

(1947) 07 MAD CK 0014
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

K. Bhimeswara Rao

RESPONDENT

Date of Decision : 23-07-1947

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1948 Mad 258 : (1948) 61 LW 223 : (1947) 2 MLJ 594

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—This is an appeal against the acquittal of the accused in C.C. No. 55 of 1946 by the Sub-Divisional Magistrate, Ellore. He

was charged with an offence u/s 420 of the Indian Penal Code for having dishonestly induced Kesaripalli Anjaneyulu, P.W. 1, and Umma

Janardhana Rao, P.W. 2, to deliver to him Rs. 1,000.

2. The accused was an auditor employed by P. Ws. 1 and 2 who were merchants jointly conducting tobacco business at Ellore to audit the

accounts of their firm, to prepare their Income Tax return and to look after their Income Tax affairs. He had been so employed by them for over

fifteen years. They sent their Income Tax return for the assessment year 1944-45 some time in August, 1944. The case for the prosecution is that

after the accounts were prepared for Income Tax purposes the accused represented to them that their income was such that they would become

liable to Excess Profits Tax and he undertook to see that they escaped such assessment if Rs. 1,000 was given to him to be paid as a bribe to the

Income Tax Officer. P.W.s 1 and 2 accordingly paid him Rs. 1,000 some time in January, 1945. Eventually there was an assessment order Exhibit

D-1, dated 12th January, 1945 and by that order they were not assessed to any Excess Profits Tax. Months later, P.W. 2 met P.W. 3, the

Income Tax Officer, Ellore, who was the Income Tax Officer on the relevant dates, and after a conversation which related to private matters, P.W.

2 asked P.W. 3 if he was in receipt of Rs. 1,000 sent through his auditor in the previous year. P.W. 3 denied having received any money from the

auditor. P.Ws. 1 and 2 then realised that they had been duped. P.W. 3 consulted his superior officers and on their advice he lay a trap to catch the

accused.

3. On 22nd September, 1945, he kept his Inspector, personal clerk and others in a room adjacent to the hall in which he was seated and asked

them to over-hear what passed in the hall. P.Ws. 1 and 2 and the accused came into the hall with the accounts. Then, as previously arranged, after

a pretence of examining the accounts, P.W. 2 said that P.W. 3 may finish the examination and that he would give him a bribe of Rs. 1000 as in the

previous year. P.W. 3 asked him what it was about and P.W. 2 told him that the accused had taken from them Rs. 1,000 in the previous year

stating that it would be given to the Income Tax Officer as a bribe. P.W. 3 then asked the accused about it. The accused replied that it was a

matter between them and that it was nothing. P.W. 3 then informed the accused that the whole truth of the matter was known and that the

accused* should immediately return the amount to them. The accused agreed. P.W. 2 brought an account book wherein an entry was made

showing a cash payment of Rs. 1,000. This entry was signed by the accused. This entry really amounted to a repayment of Rs. 1,000 alleged to

have been taken by the accused. The Income Tax Officer, P.W. 3 then recorded statements from the accused, the Inspector, his personal clerk

and others and sent a report to the Assistant Commissioner. On 4th April, 1946, P.W. 3 was directed by the Commissioner of Income Tax to

lodge a complaint against the accused before the Police ; and a complaint was filed accordingly.

4. The defence as set out in the statement made by the accused before the Magistrate was that though it was true that a sum of Rs. 1,000 was paid

it was not paid to be utilised for bribing the Income Tax Officer but it was paid as a reward for the services rendered by the accused in pursuance

of an agreement by which P.W. 2 proposed to pay him this reward if excess profit liability was avoided.

5. The Magistrate considered that the only point for determination was whether the accused received the amount as a reward or as a bribe for

P.W. 3. He held that the prosecution had failed to prove beyond reasonable doubt that the accused received the amount representing to P.W.s 1

and 2 that he would give it as a bribe to the Income Tax Officer. He came to this conclusion mainly because he considered that P.Ws. 1 and 2 on

whose testimony to a large extent the case for the prosecution depended were not reliable and could not be believed. He accepted as true the

entry in the account book of the accused against the date 29th January, 1945 (Exhibit P. 16 (b)). This date was long after the date of the

assessment order. It is common ground now that the payment of Rs. 1,000 was made by P. Ws. 1 and 2 and received by the accused in January,

1945. P.Ws. 1 and 2 did not give the definite date on which the amount was paid ; but it is reasonably clear from their evidence that according to

them the money was paid to the accused before" the order of assessment. On the other hand according to the accused the money was paid on

29th January, 1945 and the is sought to be supported by the entry in the account of the accused already referred to. If this entry were genuine

there can be no doubt that the case for the prosecution must fail. It is impossible to accept the story of P.Ws. 1 and 2 that the money was paid to

be offered as a bribe to the Income Tax Officer when long before the date of payment an assessment order had been made in their favour. I have

looked into the original account and the entry in question appears to me clearly an interpolation. There are blank spaces on the page in question

which would permit the making of an entry at any time and curiously enough immediately following the credit of Rs. 1,000 there is a debit of an

identical sum in connection with some other transaction. I think it extremely unsafe to act on this entry.

6. There is another ground also on which the plea of the accused must be rejected. In the account book of P.Ws. 1 and 2 there is no entry of the

payment of Rs. 1,000 to the accused either in the beginning of January, or on 29th January, 1945. If this payment, was as the accused would have

it, only for services rendered then surely it must have found a place in the accounts of the firm of P.Ws. 1 and 2 and admittedly it does not find a

place. It was pointed out by the learned advocate for the accused that according to P.W. 1's statement before the Income Tax Officer (Exhibit P-2)

the amount was paid out of his deceased's wife's cash lying in the safe. I doubt if this statement is admissible in evidence. But even if the money

had been paid from cash belonging to P.W. 1's wife, there would have been appropriate entries in the accounts of the firm because the payment

was certainly made on behalf of the firm. I have no hesitation in rejecting the plea of the accused that the amount was paid to him as a reward for

his services after the date of the assessment.

7. The Magistrate considered that P.Ws. 1 and 2 have no respect for truth and their evidence cannot be believed. He came to this conclusion

mainly because of several discrepancies in the evidence. These witnesses were deposing nearly an year after the alleged offence had been

committed ; and there are bound to be errors in their memory. I do not think much should be made out of the divergence of testimony as to

whether the accused told them in person or the accused made the representation through their clerk. Though I agree that these two witnesses are

not certainly of high integrity because they admittedly abetted the offence of the alleged bribing of the Income Tax Officer, still I do not think that

fact warrants a complete rejection of their evidence. In my opinion, their evidence, taken along with the evidence of P.W. 3 does lead to the

inference that the sum of Rs. 1,000 was paid by them to the accused to be utilised for bribing the Income Tax Officer.

8. Mr. V.T. Rangaswami Ayyangar, learned Advocate for the accused, raised an interesting point relying on the decision of the Bombay High

Court in Emperor v. Jani Hira 15 Ind.Cas. 793 that the money paid by P.Ws. 1 and 2 to the accused for an illegal object could not have been

recovered even in a civil suit and in respect of such money a criminal prosecution for cheating will also not be sustainable. I am not certain that the

amount could not have been recovered in a Civil suit. But even assuming it was not I do not consider that ipso facto no criminal prosecution can lie

if otherwise an offence under the Indian Penal Code is made out. The learned Advocate conceded that there was nothing in general exceptions

from which he can derive any support. It must then be on grounds of public policy. But I do not think it right to import considerations of public

policy in adjudicating on the criminal liability of an accused person.

9. I therefore differ from the Magistrate and hold that it has been established by the prosecution that a sum of Rs. 1000 was paid by P.Ws. 1 and

2 to the accused to be given as a bribe to the Income Tax Officer. Nevertheless in my opinion the accused cannot be held to be guilty of the

offence of cheating, because there is one essential ingredient which has not been made out in this case. According to P.Ws. 1 and 2 the accused

represented that he wanted the sum to be offered as a bribe to the Income Tax Officer. They also admit that they agreed to pay the amount for that

purpose. But it has not been conclusively established that at the time when the payment was made the accused did not intend to so utilise the

amount. It may be that the amount was not really paid to P.W. 3. But it has not been shown that the accused, when he induced P.Ws. 1 and 2 to

give him the money, never had any intention of attempting to bribe the Income Tax Officer. The accused might be foolish in assuming that he could

have bribed a public officer. But there is nothing to show that at the time when P.Ws. 1 and 2 delivered the property i.e., the money, to the

accused, there was an actual deceit in the sense that it was not the intention of the accused ever to try to utilise the amount in that way. For aught

we know, it may be the accused at the time thought that he might be able to achieve his object by resorting to illegal means. P.Ws. 1 and 2 whole-

heartedly agreed to such a proposal. Whether the accused was bound to return the money to P.Ws. 1 and 2 when he did not as a fact pay it over

to the Income Tax Officer and whether, on his failure to do so, P.Ws. 1 and 2 had a cause of action against the accused for the return of the

money, it is unnecessary for me to decide. It is enough to say that it has not been proved that at the time the accused made the alleged

representation he made it falsely and with the intention to deceive P.Ws. 1 and 2. In the absence of this ingredient, which I consider essential, it

cannot be said that the prosecution has established that the accused is guilty of cheating. On this ground I would support the order of acquittal

passed by the Magistrate.

10. It is only necessary for me to point out that the remarks made by the Magistrate against P.W. 3 were unwarranted and need not have been

made.

11. In the result the appeal is dismissed.