

Gian Chand, etc. v. Amar Nath (Gujral, J.)

application clearly show an intention on the part of the landlord to treat the original contractual lease to be subsisting. There may, therefore, appear to have been a waiver of the landlord's intention to enforce the forfeiture leading to the alleged termination of the contractual tenancy and sections 106, 111(g) and 112 of the Property Act are clearly applicable inasmuch as they lay down just and equitable principles of law.

(7) The written statement was filed by the respondent-tenant in January, 1967, when it was commonly understood that a notice of termination of the tenancy in terms of section 106 of the Property Act was not necessary. There was no averment in the ejection application filed by the petitioner-landlord that any such notice had been served on the tenant and there was, therefore, no occasion for the latter to admit or deny the plea. There was, therefore, no deliberate and conscious act on the part of the tenant so as to amount to waiver and in view of the Bench decisions in the cases of *Bhaiya Ram* (1), and *Sawaraj Pal* (2), the plea of want of notice was rightly allowed to be raised by the Appellate Authority even if it could be said that it was rather at a belated stage of the proceedings.

(8) No useful purpose would be served by a remand as it was no body's case that a notice of termination of the tenancy had been served by the petitioner-landlord on the respondent-tenant before the filing of the present ejection application.

(9) I, therefore, dismiss the revision petition, but leave the parties to bear their own costs.

N. K. S.

REVISIONAL CRIMINAL

Before Man Mohan Singh Gujral, J.

GIAN CHAND ETC.—Petitioners.

versus.

AMAR NATH,—Respondent.

Criminal Revision No. 504 of 1968.

April 3, 1970.

Companies Act (I of 1956)—Section 446—Winding up orders passed against a Company—Criminal proceedings against employees of the

*Company for cheating and other offences—Whether barred without leave of the Court.*

Held, that section 446 of the Companies Act only bars proceedings against the company where a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, except by leave of the Court. This provision does not bar criminal proceedings against the employees of the company for cheating or other offences. Where criminal proceedings for cheating are not against the company but against the manager or directors of the company, leave of the Court is not necessary as the proceedings cannot be said to be against the company. The company cannot be charged with cheating not having the *mens rea* requisite for the offence of cheating. (Para 4).

*Petition under sections 439 & 561-A of the Criminal Procedure Code for revision of the order of Shri Sukhdev Singh, Session Judge, Hoshiarpur, dated 2nd March, 1968, affirming that of Shri T. N. Gupta, Judicial Magistrate 1st Class, Hoshiarpur, dated the 1st February, 1967, dismissing the petitioners' application dated 9th December, 1966, for quashing the proceedings.*

M. L. NANDA, ADVOCATE, for the petitioners.

S. C. KAPILA, ADVOCATE, for the respondent.

#### JUDGMENT

MAN MOHAN SINGH GUJRAL, J.—This is a revision petition against the order of the Sessions Judge, Hoshiarpur, dated 2nd March, 1968, upholding the order of the Judicial Magistrate First Class, Hoshiarpur, dated 1st February, 1967.

(2) The facts giving rise to this revision petition are that Amar Nath respondent filed a complaint against the petitioners under sections 406, 418, 420, 467 and 471 of the Indian Penal Code and sections 628 and 629 of the Companies Act which came up for disposal before the Judicial Magistrate First Class, Hoshiarpur. After the preliminary evidence the two accused Gian Chand and Dewan Chand were summoned and when they appeared, they took an objection that the complaint against them could not proceed and be quashed.

This application was dismissed by the Judicial Magistrate and their revision petition before the Sessions Judge, Hoshiarpur, also failed. Being aggrieved the accused have come up in revision to this Court.

(3) Before setting out the grounds on which it is sought that the proceedings be quashed, it is necessary to give in brief the complaint

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of the complainant against the two petitioners. In the complaint it is stated that the petitioners had floated a company under the name and style of Alliance Finance Limited with the object of dishonestly depriving people of their money. The company had its office in Hall Bazar, Amritsar, and Gian Chand was its managing director while Dewan Chand had been acting in various capacities such as manager, managing agent, secretary, treasurer and employee of the company. It is further stated that both the accused approached the complainant and with a view to fraudulently and dishonestly cause wrongful gain to themselves deceitfully induced the complainant to purchase one thousand shares of the value of rupees ten each knowing and having reason to believe that the Alliance Finance Limited was a bogus concern. It is added that in December, 1957, or January, 1958, the accused misrepresented facts to the complainant in the presence of Chhajju Mal Aggarwal and Piare Lal, son of Amar Chand Bahal, residents of Hoshiarpur, that Alliance Finance Limited was a highly profitable concern and was paying high dividends to its shareholders and in the presence of these persons the complainant purchased shares worth rupees ten thousand, as a result of the inducement offered by the accused. It is stated that a cheque for Rs. 750 was issued in the name of Alliance Finance Limited and was given to the two accused at Hoshiarpur. Subsequently, the complainant issued two more cheques for Rs. 5,000 and Rs. 4,250 and gave these to the accused at Hoshiarpur. Besides these, some other cheques were issued and given to the accused and a total amount of Rs. 26,275 was paid to the accused. It is stated that the accused after getting the cheques cashed misappropriated the amounts and that when the complainant grew suspicious of the business dealings of the respondents and asked them to refund the money the accused issued two cheques for Rs. 16,274 on the Co-operative Bank Ltd., Amritsar. It is averred that post-dated cheques were fraudulently issued by the accused who knew that the company did not possess the amount and there was no possibility of the acquisition of this amount by the company by due dates. It is further stated that subsequently the two accused forged a receipt showing that the complainant had received Rs. 16,275 from the Alliance Finance Limited and that the accused tried to use the forged receipt as genuine before the Official Liquidator appointed by the Punjab High Court in proceedings under sections 397 and 398 of the Companies Act. It is further maintained that the accused prepared false records, false reports of the meetings of the directors, false balance-sheets and issued false certificates and made false representations regarding the affairs of the company and had thereby committed

offences of cheating, criminal breach of trust, forgery and fabrication of false documents, etc. It was, therefore, prayed that the accused be punished under sections 406, 418, 420, 467 and 471 of the Indian Penal Code and sections 628 and 629 of the Companies Act.

(4) On behalf of the petitioners two main arguments have been raised before me. It is firstly contended that in view of the provisions of section 446 of the Companies Act no proceedings could be taken against the directors and employees of the company as a winding-up order had been passed against the company and the company had been dissolved on 24th November, 1967. This argument is wholly without merit. Section 446 of the Companies Act only bars proceedings against the company where a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, except by leave of the Court. This provision does not bar criminal proceedings against the employees of the company for cheating or other offences. Where criminal proceedings for cheating are not against the company but against the manager or directors of the company, leave of the Court is not necessary as the proceedings cannot be said to be against the company. The company cannot be charged with cheating not having the *mens rea* requisite for the offence of cheating.

(5) The second contention raised on behalf of the petitioner deserves more serious consideration and is based on the provisions of section 195 of the Code of Criminal Procedure. The relevant provision reads as under:—

“195. (1) No Court shall take cognizance—

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- (b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or
- (c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been

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committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate."

On the basis of the above provisions it is contended that as the receipt for Rs. 16,275 had been used in the proceedings which were pending in the High Court under sections 397 and 398 of the Companies Act, the Court could not have taken cognizance of the offences under sections 467, 471, etc., without there being a complaint in writing by the official liquidator before whom the receipt was produced. It is further urged that in so far as the allegations of cheating are concerned they are also closely interwoven with the allegations of forgery and fabrication of false evidence and cognizance of these allegations could also not be taken without a complaint of the official liquidator. It is urged that it is not permissible for the prosecution to split up the facts of the case in order to get round the bar of section 195 of the Criminal Procedure Code.

(6) In *Basir-ul-Huq and others v. the State of West Bengal* (1), the Supreme Court considered the scope of section 195 of the Criminal Procedure Code:—

"Though, in our judgment, S. 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in S. 195.

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(1) A.I.R. 1953 S.C. 293.

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Cr. P.C. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S. 195, prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it."

I proceed to examine the facts of the present case in the light of the above observations. The allegations in the complaint can be distinctly divided in two categories. The first allegation is that the accused had by deceiving the complainant fraudulently and dishonestly induced him to deliver rupees ten thousand and had thereby committed the offence of cheating. The second and a separate part of the allegations is that the accused had misappropriated the amount of Rs. 26,275 and had also cheated the complainant by issuing post-dated cheques for Rs. 16,275 which the accused knew could not be cashed. Coupled with this allegation was the further allegation that the receipt produced before the official liquidator by the accused showing the receipt of Rs. 16,275 by the complainant which was the amount due under the two post-dated cheques was a forged document. Considering the nature of the allegations I am of the view that so far as the allegations relating to the issuance of the post-dated cheques and the putting in of a receipt alleged to have been forged are concerned they are interconnected and inter-related and disclosed primarily and essentially an offence for which a complaint of the Court is required. Faced with this situation, the complainant made an application in the Court of Session wherein he dropped the allegations relating to charges under sections 467 and 471 of the Indian Penal Code against the accused-respondent. The accused, therefore, cannot be proceeded against with regard to the offence of cheating in so far as it relates to the issuance of post-dated cheques or the production of a receipt alleged to have been forged.

(7) The position, however, is different with regard to the allegations which relate to the obtaining of Rs. 10,000 by the accused by representing to the complainant that the company was a profitable concern and was declaring very good dividends. These allegations were not the subject-matter of inquiry in the High Court and even otherwise the offence disclosed is distinct and is not included within the ambit of section 195 of the Criminal Procedure Code. Prosecution for this offence, is, therefore, not barred under section 195 of the Criminal Procedure Code. In this view I find support from the case of *State v. Nemchand Pashvir Patel and others* (2). In this case

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(2) A.I.R. 1956 Bom. 326.

the accused were committed to stand their trial for the offence under sections 471/467 and 34 and under section 420 read with section 34 of the Indian Penal Code. These offences were alleged to have been committed with respect to documents filed before a Sales Tax Officer. It was held that the commitment order with respect to the offence under section 467 of the Indian Penal Code was liable to be quashed as there was no complaint under section 195(1)(c) of the Criminal Procedure Code by the Sales Tax Officer, but the order of commitment under section 420 of the Indian Penal Code could not be interfered with by the High Court. It was observed that a complaint for an offence under section 420 of the Indian Penal Code could be lodged by any person and the order of committal for this offence was, therefore, perfectly in order.

(8) On behalf of the petitioners reliance was placed on *Vivekanand Nand Kishore v. State* (3), wherein the following observations appear:—

“When the main offence is the one under S. 471, Penal Code, namely, the offence of using a forged document as genuine document and the other offences all flow from it, in the sense that if the charge under S. 471 fails, the charges for the other offences would also fail, none of which offences can ‘in truth and substance’ be said to be of a distinct nature, the mere fact that Ss. 406, 467 and 420, Penal Code are also tacked on to the offence under S. 471, Penal Code, would not serve to take the case out of the scope and ambit of S. 195(1)(c).

The facts in this case were that the accused had presented an application before the Compensation Officer, Meja, for the withdrawal of Rs. 80.98 which was payable as compensation to one Bans Bahadur. The application was accompanied by a *vakalatnama* purporting to have been signed by Bans Bahadur. It was found that Bans Bahadur had died some time earlier and that the *vakalatnama* was a forged document. When the matter came to the notice of the Additional District Magistrate (E), Allahabad, a report was made to the police on the basis of which a charge-sheet was submitted under sections 406, 420, 467 and 471 of the Indian Penal Code. On these facts the above observations were made and it was held that cognizance could not be taken without a complaint of the Court before which the

documents had been produced. The facts in *Vivekanand Nand Kishore's case* (3), show that the entire transaction was one and that the offence of cheating was closely allied to the other offences under sections 467 and 471 of the Indian Penal Code. In view of this it was found that in truth and substance the offence under section 420 of the Indian Penal Code could not be a distinct offence. In the present case, however, it has been found that the offence with regard to the payment of rupees ten thousand by the complainant to the accused at Hoshiarpur on their representation was a distinct and separate offence as compared with the other allegations relating to issuance of post-dated cheques and the production of an allegedly forged receipt.

(9) For the reasons stated above, I find that there is no merit in the second contention either and I dismiss the revision petition.

N. K. S.

ORIGINAL CRIMINAL

*Before Man Mohan Singh Gujral, J.*

STATE (on behalf of Court),—*Petitioner.*

*versus.*

DEWAN JAMAN LAL,—*Respondent.*

**Criminal Original No. 220 of 1969.**

April 3, 1970.

*Judicial Officers Protection Act (XVIII of 1850)—Section 1—Execution of a decree—Judgment-debtor raising objection regarding the nullity of the decree—Executing Court deciding the objection—Whether protected by Judicial Officers' Protection Act—Contempt of Courts Act (XXXII of 1952)—Section 3—Jurisdiction under—Whether to be exercised sparingly—Acts amounting to contempt of Court—Stated—Communication sent to a Judicial Officer executing decree containing threat of damages and casting aspersions on his integrity—Whether amounts to contempt.*

*Held*, that it is within the jurisdiction of the executing Court to decide all the objections raised by the judgment debtor including the objection that the decree which is sought to be executed is a nullity and cannot be executed. The Judicial Officer executing the decree is therefore protected by virtue of the provisions of Judicial Officers' Protection Act while dealing with the execution application and even if he