

(1947) 08 MAD CK 0018
In the Madras High Court
In Re: E.K. Krishnan

Date of Decision : 11-08-1947

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1948 Mad 268 : (1948) ILR (Mad) 578 : (1947) 60 LW 690 : (1947) 2 MLJ 380

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant has been convicted by the Chief Presidency Magistrate, Egmore, of an offence punishable u/s 420 of the Indian

Penal Code, on three separate counts; and on each count, he has been sentenced to one year's rigorous imprisonment and a fine of Rs. 100, the sentences of imprisonment to run concurrently.

2. The charge relates to three offences committed within the course of a year, from the nth December, 1945, to the 16th April, 1946, all of the

same description. The gravamen of the charge is that the appellant used to approach persons desirous of obtaining licences for the driving of cars

and other vehicles and promise them, that if they would give him a sum of money, (Rs. 35 in one case) he would procure them licences without the

necessity of their undergoing any test. The customary procedure to be adopted in a genuine application would be for the applicant to obtain a

challan for Rs. 2 and submit an application with that challan, a photograph, and a medical certificate, for a licence. If the application is in proper

form, the applicant will have to submit to a test which would be carried out by the Motor Vehicles Inspector, who, if he is satisfied with the

applicant's skill, will send the application back to the office of the Deputy Commissioner, Traffic Department. The applicant will then have to pay

another Rs. 5, whereupon an order for the issue of a licence will be made. The evidence is to the effect that this procedure was not adopted in the

cases under charge and that the appellant, who was an assistant to the Traffic Head Constable, arranged everything for the applicant, filled in his

form, got a certificate attached to the application forged, filled it in as if the test had been completed, himself made an entry in what is known as the

Test Register and then got the application sent to the various officials in the office upon which the licence was in due course granted.

3. No less than 7 drivers were examined, who all deposed that they were approached by the appellant, who took from them various sums of

money and promised to secure licences for them. The requisite entries in, the Test Register were made by the appellant; and with the exception of

one case, the signature in the certificates purporting to be granted by the Motor Vehicles Inspector were forged. P.W. 16, an Additional Motor

Vehicles Inspector, and P.W. 17, a Traffic Inspector who was officiating as a Motor Vehicles Inspector, also deposed that with the one exception

above referred to, the signatures purporting to be theirs on the certificate were not theirs. It is argued that the evidence of the drivers is not worthy

of credence, because they were in some measure accomplices. The statements made by them, however, were against their own interests ; and it is

most unlikely that if they had been duly examined and found to be fit to drive, they would be willing to depose that they had not been submitted to

a test. Moreover, their evidence is supported by the evidence of P. Ws. 16 and 17, that the certificates were not in fact signed by them. We are

therefore satisfied that their evidence is true. It is true that evidence has not been produced to speak to every one of the steps between the

preparation of the application and the granting of the licence ; but in view of the proved part played by the appellant, there can be little doubt that

he was responsible for the preparation of false certificates to the applications and after entry had been made in the Test Register by himself, he had

put the applications in the necessary place in order that they might be dealt with in due course by the officials concerned. Once an application

showed that the applicant had been tested, that his photograph and a medical certificate were attached, that he had paid everything that is

necessary, and that his application was in order, a certificate would necessarily follow.

4. Cheating is defined in Section 415 of the Indian Penal Code, in these words:

Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent

that any person shall retain any property, or 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".

It is seen from this definition that there are two principal ways in which the offence may be committed. The first is by fraudulently inducing a person

to deliver property, and the second is by intentionally inducing a person to do or omit to do anything which he would not do or omit if he had not

been so deceived and which act or omission is likely to cause damage or harm to that person in body, mind, reputation, or property. It is not

necessary to say very much with regard to the second class of cheating. Mr. Sivakaminathan for the Crown Prosecutor argues that the act of

granting a licence was likely to cause damage to the reputation of the licensing officer and to harm the public through the grant of a licence to a

person who had not been found fit to drive. Although this argument derives some support from an obiter dictum of Benson, J., in *Kotamraju*

Venkatarayudu v. Emperor I.L.R.(1905) Mad. 90 we are of opinion that the possible injury to the licensing officer's reputation and the possible

harm to the public are causes too remote to be taken account of.

5. There remains for consideration the definition of the first class of cheating. Before the appellant can be found guilty under this part of Section

415, it is necessary to prove, firstly, that the licensing officer was fraudulently or dishonestly induced to part with the licence and, secondly, that the

licence is property. We agree with Mr. Sundararajan that "fraudulently" and "dishonestly" imply some idea of wrongful loss to a person or wrongful

gain ; but we are satisfied that the act done was fraudulent in that it procured an advantage to the appellant. It is not necessary that the appellant

should directly gain financially by inducing the licensing officer to part with the licence ; although we think that he did. In the case above referred to,

Kotamraju Venkatarayudu v. Emperor I.L.R.(1905) Mad. 90 the learned Judges considered at considerable length what has to be proved to

establish that an act was done fraudulently. They quoted with approval a passage from Sir James Stephen's "History of the Criminal Law of

England", Volume II, page 121 in which we find:

A practically conclusive test of the fraudulent character of a deception for criminal purposes is this : Did the author of the deceit derive any

advantage from it which could not have been had if the truth had been known ? If so, it is hardly possible that the advantage should not have had

an equivalent in loss or risk of loss to some one else, and, if so, there was fraud.

They also refer with approval to a dictum of Banerji, J., in Queen-Empress v. Mohamed Saeed Khan I.L.R.(1898) All. 113 to the same effect and

to a passage in Haycraft v. Craesy (1801) 2 East. 92 accepted by the Bombay High Court in Queen-Empress v. Vithal Narayan I.L.R.(1889) 13

Bom. 515 (Note) where fraud is defined thus:

by fraud is meant an intention to deceive whether it be from any expectation of advantage to the party himself or from illwill is immaterial.

It is clear from this and from other cases which have considered the meaning of fraud that fraud is committed if any advantage is expected to the

person who causes the deceit. It is argued here that the appellant did not get any advantage from his deceit, because he had already received illegal

gratification from the licensee and he received no further benefit from the issue of the licence. The act of granting the licence cannot however be

divorced from what went before. The appellant entered into an agreement with the licensee to give him a certificate if the licensee gave him a sum

of money. In order to fulfil his agreement it was necessary for the appellant to obtain a licence from the licensing authority. He procured that licence

from the licensing authority and was thereby enabled to fulfil his agreement. It seems to us that it was an advantage to the appellant to be able to

fulfil his agreement for if he had not done so, it is unlikely that the would-be licensee would have taken no further steps. The appellant could not,

with impunity, have taken from different people sums of money, promising to procure licences for them, and taken no steps to acquire them. If he

took the money and in order to fulfil the agreement deceived the licensing authority and obtained licences, it seems to us that he derived an

advantage, and so his act in procuring the licence was a fraudulent one.

6. The further question is whether the licence was property. It is not denied that

the licence was property in the hands of the licensee. It is argued that it did not become property until it reached the hands of the licensee and that when it was in the possession of the licensing officer as well as when it was in the possession of the appellant it was not property but merely a worthless piece of paper. We are prepared to agree that not every tangible object may be property. A piece of discarded rubbish thrown away in the street is perhaps not property ; but we do not think that a licence can be placed in the same category. It is true that it had no monetary value to the licensing authority ; but apart from the intrinsic value of the paper on which it was written it had a substantial potential value. As soon as the licence reached the hands of the licensee, it had an actual value ; but even before it reached his hands, it was of value to the appellant, because without that licence he would have been unable to fulfil his agreement and to have retained the money that was given to him. It seems to us that any object that is of value to one person cannot cease to be property because it passes into the hands of a person who has no use for it. Nor can it be said that an object becomes property only when it comes into the hands of some person who has an actual use for it. For example, if A were to make out a cheque in favour of B and keep it in his drawer with the intention of giving it to B when he met him, could it be said that the cheque was not the property of A while it was in his drawer, merely because it was of no value to A as long as he retained it ? The licencing authority was not willing to part with the licence except to the person in whose name it was issued and he was parting with it for valuable consideration paid by the licensee. We do not therefore think that because to the licensing authority the licence was of little or no actual value it was not property.

7. It is pleaded on behalf of the appellant that the sentence should be reduced in view of the circumstance that the appellant has lost his employment. We however cannot lose sight of the fact that the appellant, as a public servant, had a special responsibility to the public. We do not therefore: find sufficient reason for interfering with the discretion exercised by the Chief Presidency Magistrate.

8. The appeal is dismissed.