

KAPOOR CHAND MAGANLAL CHANDERIA

v.

DELHI STATE (ADMINISTRATION)

April 16, 1985

[A P. SEN AND E.S. VENKATARAMIAH, JJ.]

Indian Penal Code, Ss. 420 & 511.

Affidavit—Substitution of word 'permanently' for 'three Years'—Prosecution launched—Plea of accused—Affidavit used, under 'honest belief'—Prosecution whether valid and permissible.

The appellant who was a British citizen of Indian origin, came on a temporary visit to India for a period of three years in July 1966 as he had a family holding in Messrs Atul Drug House Limited, to survey the business situation and to make a decision for his future stay in the country. Along with him he brought a Mercedes Benz car as part of his personal baggage, free of duty, under the Tripe—trique convention under which he was entitled to retain the car for a maximum period of one year. After his arrival in India he was appointed as Managing Director of the Company and this required his presence in the country for quite some time and therefore the appellant applied to the Joint Chief Controller of Imports & Exports for the issue of an import licence to keep the said car for more than one year, but that application of his was rejected by the Chief Controller on the ground that he had not come to India for permanent settlement. On the appellant informing the Chief Controller that he had reconsidered his decision and decided to stay in India permanently, the Chief Controller required him to submit amongst other documents an affidavit counter-signed either by the High Commission for India in Tanzania or the Indian Embassy at Nairobi in Kenya or a Notary Public.

It appears that the appellant before his arrival in India had with him an affidavit sworn before the Third Security, High Commission for India at Dar-es-Salaam stating that he was taking up appointment as a Director of Messrs Atul Drug house Limited and it would therefore necessitate his presence in India for a period of three years at least. When the Chief Controller asked the appellant to produce an affidavit along with the application for grant of an import licence, what he did was to score out the words 'for three years' and

A added in ink the word 'permanently'. The Chief Controller rejected the application on the ground that the affidavit submitted by him was a forged document. Admittedly, the Mercedes Benz car had been repatriated out of India by the appellant within the period provided under the Tripe-trique convention.

B The appellant was prosecuted by the Central Bureau of Investigation in the Court of the Additional Chief, Presidency Magistrate, Bombay for commission of an alleged offence punishable under s. 420 of the Indian Penal Code, on the allegation that he had made a false declaration before the Assistant Collector of Customs, Bombay that he was a tourist and had come to Bombay to stay for a period of six months knowing full well that he had sworn an affidavit before the Third Secretary, High Commission for India at Dar-es-Salaam that he would remain in India for a period of three years. The aforesaid affidavit was put in evidence by the prosecution. The Customs authorities led no evidence in support of the charge. The learned Chief Presidency Magistrate after a trial lasting over four years acquitted the appellant on the ground that the prosecution had failed to establish the charge beyond all reasonable doubt. He further held that the appellant was falsely implicated at the instance of one Shah, the other Managing Director, in a struggle to gain control over the Company.

E The Delhi Special Police Establishment had in the meanwhile filed a challan against the appellant in the Court of the Judicial Magistrate (First Class), Delhi on February 10, 1971 for commission of an alleged offence punishable under ss. 420 and 471 read with s. 467 of the Indian Penal Code. The learned Magistrate framed charges against the appellant under ss. 420, 467 and 471 read with s. 467 of the Indian Penal Code directing him to stand trial in a Court of Sessions. The learned Single Judge of the Delhi High Court however on a reference by the Additional Sessions Judge, Delhi under s. 438 of the Code of Criminal Procedure, 1898 quashed the charge framed against the appellant under ss. 467 and 471 read with s. 467 of the Indian Penal Code and remanded the case to the Metropolitan Magistrate, Delhi with the direction that he should proceed to try the appellant for commission of an alleged offence punishable under s. 420 read with s. 511 of the Indian Penal Code.

Allowing the Appeal,

G HELD : 1. In the facts and circumstances of the case, it would be extremely doubtful whether the ingredients of an offence under s. 420 read with s. 511 of the Indian Penal Code were made out. The appellant might come forward with an explanation, namely, that he acted on honest belief that he could make use of the unutilized affidavit lying with him and it could not be said that the explanation so offered would not be a reasonable explanation. [779B-D]

H 2. In the instant case, there was absence of any dishonest intention or *mens rea* on the part of the appellant when he made use of the affidavit sworn by him before the Third Secretary, High Commission for India at Dar-es-Salaam. It was foolish on his part to have altered the affidavit by scoring out the words 'for three years' and to have added in ink the word 'permanently',

The appellant could as well have got an affidavit sworn before the Notary Public at Bombay and forwarded it along with his application for grant of an import licence. Admittedly, the Chief Controller of Imports & Exports was not cheated nor was there any attempt to cheat him. The Mercedes Benz car brought by the appellant, free of duty, was repatriated by him out of India within the prescribed period of one year. [776H; 777A; 779-E]

3. Although the rule against double jeopardy guaranteed under Art. 20(2) of the Constitution or the plea *autrefois acquit* under s.403 of the Code of Criminal Procedure, 1898 are not available to the appellant since the alleged offences were not substantially the same but were separate and distinct, it would not subserve the interests of justice to direct the prosecution of the appellant over again before the Metropolitan Magistrate, Delhi for an act of indiscretion in substituting the word 'permanently' for the words 'for three years' in the affidavit which the circumstances suggest was an honest but a foolish act, particularly when he had been acquitted of a somewhat similar charge by the Additional Chief Presidency Magistrate, Bombay wherein the affidavit was relied upon by the prosecution as a piece of evidence to substantiate the charge that he made a false declaration before the Assistant Collector of Customs, Bombay. The adoption of such a course after a lapse of nearly 20 years would not only entail a fresh trial but subject the appellant to undue harassment and ultimately may result in an acquittal. [778G-H; 779E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No: 152 of 1975.

From the Judgment and Order dated 26.8.1974 of the Delhi High Court in Criminal Revision No. 228 of 1973.

Mr. Ram Jethmalani and N. H. Hira Srani for the Appellant.

M.S. Gujaral, G.D. Gupta and R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by

SEN, J. While we strongly deprecate the conduct of the appellant in altering the affidavit sworn by him at Dares-Salaan on July 5, 1965 countersigned by the Third Secretary, High Commission for India, Tanzania by substituting in ink the word 'permanently' for the words 'for three years' for securing customs clearance for his Mercedes Benz 200 Saloon Car, Model 1965, bearing registration No, KGA 111 which he had brought along with him in July 1966 as part of his personal baggage, free of duty, under the international convention known as Carnet De-Passage Tripe-trique, under which

A he could retain the car only for a maximum period of one year, which may prima facie make out a case for framing of a charge under s.420 read with s.511 of the Indian Penal Code, 1860, we do feel that no useful purpose would be served by subjecting the appellant to another prosecution punishable under s.420 read with s.511 of the Code after a lapse of nearly 20 years.

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C There can be no doubt that the appellant was guilty of impropriety by scoring out the words 'for three years' and substituting in ink the word 'permanently' but the appellant was candid enough to admit that he had done so under the reasonable belief that he could utilize the unused affidavit that he had sworn at Dar-es-Salaan for the aforesaid purpose of getting customs clearance. But the fact remains that the Chief Controller of Imports and Exports refused to grant the request as a result of which the appellant expatriated the said Mercedes Benz car out of India within the prescribed period of one year as prescribed under the Tripe-trique convention. Prior to D 1966, the appellant was a British citizen of Indian origin having extensive business interests at Mombasa in Tanzania and several other countries of the world. He had a family holding in Messrs Atul Drug House Limited, Bombay and came on a temporary visit for a period of three years to survey the business situation and to E make a decision about his future stay in the country. After his arrival in India, he was on July, 1966 appointed a Managing Director thereof. Apparently he found that his involvement in Messrs Atul Drug House Limited as a Managing Director required his presence in India for quite some time and accordingly applied to the Joint Chief Controller of Imports and Exports F for the issue of an import licence to keep the said car for more than one year. That request of his was turned down by the Chief Controller of Imports and Exports on the ground that he had not come to India for permanent settlement. Thereafter, the appellant intimated the Chief Controller that he had reconsidered his decision and decided to stay in India permanently. The Chief Controller G had required the appellant to submit amongst other documents an affidavit countersigned either by the High Commission for India in Tanzania or the Indian Embassy at Nairobi in Kenya or a Notary Public. Undoubtedly, the appellant committed a foolish act by substituting in ink the word 'permanently' for the words 'for three H years' in the affidavit submitted by him presumably because he

thought that he would be required to go back to Tanzania to swear such an affidavit which was just a mere formality. The appellant could as well have sworn an affidavit before a notary public at Bombay and submitted it along with his application for customs clearance.

The appellant for this act of indiscretion has already suffered a prosecution launched by the Central Bureau of Investigation in the Court of the Additional Chief Presidency Magistrate, Bombay for commission of an alleged offence punishable under s. 420 of the Indian Penal Code. The aforesaid affidavit which he had furnished to the Chief Controller of Imports & Exports was a document filed by the prosecution in that case and put in evidence to substantiate the charge that he made a false declaration before the Assistant Collector of Customs, Bombay that he was a tourist and had come to Bombay to stay for a period of six months and thereby the Assistant Collector was misled by the declaration so made although the appellant knew full well that he had sworn an affidavit before the Third Secretary, High Commission for India at Dar-es-Salaam that he was taking up an appointment as a Director of Messrs Atul Drug House Limited and it would therefore necessitate him to remain in India for a period of three years at least. The prosecution further alleged that he made a representation to the Chief Controller of Imports & Exports, New Delhi to issue him a customs clearance and when he was asked to produce affidavit in support of his claim, he scored out the words 'for three years' from the said affidavit and added in ink the word 'permanently' which amounted to forgery for which a case was pending in the Delhi Court.

The appellant pleaded his innocence and denied the commission of the alleged offence. His plea in defence was one of false implication. He stated that the prosecution had been launched by the Central Bureau of Investigation in 1969 i.e. long after the Mercedes Benz car had been exported out of India before July 29, 1967 i.e. the period of one year allowed under the tripe-trique regulation, at the instigation of his business rival Shah, the other Managing Director. After a trial the learned Additional Chief Presidency Magistrate by his judgment dated April 7, 1973 acquitted the respondent holding that the prosecution had failed to establish the charge under s. 420 of the Indian Penal Code beyond all reasonable doubt

A He further held that the dispute between the two groups viz. the Shah family on the one hand and the Chanderia and Khimsia families on the other, to gain control over the management of Messrs Atul Drug House Limited arose in 1968 and that the appellant was falsely implicated at the instigation of Shah, the other Managing Director, who was on friendly terms with Wagh, Director of Enforcement.

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The Delhi Special Police Establishment had in the meanwhile filed a challan against the appellant in the Court of the Judicial Magistrate (First Class), Delhi on February 10, 1971 for commission of an alleged offence punishable under s. 420 and 471 read with s. 467 of the Indian Penal Code. By his order dated May 14, 1973, upon an inquiry under s. 207A(4) of the Code of Criminal Procedure, 1893 the Judicial Magistrate (First Class), Delhi being of the view that the aforesaid affidavit was a valuable security, framed charges against the appellant under s. 420, 467 and 471 read with s. 467 of the Indian Penal Code directing him to stand his trial in a Court of Sessions. In revision, the Additional Sessions Judge, Delhi by his order dated May 22, 1973 made a reference under s. 438 of the Code for quashing of the charge under ss. 467 and 471 read with s. 467 of the Indian Penal Code taking a contrary view. Accepting the reference, a learned Single Judge of the Delhi High Court by his order dated August 26, 1974 set aside the order of committal passed by the learned Judicial Magistrate and quashed the charge framed against the appellant under ss. 467 and 471 read with s. 467 of the Indian Penal Code and remanded the case to the Metropolitan Magistrate, Delhi with the direction that he should proceed to try the appellant for commission of an alleged offence punishable under s. 420 read with s. 511 of the Indian Penal Code.

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Learned counsel for the appellant with his usual fairness frankly concedes that the plea of *autrefois acquit* under s. 403 of the Code or the rule against double jeopardy guaranteed under Art. 20(2) of the Constitution are not available to the appellant since the offences are not substantially the same but separate and distinct. He however contends that the substitution in ink of the word 'permanently' for the words 'for three years' in the affidavit was an honest but a foolish act and therefore no useful purpose would be served in

directing another prosecution of the appellant for an alleged offence punishable under s. 420 read with s. 511 of the Indian Penal Code. The contention must, in our opinion, be accepted.

Although we commenced this order by observing that the act of the appellant in altering the affidavit may *prima facie* make out a case for framing of a charge under s. 420 read with s. 511 of the Indian Penal Code, he has come forward with an explanation, namely that he was under an honest belief that he could utilize the unused affidavit lying with him and it cannot be said that the explanation so offered was not a reasonable explanation. If that be so, the act complained of may or may not amount to an offence punishable under s. 420 read with s. 511 of the Indian Penal Code, 1860. It would not subserve the interests of justice when admittedly the Chief Controller of Imports and Exports was not cheated, nor was there an attempt to cheat him. This is amply borne out by the fact that the Mercedes Benz car brought by the appellant, free of duty, under the Tripe-trique convention was repatriated by him out of India before July 29, 1967 i.e. within the period of one year prescribed thereunder. For aught we know, the appellant did not have any dishonest intention.

In the facts and circumstances of the case, we do not think that it would be expedient, in the interests of justice to maintain the order of the learned Single Judge by which he has remained the case to the Metropolitan Magistrate, Delhi with the direction that he should proceed to try the appellant for commission of an alleged offence punishable under s. 420 read with s. 511 of the Indian Penal Code. The adoption of such a course after a lapse of nearly 20 years would not only entail a fresh trial but subject the appellant to undue harassment and ultimately may result in an acquittal.

In the result, the appeal succeeds and is allowed. The order passed by the High Court is set aside and the proceedings now pending before the Metropolitan Magistrate, Delhi are quashed.