

(1985) 05 AHC CK 0020
In the Allahabad High Court

Shyam Sunder Gupta and Another	Vs	APPELLANT
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 01-05-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 420

Citation : (1985) CriLJ 1674

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Judgement

V.P. Mathur, J.—Both these revisions, which have been heard together are directed against the judgment and order passed on 14-5-1982 by Mr. U. S. Pandey, the then IV Addl. Sessions Judge, Mirzapur. The learned Judge was disposing of Criminal Appeal No. 4 of 1982, which had been filed in his Court against the judgment and order passed on 22-12-1981 by the 1st Additional Munsif Magistrate, Mirzapur in Case No. 69 of 1981. The learned Munsif Magistrate convicted Shyam Sunder Gupta and Raj Kumar Gupta u/s 420 read with 34, I.P.C and sentenced each one of them to one year's rigorous imprisonment. In appeal, the learned Additional Sessions Judge maintained the conviction, but altered the sentence by imposing a fine of Rs. 1000/- on each one of the accused persons and in default making the defaulter liable to three months' rigorous imprisonment, and also punishing them with sentence of imprisonment till the rising of the Court. The contention on behalf of the revisionists of Criminal Appeal No. 915 of 1982 namely Shyam Sunder Gupta and Raj Kumar Gupta is that the order of conviction is wrong and should not have been passed and cannot be justified, as no case u/s 420 read with 34, I.P.C. is made out. The contention on behalf of Ramapati Pandey, who is the complainant revisionist of Crl. Revision No. 1536 of 1982, is that the sentence awarded by the learned Additional Sessions Judge is inadequate and should be enhanced.

2. I have heard the learned Counsel on both the sides. It is undoubted that so far as points of fact are concerned, they stand concluded by the findings of two

Courts below, and this Court will not interfere with the same, but only question of law can be considered. So far as the question of enhancement of sentence is concerned, it is a legal point and will have to be considered in the light of the circumstances of the case.

3. The established case is that Ramapati Pandey has got a son Rama Shankar. This young man was out of job and so Ramapati Pandey was keen to see that he was somehow fixed. Through the intervention of a common friend namely Chinta Mani Tewari, he came into contact with Shyam Sunder Gupta and his son Raj Kumar Gupta. The first meeting took place in village Baraudha. During the course of subsequent meetings Ramapati Pandey made a mention to Raj Kumar Gupta and his father Shyam Sunder Gupta about the unemployed state of his son and about his anxiety in this matter. It is said that the two accused persons told Ramapati Pandey that it would be better if he put his son Ramashankar in Coal Business. When Ramapati Pandey expressed that he had no experience of such a business, he was informed that the accused persons were familiar with certain high up of Bina Colliery and that they would try to obtain a , quota or license for Coal Depot for Ramashankar. They also gave out that a sum of Rs. 3000/- will be needed for this purpose. Ramapati Pandey expressed his inability to pay such a huge amount and said that he was only possessed of Rs. 2000/-. The two accused persons agreed to do his job for that money, and ultimately in presence of a number of persons including Tilakdhari, Chintamani Tewari and Ramashankar, a sum of Rs. 2000/- was paid to Raj Kumar Gupta and he counted the money and handed it over to his father. Ramapati Pandey understood that the accused persons will try to obtain for Ramashankar from Bina Colliery some sort of license to run a Coal Depot and to get a quota fixed. It is contended that they did not do so and also did not return the money but made themselves scarce and were not available in spite of repeated attempts by Ramapati Pandey. It was only after a long time that Ramapati Pandey by chance met Shyam Sunder Gupta at the Railway Station on 15-4-1981, when he demanded his money back, Shyam Sunder Gupta told him that there was no such money transaction between them and that he should keep quiet otherwise he might be properly dealt with. Then Ramapati Pandey .sent a complaint to the Superintendent of "Police concerned by registered post and when no action was taken, a complaint was filed. It may be mentioned here that the accused persons did not take any stand whatsoever except merely saying that the whole of the prosecution case is false and they have been falsely implicated because of Ranjish, which they had with some other person, under whose influence Ramapati Pandey was working. They did not come with the case that they had obtained a sum of Rs. 2000/- and that they had tried to do the job which they had promised, but could not accomplish it for one reason or the other. They simply denied the whole story.

4. After perusing the entire evidence on the record, the learned Magistrate who tried this case, came to the conclusion that the prosecution story was completely true and things had happened in the manner in which the prosecution alleges.

The learned Additional Sessions Judge, when he heard the appeal after perusing the record and considering the entire evidence on the record, also came to the same conclusion. This being a finding of fact returned by the two Courts below one after the other, is now final between the parties and cannot be agitated before this Court and actually has not been agitated. The question is whether even with this evidence, a case u/s 420 read with 34, I.P.C. would still be made out. The basic ingredient of the offence u/s 420 of the I.P.C. would be cheating with intention to cheat from the very inception. In other words if the evidence on the record is able to establish that the intention of the two accused persons right from the very beginning was never to do that which they had promised, but simply to obtain a sum of Rs. 20007- and run away with it, then the charge u/s 420 read with 34, I.P.C will be deemed to have been made out. But if it can be inferred that in the beginning they had no such intention and when they obtained the money, they had an idea of helping Rama Shankar by trying to obtain Coal quota or permit for him, then they will not be guilty u/s 420, I.P.C. In that case, it will be a case of simple civil liability and not a case of criminal liability,

5. In the case of Shivnarayan Kabra Vs. The State of Madras, , it has been held that "for an offence u/s 420, I.P.C. accused need not make false pretence in express words. The same may be- inferred from all circumstances including the conduct of the accused in obtaining property." The facts of this case are not similar to the facts of the present one. But the Rule of law that all the circumstances including the conduct of the accused have to be looked into in order to come to a conclusion, has been enunciated. There is another case, upon which reliance is placed by the learned Counsel for the accused persons and it is the case of State of Kerala Vs. A. Pareed Pillai and Another, . The circumstances and the facts of this case are also entirely different from the one which is before me, but the proposition that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of the making of the promise and such dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise is very much valid even for the present case.

6. In the case of Mobarik Ali Ahmed Vs. The State of Bombay, it has been held that the question whether the evidence discloses only a breach of civil liability or a criminal offence u/s 420, I.P.C. depends upon whether the complainant in parting with his money acted on the representations of the accused and in belief of the truth thereof and whether those representations when made were in fact false to the knowledge of the accused and whether he had a dishonest intention from the outset. If the Courts below find these facts specifically against the accused in categorical terms, the above questions of fact will not be open to challenge in the Supreme Court in an appeal on special leave.

7. In the light of this law, when we peruse the evidence which is on the record and which has been accepted as true and correct by the two Courts below, it appears that the two, accused persons represented that they had influence on

some of the officers of the Bina Colliery and they obtained a sum of Rs, 20007- with the promise that they will approach those officers and get a permit, licence or a quota of coal in the name of Rama Shankar, It is not disputed that after obtaining this amount, no such permit, licence or quota could be obtained in the name of Rama Shankar. This in itself will not be sufficient to hold that the accused were having an intention to cheat right from the inception. They had an opportunity to explain their conduct. They could say and adduce evidence in support of that contention that they tried to approach and convince some of the officers but failed. If such an evidence had been adduced, no intention to cheat from the very inception could be inferred. All the circumstances of the case and the conduct of the accused would be relevant in the present case to come to a conclusion. In the absence of any such explanation by the accused persons and in the face of their defence that they did not obtain any money; that they never made any promise and in the light of findings of fact recorded by the Courts below that they had obtained Rs. 20007- on the promise to approach the officers of Bina Colliery and get a Coal quota fixed in the name of Rama Shankar, it will have to be inferred that right from the inception they had a dishonest intention. Had it not been so they would have definitely tried to keep up their promise. Towards that end, they could have approached some of the officers as they had promised. Even if after approaching them, they had failed, their criminal liability would have ended. They have not however done anything like this. It means therefore that they did not keep their promise, but they also obtained money with intention never to keep that promise. Under these circumstances, I am in agreement with the two courts below that a case u/s 420 read with 34 of the I.P.C, was made out against both the accused namely Shyam Sunder Gupta and Raj Kumar Gupta. Their convictions were therefore rightly returned by the two courts below.

8. The question of sentence arises for consideration. It is in evidence that one of the accused namely the father Shyam Sunder Gupta has suffered a paralytic stroke. It is also in evidence that the other co-accused namely Rajkumar Gupta is a young man and the learned Judge is of the view that he might have acted under the influence of his father. He has therefore taken a compassionate and lenient view of the matter. The law requires that if one is convicted u/s 420, I.P.C. he should be punished with imprisonment and may also be liable to fine. Therefore, some sentence of imprisonment is a must. In this case on humanitarian ground as the then learned Additional Sessions Judge has mentioned in his judgment the sentence of imprisonment has been limited till the rising of the Court. There is nothing wrong or illegal about it, He has also imposed upon the accused persons a substantial amount of fine of Rs. 1,000 each and in default of the same, he has directed the defaulter to undergo rigorous imprisonment for three months. This is perfectly justified.

9. Under these circumstances, there would be no justification for me to enhance the sentence.

10. In the result, both the revisions stand dismissed. The record shall go back to the Court below. The two accused revisionists are allowed one month's time from today to deposit the amount of fine, failing which the default clause will be enforced.