
(1923) 08 CAL CK 0036
In the Calcutta High Court

Superintendent and Remembrancer of Legal Affairs	APPELLANT
Vs	
Manmatha Bhusan Chatterjee and Others	RESPONDENT

Date of Decision : 21-08-1923

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1924 Cal 495

Hon'ble Judges : Suhrawardy, J;Richardson, J

Bench : Full Bench

Judgement

Richardson, J.—The four accused were tried by the Magistrate of Asansol on two charges imputing criminal conspiracy to cheat the Best Indian Railway Co. The charges were laid u/s 420 read with Section 120-B and u/s 417 read with Section 120-B of the Penal Code. That is to say, on the same evidence the accused were charged with conspiring to cheat the East Indian Railway Co., in each of the two ways defined in Section 415. The Magistrate convicted the accused on both charges, but passed sentence only under the charge which refers to Section 420-B. He sentenced all the accused to imprisonment till the rising of the Court. In addition, he imposed on the accused Biseswar and Manmatha a fine of Rs. 300, each and on Ramdin Lal and Hriday Narain a fine of Rs. 500 each.

2. On appeal to the Sessions Judge of Burdwan, the convictions and sentences were set aside and the accused were acquitted.

3. We have now to deal with an appeal by the Local Government from the Sessions Judge's judgment of acquittal.

4. The charges relate to the period between February and May, 1920, during which the supply of Railway wagons for the transport of coal was strictly controlled and regulated by Government under the Defence of India Act and Regulations. The number of wagons to which a colliery was entitled for the supply of coal to a particular consignee was fixed by a Government Officer, known as the Coal Transport Officer (C.T.O.), and under the Regulations no

colliery could obtain, and the Railway could not supply to any colliery more wagons than the number so fixed. The distribution of wagons depended in the first instance on a division of the purposes for which coal was required into five classes in order of preference as follows:

1. R.I.B., for the Royal Indian Marine.
2. Loco., for Railway purposes.
3. Super X, for essential industries.
4. X, for the more favoured mills and factories.
5. Public, for private consumption and the smaller industries.

5. The demands for wagons was dealt with on the principle that the needs of a superior class must be met in priority to those of any inferior class. While, therefore, Government control nominally extended only to the first four classes, it was not till the wagons required for those classes had been provided that the Railway could make any wagons available for the public class. In the present case we are mainly concerned with wagons required for the purposes denominated X.

6. In order to understand the charges, some account, as brief as possible, is necessary of the complicated machinery by which control was maintained.

7. A consumer, having contracted with a colliery for the purchase of the coal, had to apply to the C.T.O. for the requisite number of wagons, stating the purpose for which the coal was required and the name of the colliery. The C.T.O. might refuse the application or sanction the supply of such number of wagons as he thought fit. The number might be fixed once for all, say six wagons, or it might be so many wagons periodically, as one daily or 4 weekly. If wagons were sanctioned, a copy of the sanction was sent to the Coal Manager of the East Indian Railway in Calcutta and a copy also to the Manager of the colliery and to the consumer. The Coal Manager then intimated the sanction to the District Traffic Superintendent (D.T.S.) at Asansol by a letter, called the letter of authorization, of which again a copy was forwarded to the colliery.

8. In the office of the D.T.S., there were clerks called "checkers" who dealt with different areas or sections served by the Railway. On the receipt of a letter of authorization, it was the duty of the checker concerned to enter such details as the following in a "special ledger," the date of the entry, the class (e.g., X), the number of wagons sanctioned, the name" of the colliery, and the date and number of the letter of authorization.

9. On the strength of their copy of the letter of authorization the colliery became entitled to indent on the D.T.S. for the number of wagons sanctioned. On receipt of the indent it was the checker's duty to compare it with the entries in the "special ledger." If he found the indent in order, he made a note upon it himself showing; how many wagons the indenter was entitled to.

10. It was the daily duty of the D.T.S. to distribute the available wagons between the different classes. This he did by an order fixing the percentage of the demand for an inferior class which could he-complied with. If he allowed, say 50" per cent, of the demand for X class, each indentor for wagons for that class would receive half his sanctioned number, of course, omitting fractions.

11. Thus, when the indent from the colliery which we are trying to follow, passed from the checker to another clerk called the "poster," it was the latter's duty - a purely mechanical one - to enter in a form called the Indent Allotments Sheet the number of wagons to be allotted in full or partial compliance with the indent, as the case might be, according to the percentage order of the D.T.S. This sheet might of course show the allotments made to more than one colliery.

12. From the Allotment Sheet other documents were prepared-

- (1) the Pilot Guard's Memo, by one clerk,
- (2) the Wagon Chalan for each colliery by another clerk, and
- (3) the Special Supply Statement by a third clerk.

13. The Pilot Guard's Memo, and the Wagon-Chalans were both made over to the Pilot Guard. The Wagon Chalans which showed the number of wagons allotted and the class were made over by the Pilot Guard to the named collieries when the wagons were taken to the colliery sidings. In the result, therefore the Wagon Chalan corresponding to any particular indent became the authority which entitled the colliery to load the allotted wagons with coal.

14. The Special Supply Statement went first to the weigh bridge X clerk who entered upon it the identification numbers of the wagons to be supplied to each colliery. Having done so, the statement went to the checker in the office of the D.T.S., who then entered in his Special Ledger the actual number of wagons supplied to each colliery in his section. It was the checker's duty to keep count of the balance, if any, still due under the relative letter of authorization and so to check subsequent indents referring to that letter. The colliery, as I gather, might go on indenting till the full number authorised had been supplied.

15. The whole process of allotment would seem generally to have been carried out on the day the indents were received, the wagons being taken to the sidings on the following day.

16. Having outlined the course of business, I return to the accused. Manmatha and Biseswar were checkers in the office of the D.T.S. at Asansol. Manmatha was in charge of the down Asansol Pilot section and Biseswar, of another section. Ram Din Lal was the Manager of the B.P. Singh Colliery within Manmatha's section. Hriday Narain was a broker or intermediary standing between the colliery and consumers.

17. So far there is no dispute; but I now come to the controversial part of the case. At the trial, evidence was led to show the part which each of the accused

played in the alleged criminal conspiracy. On that evidence the Courts below came to substantially the same conclusions of fact. They differed as to the result. The learned Sessions Judge, overruling the learned Magistrate, held that the facts found did not disclose the offences charged. The accused make no admissions as to the facts, and the appeal before us has so far been argued with reference only to the questions, mainly, questions of law, arising out of the difference of opinion between the two Courts. For the purposes of the present discussion, therefore, we assume, without deciding that the facts have been correctly found by those Courts.

18. To simplify matters, I will deal mainly with the cases of Manmatha and Ram Din Lal. As against Manmatha, it is found that in various ways, by manipulating his Special Ledger, or by making unauthorized entries in other documents, he procured the supply to the B.P. Singh Colliery of more wagons than the colliery was entitled to under three letters of authorization issued by the C.T.O., to three different consumers. Without entering into unnecessary details it is found that in one or more instances Manmatha-

(1) altered the original entries in his ledger relating to a letter of authorization so as to increase the supply authorized by the C.T.O., e.g., by substituting two wagons daily for two weekly, the number actually authorized,

(2) altered the original entries as in (1) and supported the alteration by adding a reference to a fictitious or non-existent letter of authorization to which a false number and date were assigned.

(3) passed an indent for wagons in excess of the number actually authorized,

(4) interpolated in the Allotment Sheet with which he had no business to meddle,, an entry showing wagons allotted to the colliery which had not in fact been allotted,

(5) altered the class for which the supply of wagons was authorized by changing X into super X,

(6) omitted to post in his Special Ledger wagons actually allotted and supplied.

It is found that Rarn Din Lal, the Manager of the colliery, must have been in league with Manmatha, or otherwise he would not have submitted indents for wagons" in excess of the number specified in the "letters of authorization of which in the ordinary course he had received copies.

19. As regards the checker, Biseswar, it is found that in several instances he co-operated with Manmatha in procuring unauthorized wagons for the colliery. It is also found that the broker Hriday Narain was a party to the conspiracy.

20. On these findings it is contended for the Crown that the accused, more especially Manmatha and Ram Din Lal, were rightly convicted by the Magistrate under both the charges.

21. The charges run as follows:

(1) That you...conspired with each other and other persons unknown to cheat the East Indian Railway by deceiving the said Railway and by fraudulently and dishonestly inducing the same Company to deliver through the office of the D.T.S., Asansol, to B.P. Singh Kalipahari Colliery for the carriage of coal or soft coke a larger number of wagons the property of the E.I.R. than the said colliery was entitled to receive and thereby committed an offence punishable under Sections 420/120-B of the Indian Penal Code.

(2) That you...conspired with each other and other persons unknown to cheat the E.I.R. Co. by deceiving the said Railway and so intentionally inducing the same Company to supply through the office of the D.T.S., Asansol, to B.P. Singh Kalipahari Colliery for the carriage of coal and soft coke a larger number of wagons than the said colliery was entitled to receive and which the said Railway would not do (sic) if not so deceived and which would cause or was likely to cause damage or harm to the said Railway in its reputation and thereby committed an offence punishable under Sections 417/120-B of the Indian Penal Code.

22. There is no doubt about the existence of a criminal conspiracy as defined " in Section 120-A of the Code provided the overt acts committed by the two checkers amount to cheating. But, before considering the definition of that offence in Section 415, there are one or two preliminary observations to be made.

23. In the first place, I have no doubt that this prosecution was launched because the authorities of the East Indian Railway Company strongly suspect that the checkers, Manmatha and Biseswar, were bribed by the colliery. If the facts have been correctly found, I sympathize largely both with this suspicion and with the desire that the parties concerned should be brought to book. Bribery and corruption and underhand practices of all kinds are constant enemies to civil progress. But it has still to be stated that bribery is not proved. It is conceded for the Crown that there is no tangible evidence of money passing from the colliery to the checkers and that so far the case rests on suspicion only. The observation, it is hardly necessary to add, does not excuse the accused if their proved acts constitute an offence under the Code.

24. Secondly, it is not suggested that the conduct of the accused caused any loss of money to the East Indian Railway Company. The colliery paid for the use of the wagons supplied to them at the usual rates. The Railway Company therefore was not defrauded. But a fraud was committed upon the Defence of India Act and Regulations and it was also argued for the Crown that the conduct of the checkers was dishonest in the sense that they intended to procure some wrongful gain or advantage for the B.P. Singh Colliery at the expense of other collieries. No point was made for the defence in this connection and for the purpose of the first charge, I will take it that, on the facts found the checkers acted fraudulently or dishonestly or both fraudulently and dishonestly as those

words are used in the Code.

25. Thirdly, as to the frame of the charges, so far as they speak of the East Indian Railway being cheated, Mr. Sanyal for the defence took the exception that an inanimate object cannot be cheated or have reputation. But the charges also refer to the Company and, however loose the language may be, no one could have supposed that the expression "East Indian Railway" meant the lines of rail and not the Company. Further, we were told, and I will assume that there is evidence on the record, which, if accepted, shows that responsible officers of the Company in its Asansol Office were deceived and induced either to allot wagons to the B.P. Singh Colliery which would not otherwise have been allotted or to make out Wagon Chalans for the colliery which would not otherwise have been made out. If that be so, the evidence is sufficient to support the allegations in the charges that the Railway Company was by reason of deceit induced to act in a certain way. A corporation, such as a Railway Company, is an artificial person, and its acts are those of the agents who act for it and in its name. It would, however, have been more regular if the charges had been specific in this respect. See *P.E. Billingham and Others Vs. King-Emperor*, .

26. I come now to the two forms of cheating defined in Section 415. They are as follows:

(1) Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person...is said to cheat.

(2) Whoever by deceiving any person intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was 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.

27. In the first of these forms cheating is punishable u/s 420 which says:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person...shall be punished with imprisonment, etc.

28. In the second form the offence is punishable under the more general Section 417 - "whoever cheats shall be punished with imprisonment, etc."

29. As to the charge which assigns cheating in the first form, the question principally discussed was whether the taking of the wagons to the colliery siding in order that they might be loaded by the colliery with coal was a delivery of property to the colliery within the meaning of the definition. As to the colliery siding, there is no evidence that it belongs to the colliery; on the contrary the evidence is that several collieries may use the same siding. In that state of the record we must, I think, assume that the colliery sidings belong to the Railway Company and not to the collieries. It follows that the wagons never leave railway land.

30. Property, as it appears to me, is delivered when something in the ownership

or possession of one man is delivered into I the ownership or possession of another. Railway wagons are no doubt "property." They are the property of the Railway Company. In my opinion, however, they are not as property delivered to a colliery merely by being taken to the colliery siding. No doubt the colliery is entitled to load the wagons but the amount of control exercised for that purpose seems to be of a very limited character. It is said that collieries sometimes exchange wagons, but the evidence on this point is unsatisfactory and it is certainly not shown that the practice, if it exists at all, is authorised. On the materials available, I am unable to say that the wagons ever go out of the possession and control of the Railway Company.

31. Though some reference was made in the argument to *R. v. Kilham* (1870) 1 C.C.R. 201 of *B. v. Chapman* (1910) 4 Cr. App. Rep. 276 we have not considered whether the delivery of the Wagon Chalans to the colliery amounted to a delivery of property within the meaning of the section. The case against the accused has not been put or investigated in the Courts below on that basis. The charge says that wagons, the property of the Railway Company, were delivered to the colliery. In my opinion the charge so framed is not substantiated and the accused are entitled to an acquittal upon it.

32. There remains the charge of cheating in the second form. In that form the offence does not necessarily involve fraud or dishonesty. The words of the definition are undoubtedly wide, and if pushed to the full limit of their meaning, might embrace acts which the man in the street would hardly regard as criminal offences. That observation, however, raises a question of the appropriate punishment in the particular case rather than of construction.

33. Clause 392 of Lord Macaulay's draft corresponds to the first part of Section 415. The second part would appear to have been added at some later date after the Code had left his hands and the hands of the Indian Law Commissioners. The illustrations throw no light on what is meant by damage or harm in body, mind or reputation and so far as such damage is concerned the offence is not very appropriately placed in the chapter of the Code relating to offences against property. The essence of the offence would seem to lie in the possibility of damage or harm being caused in the said respects or in property. Generally speaking, a criminal offence consists of an act done by the accused with a specific criminal intent or state of mind, constituting the *mens rea*. Difficulties, connected with the notion of causation common enough in other branches of the law such as tort, seldom arise. It is true that negligence is sometimes punishable as an offence, because it causes or is likely to cause hurt or injury to another (cf. Sections 279 and 280 and 284, 289 of the Code). But cheating in the second form has this additional peculiarity. The damage is to be caused by the person deceived to himself. Indirectly it may be, the damage is to result from the deceit, but immediately it is to result from the induced act of the person deceived. This no doubt explains why the word "injury," defined in Section 44 of the Code as any harm whatever illegally caused to any person in body, mind, reputation or

property," was not employed in Section 415.

34. It does not appear to be necessary that the resulting damage or likelihood of damage should have been within the actual contemplation of the accused when the deceit was practised. But authorities in this Court lay down:

(1) that the person deceived must have acted under the influence of the deceit, *Ramanath v. King-Emperor* (1905) 2 C.L.J. 524 and *Milton v. Sherman* 22 C.W.N. 1001;

(2) that the facts must establish damage or likelihood of damage *Baburam Bai v. Emperor* (1905) 32 Cal. 775;

and, (3) that the damage must not be too remote, *Mojev v. Queen-Empress* (1890) 17 Cal. 606, *Kishori Lal Chatterji v. Emperor* 9 C.W.N. 764 and *Mahadev v. Dhonraj* 12 C.W.N. 750.

35. On the point of remoteness of damage, there seems no sound reason why a definition which pre-supposes wilful deceit on the part of the accused should be too narrowly interpreted. The word "cause" doubtless excludes damage occurring as a mere fortuitous sequence, unconnected with the act induced by the deceit, except as every event is connected with preceding events in unending (chain. On the other hand, the definition, as it stands, is wide enough to include all damage resulting or likely to result as a natural consequence of the induced act. In *Mojev's* case 9 C.W.N. 764, however, the learned Judges said : "We think that the damage or harm must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom." I take it that these expressions mean at their lowest that the damage must be the direct, natural or probable consequence of the induced act.

36. In the present case, there is no question on the facts found that the act of the Railway Company in allotting an excessive or disproportionate number of wagons to the B. B. Singh Colliery was induced by the deceit practiced by the accused or some of them. The difficulty is as to the element of damage.

37. A corporation cannot well suffer damage in mind or body and the charge maintains that the Railway Company suffered damage not in property but in reputation. I will concede that an incorporated Company may have reputation for the good conduct of the business or undertaking of the Company, and that the Company's reputation may be quite distinct from that of any of its officers however highly placed. Under the definition, however, it is clearly not sufficient to say that the malpractices of the two checkers brought or tended to bring the administration of the Company into discredit. The question is whether the allotments of the excess wagons to one colliery caused or was likely to cause within the meaning of the definition, damage to the Company in reputation. It was argued very plausibly for the Crown that, under the Indian Railways Act, 1890, Section 42(2), "a Railway administration shall not make or give any undue or unreasonable preference to, or in favour of, any particular person," that the

East Indian Railway Company sets great store on its reputation for impartiality and that this reputation was affected or endangered by the allotment of the wagons. I will not say positively that the Railway Company suffered no damage to its reputation; but in view of the authorities I am disposed to conclude that this damage was too remote. It appears to me that the damage here complained of is indirect and ulterior rather than the direct, natural or probable consequence of the action which the Company was deceived into taking. The direct consequence of one colliery getting more than their fair share of wagons is that other collieries must suffer the disadvantage of getting less than their fair share. If it be said that a suit might have been brought against the Company for damages for undue preference, such a possibility u/s 415 would come under the head of damage or likelihood of damage to property and not of damage to reputation. A charge alleging damage or likelihood of damage to property would, I think, have been easier to support than the charge framed. For in my opinion in a case of the present description it is rather in the region of property than in that of mind and reputation that the natural and probable consequences should be looked for.

38. There is another aspect of the matter which ought not to be neglected. We are dealing with a criminal charge and the evidence adduced and the circumstances disclosed should be sufficient to satisfy the Court or a Jury that the damage complained of was caused or was likely to be caused. In this case, is there any more reason to say that the Company's reputation for impartiality suffered than to say that their reputation for efficiency of supervision suffered? We are dealing with a great Railway Company. Would any reasonable person suppose that the Company or the head officers or managers of the Company in Calcutta were parties to or connived at the special favour shown to the B.P. Singh Colliery? The general feeling would, I think, be that if a complaint were made to the Company, the Company would do its best to mend matters. The act of the Company would be attributed to mistake due to carelessness or pressure of business or, as the allegation here is, to the Company being misled by its subordinate staff. Error of this kind may occur in all business which is done on a large scale and a margin would be allowed for in judging of the conduct of the business.

39. Our attention was directed at any rate to some part of the evidence adduced bearing on the alleged injury to the Company's reputation. We were told that two articles appeared in the newspaper "Commerce" but they were not placed before us. We were shown an anonymous letter (received in the Calcutta Office. The oral evidence consisting of the opinions of certain witnesses on the subject is of more than doubtful admissibility. Without some further examination of the materials on the record and further argument, I should hesitate to assert that the allotment of the excess wagons to the B.P. Singh Colliery caused or was likely to cause any appreciable damage to the Company's reputation.

40. On the whole, I come to the conclusion "that the Sessions Judge was right in

acquitting the accused on both charges.

41. It was said in argument that it was difficult to make dishonest clerks account for their actions. If a state of things exists which imperils the due administration of the Railway Company, it would not, I think, be beyond the resources of the legislature to devise a remedy. Cf. *Sage v. Eicholz* (1919) 2 K.B. 171 and Section 477-A of the Penal Code.

42. In the result I am of opinion that this appeal should be dismissed.

43. Appeal No. 4 is governed by similar consideration and must also be dismissed.

Suhrawardy, J.

44. I agree.