

REVISIONAL CRIMINAL

Before Khosla and Soni, JJ.

KULDIP SINGH,—Convict-Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 453 of 1953

Indian Penal Code (Act XLV of 1860)—Sections 42 and 420—Dishonestly—Meaning of—Cheating, essential ingredients of—Doctrine of constructive notice—Relevancy of, for offence of cheating—Transfer of Property Act (IV of 1882)—Section 3—Object of.

1953

August 21st.

Held, that the essential ingredients of cheating are (a) dishonest intention upon which a false representation is based and in consequence of which (b) valuable property is delivered to the person making the false representation. What is to be considered in Criminal Law is what is the actual state of facts and whether the person cheated did know the real facts or not. That he must be deemed to know certain facts because of the operation of law will not affect the case. That will only affect his rights in the property he acquires.

Held, that the doctrine of constructive notice as set out in the Explanation to section 3 of the Transfer of Property Act, 1882, has no relevance for the purpose of determining whether a person has committed the offence of cheating or not. What is relevant is whether as a matter of fact the complainant knew of the true state of affairs or not and if he was induced to part with valuable property as the result of misrepresentation made to him. The doctrine of constructive notice is intended to safeguard the interests of a third person and not to exonerate the offender who obtains money by making a false representation.

Held, that in determining whether a person has acted 'dishonestly' or not, it is the intention which is important and not whether a person is under a legal duty to disclose or suppress facts within his knowledge. Therefore, where a person with the intention of causing wrongful loss to another makes a false representation to him or suppresses certain facts, he will be said to have acted dishonestly even if the law does not require him to state the truth.

Held, that the Transfer of Property Act deals with the rights of individuals in the property which is the subject-matter of any transaction. It is not concerned with whether a person has been cheated or not. The object of Explanation to section 3 is to safeguard the interests of a third party who has acquired a good title under a previous registered instrument but it does not in any way alter or modify the criminal liability of a person who deliberately suppresses or misstates certain facts.

Pandit Shivnath Sahibram Kaul v. Jethanand Morrijmal and others (1), relied on; Karachi Municipality v. Bhojraj and others (2), dissented.

Petition under section 439 of Criminal Procedure Code, for revision of the order of Shri J. N. Kapur, Additional Sessions Judge, Ambala, dated the 2nd May 1953, affirming that of Shri Gurdarshan Singh, Magistrate, 1st Class, Ambala, dated the 28th November, 1952. convicting the petitioner.

H. L. SIBAL, for Petitioner.

K. S. CHAWLA, for Advocate-General, for Respondent.

B. S. CHAWLA, for Complainant.

JUDGMENT

Khosla, J.

KHOSLA, J. The facts giving rise to this reference by my learned brother Soni, J., are given in his order of the 21st July 1953, and are briefly as follows. Moti Parshad brought a complaint against the petitioner Kuldip Singh alleging that he had been cheated of a sum of Rs. 4,000. The facts alleged by him were that Kuldip Singh agreed to sell him an area of land for a sum of Rs. 4,000 and represented that this land was free from all encumbrances. Kuldip Singh was paid a sum of Rs. 2,000 on the 10th June 1948, and by way of receipt he executed a document, Ex. P.A. In Ex. P.A. Kuldip Singh mentioned quite clearly that the land was free from all encumbrances. The sale deed was to be registered within a period of one year and it was in fact executed on the 24th April 1949. In the sale deed Kuldip Singh again recited the fact that the land was free from all previous encumbrances. In point of fact the land formed part of a larger area the whole of which was mortgaged on two previous occasions, once in favour of Amar Singh for a sum of Rs. 1,20,000 and a second time in favour of Kidar Nath for a sum of Rs. 82,000. Amar Singh filed a suit for the realisation of his mortgage money by the sale of this property and obtained a decree. In execution of the decree the land was sold and since Amar Singh's claims were not fully satisfied the complainant Moti Parshad lost his land and the money

(1) A.I.R. 1937 Sind 56

(2) A.I.R. 1915 Sind 21

he had paid for it. It was then that he brought the present complaint against Kuldeep Singh.

Kuldeep Singh's defence was that he had not made any representation to the complainant that the land was free from encumbrances. A further point argued on his behalf was that since the previous mortgages were effected by means of registered deeds the complainant must be presumed to have had notice of these transactions and so it could not be said that Kuldeep Singh had been guilty of any dishonest concealment or any dishonest representation. This defence was repelled by the learned Magistrate and Kuldeep Singh was convicted and sentenced to three months' rigorous imprisonment. An appeal was filed in the Court of the Additional Sessions Judge, Ambala, but this appeal failed. When the matter came up in revision before my brother Soni, J., the law point was once again argued and it was contended that the registration of a document which must under law be registered is constructive notice to the whole world and, therefore, Moti Parshad must be deemed to have had notice of the previous mortgages and, therefore, it could not be said that Moti Parshad had been cheated since in law, he already knew the factum of the previous charges. My brother Soni, J., thought that this point was of some importance and should be considered by a larger Bench and we have, therefore, heard arguments of counsel on this point and also the other points arising in the case.

The argument of Mr. Sibal, who appeared on behalf of the petitioner, is based on the wording of sections 3 and 55 of the Transfer of Property Act. Explanation I to section 3 reads as follows:—

“Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration * * * * *”

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Kuldip Singh Section 55(1)(a) is in the following terms:—

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“The seller is bound to disclose to the buyer any material defect in the property or in the seller’s title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover.”

Mr. Sibal contends that the previous mortgages were effected by means of registered deeds and, therefore, by virtue of the explanation to section 3, Moti Parshad must be deemed to have had notice of these mortgages. Further Moti Parshad could by exercising ordinary care have discovered that the property which he was purchasing formed part of a much larger estate which was already under mortgage. Therefore, Kuldip Singh was not bound to disclose to him the previous charges and Moti Parshad must be deemed in law to be aware of them, and, that being so, Moti Parshad was not cheated, for no representation was made to him:

The Transfer of Property Act deals with the rights of individuals in the property which is the subject-matter of any transaction. It is not concerned with whether a person has been cheated or not. The object of the explanation to section 3 is to safeguard the interests of a third party who has acquired a good title under a previous registered instrument but it does not in any way alter or modify the criminal liability of a person who deliberately suppresses certain facts or misstates certain facts. If ‘A’ has sold some property to ‘B’ by a registered deed and he then sells it again to ‘C’, ‘C’ cannot acquire a good title in the property because he must be deemed to have had notice of the previous registered sale deed in favour of ‘B’, but nevertheless he was made to part with money on a misrepresentation made by ‘A’ and, therefore, ‘A’ is guilty of the offence of cheating. This is the case which is mentioned in illustration (i) to section 415 of the Indian Penal Code. The doctrine of constructive notice cannot be imported into criminal law for the purpose of determining

whether a person is guilty of the offence of cheating or not. The essential ingredients of cheating are (a) dishonest intention upon which (b) a false representation is based and in consequence of which (c) valuable property is delivered to the person making the false representation. What we have to consider in criminal law is what is the actual state of facts and whether the person cheated did know the real facts or not. That he must be deemed to know certain facts because of the operation of law will not affect the case. That will only affect his rights in the property he acquires. The doctrine of constructive notice is intended to safeguard the interests of a third person and not to exonerate the offender who obtains money by making a false representation. The word 'dishonestly' is defined in section 24 of the Indian Penal Code—

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“whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing ‘dishonestly’.”

It is the intention which is important and not whether a man is under a legal duty to disclose or suppress facts within his knowledge. Therefore, where a person with the intention of causing wrongful loss to another makes a false representation to him or suppresses certain facts, he will be said to have acted dishonestly even if the law does not require him to state the truth. Therefore, the non-disclosure of the previous encumbrances will not affect the rights of the previous mortgagees and will not pass a complete title to the purchaser; the purchaser may nevertheless have been cheated. The extent of Moti Parshad's rights in the property which he acquired has nothing whatever to do with the fact that he was cheated. Mr. Sibal cited a decision of the Sind Judicial Commissioner's Court reported as *Karachi Municipality v. Bhojraj and others* (1). In this case the previous registered mortgage was not disclosed to the purchaser and the learned Judicial Commissioner held that no

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offence of cheating was committed because the vendor was not bound to disclose the previous mortgage which was a registered transaction. I am extremely doubtful of the correctness of this dictum but in the present case we find that there was a positive averment by Kuldip Singh that the land was free from encumbrances. It was not a case of mere silence. In *Pandit Shivnath Sahibram Kaul v. Jethanand Morrijmal and others* (1), the vendor had made a representation to the effect that there was no charge or encumbrance on the property. This representation was false as there was a previous unregistered mortgage upon the land. Davis, J.C., held that the vendor had committed the offence of cheating, as this was not a case of mere concealment or non-disclosure of facts he was not bound to disclose, but a case of false representation deliberately made for the purpose of deception. In the present case Kuldip Singh made a false representation for the purpose of deception. I would, therefore, hold that the doctrine of constructive notice as set out in the explanation to section 3 of the Transfer of Property Act has no relevance for the purpose of determining whether a person has committed the offence of cheating or not. What is relevant is whether as a matter of fact the complainant knew of the true state of affairs or not and if he was induced to part with valuable property as the result of misrepresentation made to him. In the present case it is clear that Kuldip Singh received a sum of Rs. 2,000 on making a misrepresentation regarding the property which he was selling to Moti Parshad.

Mr. Sibal also tried to show that Moti Parshad must, in point of fact, have known of the previous mortgages but on this point the decision of the learned Sessions Judge is quite clear and we must assume that, on the evidence, Moti Parshad did not know anything about the previous encumbrances when he paid Rs. 2,000 to the petitioner. The petitioner's conviction must, therefore, be upheld. Regarding the sentence the petitioner has already undergone a few days' imprisonment and

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I do not think the nature of the offence is so serious to warrant a severe sentence. The ends of justice will be served if the sentence is reduced to the term of imprisonment already undergone and a fine of Rs. 2,000. In default of payment of fine the petitioner will undergo the unexpired portion of sentence substantively awarded to him.

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The cross revision petition praying for enhancement of the sentence awarded to the petitioner fails and is dismissed. The petitioner is allowed three weeks' time to pay the fine.

SONI, J.—I agree.

Soni, J.

REVISIONAL CRIMINAL

Before Soni, J.

JAI NARAIN and TEN OTHERS,—Convicts-Petitioners
versus

THE STATE,—Respondent.

Criminal Revision No. 699 of 1953

*Indian Penal Code (Act XLV of 1860)—Section 97—
One co-owner building on shamilat land without the consent of others— Other co-owners objecting and causing injuries to the builders—right of private defence of property—Whether available.*

1953

August 27th

A and his sons began to build on the *shamilat* land jointly owned by them and others to which other co-owners objected and caused injuries to A and his sons. Sixteen persons were tried, out of which five were acquitted and eleven were convicted under sections 148, 325 and 149, I.P.C.

Held, that the accused had committed no offence. A and his sons were committing the offence of mischief and criminal trespass which gave the right of private defence of property to the accused. One co-owner of property cannot build on it so as to oust the other co-owners.

Petition for revision under section 439 of Criminal Procedure Code for the revision of the order of Shri T. C. Gupta, Additional Sessions Judge, Rohtak, dated the 3rd June 1953, modifying that of Shri Rattan Lal Garg, Magistrate 1st Class, Rohtak, dated the 13th July 1952, convicting the petitioners.

J. G. SETHI, for Petitioners.

HAR PARSHAD, Assistant Advocate-General, for Respondent.