

(1926) 08 MAD CK 0076
In the Madras High Court

Mooka Pillai and Another

APPELLANT

Vs

King-Emperor

RESPONDENT

Date of Decision : 16-08-1926

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1927 Mad 444 : (1927) 25 LW 220

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—The petitioners seek to revise the sentence and judgment of the Sessions Judge of Trichinopoly Division in C. A. No. 14 of 1925--imprisonment till the rising of the Court and Rs. 100 fine u/s 420 of the Indian Penal Code on the ground that they have already been acquitted of the same offence.

2. The complaint is that the petitioner sold certain property to the complainant and induced him to part with the sale amount by cheating him into the belief that the property was unencumbered. The same transaction was the subject of trial in C. C. No. 81 of 1923 on the file of the Court of the Sub-Divisional Magistrate of Trichinopoly when complainant said that he was cheated into the belief that petitioners would make a deposit in repayment of certain debts.

3. In a charge of cheating the complainant must establish that he was deceived, and thereby dishonestly induced to deliver property. The, question is whether he must disclose all the evidence of deception at the first trial or if he can institute a series of trials each based upon different evidence of deception.

4. The offence for which the petitioners were originally tried was that of deceiving the complainant and dishonestly inducing him to deliver property. They were acquitted of that offence. Therefore Section 403 of the Code of Criminal Procedure must be held to apply. The mere fact that complainant is prepared to adduce fresh evidence of deception would not make it a different offence. The case is not dissimilar from that reported in Emperor v. Mian Jan [1906] 28 All.

313 There a person had been convicted u/s 411 in respect of certain property stolen from one Ram Sarup and was charged again with receiving different property stolen at the same theft. It was held that the second trial was barred by Section 403. As in the present case fresh evidence was to be adduced of the same offence. That the petitioners were not tried on the second occasion for a distinct offence will become apparent if one assumes that all the facts were disclosed at the outset and considers how far Sections 233 to 235 are applicable. They would not be tried twice on two charges: (1) that they cheated by promising to make a deposit; (2) that they cheated by concealing encumbrances. Nor would they be charged with committing two offences of the same kind within a twelvemonth; nor that they had committed two offences in the same transaction. They would simply be discharged with one offence as provided by Section 233 for having cheated in such and such manner.

5. The Court of trial considered and rejected this plea u/s 403; yet although it found petitioners guilty, it practically acquitted them. It found that the petitioners had fraudulently obtained Rs. 3,000 from the complainant, and then fined them Rs. 100 leaving them the gainer by Rs. 2,900. No reason is advanced for this extraordinary sentence, except that in evading the statutory provision that a convict u/s 420 of the Indian Penal Code must be imprisoned. The Magistrate remarks:

I do not think that any substantive sentence of imprisonment is called for in this case except to satisfy legal requirements.

6. It is to satisfy legal requirements that the Magistrate holds his office, and his treatment of the case is quite unwarranted. Nor does the observation of the appellate Judge "the sentence is if anything lenient" adequately appraise the Magistrate of his fault.

7. Thus the sentence of the lower Courts cannot be supported, and must be reversed, but to all intents and purposes it was a nullity as originally pronounced.

8. The petitioners are acquitted and the fine ordered to be refunded.