

DEVENDER KUMAR SINGLA

v.

BALDEV KRISHAN SINGLA

FEBRUARY 17, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Penal Code, 1860—Sections 420 and 34—Offence of cheating—Conviction under—Justification of—Husband and wife purchasing shares from complainant—Husband issuing post-dated cheque and executing receipt that shares were delivered to him—Cheque signed by wife, filled in by complainant—Dishonour of cheque on stop payment by wife—Complaint—Acquittal by trial Court—However, High Court convicting husband and maintaining acquittal of wife—On appeal, held: On account of delivery of shares evidenced by receipt and pre-varicating stand with regard to stoppage of payment, order of High Court with regard to conviction of husband suffers from no infirmity—However, sentence reduced to three months—As presence of wife at the time of transaction not established, acquittal of wife by High Court justified.

According to the complainant (respondent in the first appeal), husband-accused (appellant in the first appeal) and his wife purchased shares from him. He was issued post dated cheque for the total sum after which complainant delivered the shares. Thereafter, the husband executed a receipt. The cheque was signed by the wife but filled in by the complaint. Cheque was presented on the due date for encashment but was dishonored as payment was stopped by the drawer. Thereafter, complainant tried to recover money but the efforts failed. Hence he made a complaint. Husband and wife were charged under Sections 420 read with Section 34 IPC. Trial Court acquitted them since the complainant failed to establish the case. Complainant filed an appeal. High Court held that case under Section 420 IPC was fully established against the husband and not wife, and thus, convicted the husband and maintained the acquittal of wife.

Appellant in the first appeal viz., the husband contended that there is no material whatsoever to show the delivery of the shares; that the receipt was in the nature of an advance receipt given in anticipation of future delivery; that the complainant himself filled up the cheque, so far

A as the payee and amount are concerned there is no dispute; that if in reality the shares had been delivered, there is no reason as to why the accused would not fill in the cheque and give it blank to the complainant; that in the statement recorded under Section 313 Cr.P.C. the accused persons have in detail described the factual position and High Court has erroneously ignored them; that if in reality the deal was struck on 7.8.1992

B there was no reason to stop the payment on 1.8.1992 before any deal had been struck; and that when the complainant was not aware of the details of the shares, the trial court's judgment should not have been interfered with by the High Court.

C Respondent-complainant contended that the wife had stopped payment of the cheque and, therefore, being party to the transaction, she should also be convicted; that the High Court analysed the factual position; that in view of the receipt executed there was no scope for the accused to plead that there was no delivery; that even if it is conceded for the sake of argument that the complainant was not able to tell the full details

D regarding the shares, that does not in any manner corrode the credibility of his case; and that the plea that an advance receipt was given was never taken during trial and in any event no suggestion in that regard was given to the complainant during cross-examination.

E Disposing of the appeals, the Court

HELD: 1.1. In the instant case, High Court referred to the factual position that cheque was handed over to the complainant and in the receipt it was stated that shares have been received and drew a conclusion that the receipt clearly states that the shares had been transferred. The mere

F fact that the cheque was filled in by the complainant is not sufficient to take away the effect of the statement in the receipt. The plea that it was an advance receipt was not agitated before the Courts below. Significantly, there was no suggestion to the complainant that the shares had not been delivered. [466-C-D]

G 1.2. When there was definite assertion about delivery of shares evidenced by a receipt, the inability of the complainant to tell the number of shares is not sufficient to discard his case. It only establishes that the complainant did not remember the number of shares and the evidentiary value of the receipt is not in any manner disproved.

H 1.3. What appears to have weighed with the trial Court is that the

transaction allegedly took place on 27.7.1992. Significantly there is also no suggestion to the complainant during cross-examination by the accused that the transaction was done on 27.7.1992 and not on 7.8.1992 as claimed by the complainant. Merely because the accused stated that he had not received the shares or that the transaction took place on 27.7.1992 in his examination under Section 313 of Cr.P.C. that is really of no consequence. The statement under Section 313 is not evidence. It is only the accused's stand or version by way of explanation, when incriminating materials appearing against him are brought to his notice. Absence of any suggestion during cross-examination cannot be made up by a statement under Section 313 Cr.P.C. At that stage, the prosecution does not get an opportunity to question the accused about his stand in the statement under Section 313. [466-F-H; 467-A]

1.4. Pre-varicating stands have been taken as to why stoppage of payment was done. As rightly noticed by the High Court, if the stand of the accused was that shares were to be handed over by 5.8.1992, there was no necessity to direct stoppage of payment on 1.8.1992. Stand before the trial court was that wife stopped payment when she came to know that accused had used her signed blank cheque. But during the course of arguments, husband submitted that she had no knowledge of any transaction for purchasing shares, with no identification or particulars of said shares. Therefore High Court's judgment convicting the husband-accused suffers from no infirmity. However, considering the peculiar circumstances of the case, custodial sentence of one year is reduced to three months. [467-B-D]

2. Wife's presence at the time of the transaction has not been established. Though she had signed the cheque, admittedly the same was handed over to complainant only by the husband-accused. There was no deception established so far as she is concerned. Therefore, High Court rightly held that no case is established against the wife. [467-E-F]

Bashirbhai Mohamedbhai v. State of Bombay, AIR [1960] SC 979, relied on.

Shivanarayan Kabra v. State of Madras, AIR [1967] SC 986, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1036 of 1997.

A From the Judgment and Order dated 19.8.96 of the Punjab and Haryana High Court in Crl. A.P.No. 618-DBA of 1995.

WITH

Crl. A. No. 1050 of 1997.

B O.P. Sharma, R.C. Gubrele, Ms. Eliza Rumthao and Ms. Aruna Gupta for Ms. Hemantika Wahi for the Appearing parties.

The Judgment of the Court was delivered by

C **ARIJIT PASAYAT, J.** These two appeals are inter-linked being directed against the common judgment of a Division Bench of the Punjab and Haryana High Court whereby Devender Kumar Singla, appellant in Criminal Appeal No. 1036 of 1997 was found guilty of offence punishable under Section 420 of the Indian Penal Code, 1860 (in short the 'IPC'), while Mala Singla, the respondent in Criminal Appeal No. 1050 of 1997 was acquitted. Dr. Baldev
D Krishan Singla, the respondent in the first appeal and the appellant in the second appeal was the complainant on the basis of whose complaint case was registered and the trial was held.

Complainant's case in a nutshell is as under:

E On 7th August, 1992 the accused Devender Kumar Singla in the company of his wife the other accused Mala Singla, purchased 7000 Master plus shares for Rs. 1,69,000 from the complainant Baldev Krishan in the presence of Teja Singh, son of Sajjan Singh. The complainant wanted that the payment thereof be made in cash, but accused Devender assured him that as
F he was a reputed dealer in the sale and purchase of shares, and his business ran into lacs, the payment by cheque would be more in order. The complainant acting on his representation accepted a post dated cheque No.447131 for a sum of Rs. 1,69,000 drawn on New Bank of India, Moga, and issued by accused Mala Singla, and was payable on 8th August, 1992. The complainant also delivered 7000 shares and in token of having received the same, Devender
G executed a receipt Ex.PW 3/B. When the cheque was presented for encashment on 8th August, 1992, it was dishonoured on the ground that the payment had been stopped by the drawer and this fact was conveyed to the complainant vide memo Exh. PW 3/C dated 8th August, 1992. As the subsequent efforts to recover the money from the accused proved futile, the complainant filed
H the complaint in the Court of the Sub-Divisional Judicial Magistrate, Moga.

After recording the preliminary evidence, both the accused were summoned to face trial for offences punishable under Sections 420 and 109 IPC. On a consideration of the pre-charge evidence of the complainant, Baldev Krishan (PW-3) as also that of Ram Adhar (PW-1) an employee of the Union Bank of India, Moga, Tarsem Lal (PW-2) an employee of the New Bank of India, Moga, Teja Singh (PW-4) and Naresh Kumar (PW-5) a clerk of Punjab National Bank, Moga, a prima facie case punishable under Section 420 read with Section 34 IPC was found to have been made out against both the accused and they were charged accordingly to which they pleaded not guilty and claimed trial.

The Trial Court held that the complainant has not been able to establish several relevant factors. It was held that the transaction took place on 27th July, 1992 as claimed by the accused, and not on 7th August, 1992 as alleged by the complainant. There was no material to show that any shares were delivered to the accused. There was no record as regards the identity of the owner of the shares or as to whether they had in fact been transferred to the names of the accused. The existence of the alleged 7000 Master Plus shares was doubted. It was held that if the complainant was having 7000 Master Plus shares, he could have proved this fact by summoning the relevant records, but such records were not produced. Each share certificate has a distinction mark, and if the complainant had purchased the shares he should have been aware of the person from whom he had purchased them and there was no material to show that the accused had transferred any Master Plus shares in their names. With these observations the Sub-Divisional Judicial Magistrate, Moga directed acquittal of the accused persons.

Aggrieved by the said order, the complainant preferred an appeal before the Punjab and Haryana High Court. By the impugned judgment the High Court accepted the appeal so far as accused Devender Kumar Singla is concerned, but dismissed the same so far as Mala is concerned. It took note of the fact that there was no dispute that the cheque had been issued and a receipt was executed by the accused Devender Kumar Singla which clearly stated that the shares had been delivered to him. Merely because the complainant had filled the name of the beneficiary of the cheque, that did not dilute the very important factor that the accused Devender had clearly stated in the receipt that he had issued the cheque against payment of 7000 Master Plus shares and had received delivery of the shares. It was further noted that the accused Devender took the stand about the agreement to transfer the shares by 5th August, 1992. If that was so, the High Court observed, there

- A was no necessity for directing the bank to stop the payment on 1st August, 1992. There was no reason whatsoever for the accused to apprehend any foul play at the hands of the complainant prior to 5th August, 1992. The stand taken by the accused Mala Singla was at a great variance with that of her husband Devender Kumar Singla. According to accused Mala she had gone
- B out to her parental house leaving some blank cheques signed and when she returned on 30th July, 1992 she found the cheque book missing and therefore directed the Bank to stop payment. This was at a complete variance with the stand of Devender who admitted the transaction between him and the complainant. Accused Mala totally denied any such transaction. The position regarding transactions in the bank account of accused Mala was also noticed
- C by the High Court, which held that the accusations so far as the accused Devender were fully established, but the role of accused Mala was not fully established to bring home the accusations under Section 420 IPC. Therefore, the accused Devender was convicted under Section 420 IPC and sentenced to undergo imprisonment for one year and a fine of Rs. 10,000. Acquittal of
- D accused Mala was, as noted above, maintained.

- In support of the appeal filed by accused-appellant Devender, learned counsel submitted that the ingredients of Section 420 have not been established. There is no material whatsoever to show the delivery of the shares. Wrongful gain and wrongful loss which are required to be established to bring home
- E accusations under Section 420 IPC have not been established. The receipt was in the nature of an advance receipt and was given in anticipation of future delivery. The fact that the complainant himself filled up the cheques so far as the payee and amount are concerned, has not been disputed. If in reality the shares had been delivered, there is no reason as to why the accused would not fill in the complete cheque and give it blank to the complainant.
- F In the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.') the accused persons have in detail described the factual position and the High Court has erroneously ignored them. If in reality the deal was struck on 7.8.1992 there was no reason to stop the payment on 1.8.1992 before any deal had been struck. There was no material
- G to show the delivery of the shares and admittedly when the complainant was not aware of the details of the shares, the trial Court's judgment should not have been interfered with by the High court, which without properly appreciating the factual position had convicted the accused Devender and sentenced him. The sentence itself is without any logical basis. So far as the appeal filed by the complainant is concerned, learned counsel for the
- H complainant submitted that the accused Mala had stopped payment of the

cheque and, therefore, being party to the transaction, she should also be convicted. A

So far as the appeal filed by the accused Devender is concerned, learned counsel submitted that the High Court has analysed the factual position. In view of the receipt executed, the contents of which are extracted in the High Court's judgment, there was no scope for the accused to plead that there was no delivery. Even if it is conceded for the sake of arguments that the complainant was not able to tell the full details regarding the shares, that does not in any manner corrode the credibility of his case. The plea that an advance receipt was given was never taken during trial and in any event no suggestion in that regard was given to the complainant who was examined as PW-3, during cross examination. B C

In order to appreciate the rival submissions, it would be necessary to consider on the background of the factual position as to whether offence punishable under Section 420 IPC is made out. Section 420 deals with certain specified classes of cheating. It deals with the cases whereby the deceived person is dishonestly induced to deliver any property to any person or to make, alter or destroy, the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. Section 415 defines "cheating". The said provision requires, (i) deception of any person (ii) whereby fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property or (iii) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were 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. Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative to each other and this is made significantly clear by use of disjunctive conjunction 'or'. The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which no transfer occurs. Deception is the quintessence of the offence. The essential ingredients to attract Section 420 are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and the (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating under Section 420. (See *Bashirbhai Mohamedbhai v. State of Bombay*, AIR (1960) H

A SC 979.

As was observed by this Court in *Shivanarayan Kabra v. State of Madras*, AIR (1967) SC 986 it is not necessary that a false pretence should be made in express words by the accused. It may be inferred from all the circumstances including the conduct of the accused in obtaining the property.

B In the true nature of things it is not always possible to prove dishonest intention by any direct evidence. It can be proved by number of circumstances from which a reasonable inference can be drawn.

C On the proved facts it is seen that a cheque was handed over to the complainant and in the receipt it was stated that the shares have been received. The High Court has referred to this factual position and drawn a conclusion that the receipt (Ex. PW3/B) which was admittedly executed by accused Devender clearly states that the shares had been transferred. The mere fact that the cheque was filled in by the complainant is not sufficient to take away the effect of the statement in the receipt. The plea that it was an advance receipt does not appear to have been even agitated before the Courts below.

D Significantly, there was no suggestion to the complainant (PW-3) that the shares had not been delivered.

E Learned counsel for the accused appellant Devender strenuously urged by putting questions about the number of shares etc., it was indirectly suggested that there was no delivery of shares. When there was definite assertion about delivery of shares evidenced by a receipt, the inability of the complainant to tell number of shares is not sufficient to discard his case. It only establishes that the complainant did not remember the number of shares. The evidentiary value of the receipt is not in any manner disproved by the inability of the complainant to tell the numbers. Further, what appears to have weighed with the trial Court is that the transaction allegedly took place on 27.7.1992. Significantly there is also no suggestion to the complainant during cross-examination by the accused that the transaction was done on 27.7.1992 and not on 7.8.1992 as claimed by the complainant. Merely because the accused stated that he had not received the shares or that the transaction took place on 27.7.1992 in his examination under Section 313 of Cr.P.C. that is really of no consequence. The statement under Section 313 is not evidence. It is only the accused's stand or version by way of explanation, when incriminating materials appearing against him are brought to his notice.

H Absence of any suggestion during cross examination cannot be made

up by a statement under Section 313 Cr.P.C. At that stage, the prosecution does not get an opportunity to question the accused about his stand in the statement under Section 313. A

It is also seen that pre-varicating stands have been taken as to why stoppage of payment was done. As rightly noticed by the High Court, if the stand of the accused was that shares were to be handed over by 5.8.1992, there was no necessity to direct stoppage of payment on 1.8.1992. Stand before the trial Court was that accused Mala stopped payment when she came to know that accused No.1 had used her signed blank cheque. But during the course of arguments, learned counsel for the appellant submitted that the accused Mala had no knowledge of any transaction for purchasing 7000 Master Plus shares, with no identification or particulars of said shares. B C

Above being the position, the High Court's judgment convicting the accused Devender suffers from no infirmity. However, custodial sentence imposed appears to be slightly on the higher side. Considering the peculiar circumstances of the case, we reduce the same to three months, instead of one year as directed by the High Court. Criminal appeal No. 1036/1997 is allowed only in respect of the sentence though challenge to the conviction has failed. D

Coming to the appeal filed by the complainant, against acquittal of Mala it is seen that her presence at the time of the transaction has not been established. Though she had signed the cheque, admittedly the same was handed over to complainant only by accused Devender. Therefore, there was no deception established so far as she is concerned. The High Court has rightly held that the accusations have not been brought home so far as she is concerned. The appeal filed by the complainant i.e. Criminal Appeal No.1050/1997 is accordingly dismissed. E F

N.J.

Appeals disposed of.