337 it may be open to doubt whether there is any substantial distinction between what is popularly meant by fraud and what has sometimes been termed legal or

constructive fraud; but, however that may be, I am of opinion that the word ''fraud,'' as used in the Penal Code, is used in its ordinary and popular acceptation, and if that is so, it seems to me that, unless plain words are to be argued out of all meaning, a man who deliberately makes a false document with false signatures in order to shield and conceal an already perpetrated fraud is himself acting with intent to commit fraud. But if as a matter of the grammatical interpretation of the words of Section 463 it be absolutely essential to supply the notion of a future fraud as opposed to a past fraud, then, in my opinion, the facts in the present case suffice to furnish us with that requirement. For, in my view, it is a fraud to take deliberate measures in order to prevent persons already defrauded from ascertaining the fraud practised on them and thus to secure the culprit who practised the fraud in the illicit gains which he secured by the fraud.

8. I am, therefore, of opinion that on the facts of the present case, the respondent ought to have been convicted u/s 467 of the Indian Penal Code. I would convict him under that section, and sentence him to one year''s rigorous imprisonment.

9. The additional charge under Sections 218 and 109 has not been pressed against the present respondent, and upon that he is, therefore, acquitted.

Shah, J.

10. I agree that this appeal should be allowed, that the order of acquittal in favour of the respondent should be set aside, and that he should be convicted u/s 467, Indian Penal Code.

11. I accept the facts as found by the Sessions Judge and the Assessors, and in spite of the criticism offered by the learned pleader for the accused, I am satisfied on the evidence in the case that the endorsements on the challans, Exhibits 6A, 6B and 60, were written by the present respondent. It is also clear on the facts that the challans were fabricated for the purpose of concealing the fraud which Dattatraya Anant had committed by misappropriating the moneys which he had already received from the rayats. It is also clear that the fabrication of these documents would enable Dattatraya Anant to conceal the fraud by making his successor Dattatraya Hari believe that the remittances were made to the Taluka Treasury though they were not in fact made. This was a clear advantage to Dattatraya Anant and in securing him that advantage, the respondent, on the facts proved, clearly helped him by making the false documents.

12. The learned Sessions Judge has based his conclusion of acquittal on the ground that u/s 463 there is no intent to commit fraud if the intention is merely to conceal the fraud which has already been committed.

13. In this view he is supported by the decisions of the Allahabad High Court: see Empress of India v. Jiwanand (1882) 5 All. 221; Empress v. Mazhar Husain (1883) 5 All. 553; Queen-Empress v. Girdhari Lal (1886) 8 All. 653 On this point, however, the

Madras and Calcutta High Courts have taken a different view: see the cases of Queen-Empress v. Sabapati (1888) 11 Mad. 411; Lolit Mohan Sarkar v. Queen-Empress (1894) 22 Cal. 313 and Emperor v. Hash Behari Das (1908) 35 Cal. 450. After considering these cases, I agree with my learned brother in thinking that the cases in Madras and Calcutta have been rightly decided, and I am prepared to accept the interpretation therein put upon the expression "intent to commit fraud" and the word "fraudulently". I think that it is a fraud to conceal a fraud and to make the party concerned believe that no fraud has been committed. Any document made with the intention of advancing such a purpose is made fraudulently and with intent to commit fraud. The documents in question were clearly made for the purpose of concealing the fraud committed by Dattatraya Anant and with a view to induce a belief in the mind of Dattatraya Hari that no fraud had been committed. The accused is, therefore, clearly guilty u/s 467, Indian Penal Code.