

PETITIONER:
GEORGE ZACHARIG @ RAJU KARUVAMPLAKKA

Vs.

RESPONDENT:
T.K VARGHESE & ANOTHER

DATE OF JUDGMENT 25/10/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 SCC Supl. (1) 267 JT 1995 (1) 225
1994 SCALE (4) 694

ACT:

HEADNOTE:

JUDGMENT:

1. The appellant George Zacharia @ Raju Karuvamplakka was tried alongwith two others for offences punishable under Sections 419 and 420 read with 34 I.P.C. The case arose on the basis of a private complaint laid by the respondent. The trial court acquitted them. The respondent-complaint filed an appeal before the High Court and the learned single Judge of the High Court held that the appellant committed

226 the offences punishable under Sections 419 and 420 I.P.C. and sentenced him to undergo one year's R.1. under each count. The rest of the judgment of the trial court has been confirmed. Hence the present appeal. The prosecution case is as follows:

The appellant (original accused no.1) and A-2 are direct brothers. The name of A-1 is George Zacharia but he was also called by the pet name Raju. A-2 is Joseph Zacharia. A-3, one Baby was known to the complainant and to the accused. A-1 who was said to be a contractor, approached the complainant through A-3 and requested for a loan of Rs. 25,000/-. The complainant is alleged to have recently sold his hotel and had money. Ultimately an agreement was entered into and the complainant gave the loan. In the agreement it is mentioned that two registration certificates of one motor-cycle and a lorry were entrusted with the complainant as security. Later it was found that the lorry does not belong to the appellant but belongs to his brother. Therefore there was misrepresentation and cheating. The trial court acquitted mainly holding that the case is of civil nature. The High Court, on the other hand, held that if evidence of P.W. 1, the complainant, is believed that is enough to prove the guilt. The High Court also held that with regard to lorry there was misrepresentation and the evidence of P.W. 1, the complainant, even without corroboration is sufficient to bring home the guilt.

2. Initially after hearing the learned counsel for a while

finding prima facie that the matter is of civil nature, by our order dated 31.8.94 we adjourned the matter enabling the appellant to satisfy the decree passed against him by the civil court in respect of this very amount. Now we are told that a decree in fact has been passed and some properties also are attached.

3. However, we will now consider the evidence on record independently to find out whether a case has been made out against the appellant, under Sections 419 and, 420 I.P.C. There is no dispute that the appellant alone executed the agreement Ex.P. 1. The question is whether A-1 in any manner induced the respondent to lend the money on the basis of a misrepresentation. It is also not in dispute that the payment of the cheque and the amount were only in favour of the appellant. According to the complainant the appellant impersonated himself as his brother Joseph Zacharia who is the second accused and that the registration certificate of the lorry was in name of A-2, Joseph Zacharia and that when asked about the difference in the names in these two registration certificates, the appellant represented that Raju is his pet name and that his real name is Joseph Zacharia. Ex. P. 2 and Ex. P. 3, the registration certificates, accepted as security by the respondent which were represented to, belong to one and the same person namely the appellant. As to what happened and what transpired at the time of execution of agreement, there is no other evidence except that of the complainant. Even assuming what the complaint says is correct, still the question is whether in fact a case of cheating is made out. To satisfy ourselves we have perused the agreement which is not in dispute. It is executed by appellant alone and it is mentioned in the agreement that as security the appellant entrusted two registration certificates of a motor-cycle and a lorry. Further it is stated

227

that in case he fails to fulfill the agreement by paying up the loan, the complainant has full right to take forceful possession of the two vehicles. As an alternative security land was also mentioned. The relevant portion of the agreement reads as under:

"You have the full right to take forceful possession of the above mentioned vehicles or lawfully take possession of the three and a half acres property which is in my name in Sy. No. 385/1-184 and get back your loan with interest."

Admittedly a civil suit was filed and a decree was obtained. The execution proceedings were initiated in respect of the above mentioned land also. In the agreement there is nothing to show that the appellant in any manner asserted that the 'lorry also belongs to him. The registration certificate in respect of the lorry belonging to his brother has also been given as security. It only indicates some understanding between the appellant and his brother' Viewed from any angle, one cannot escape the conclusion that the dispute is of civil nature and the ingredients of Sections 419 and 420 I.P.C. are not made, out. The view taken by the trial court is quite reasonable and the High Court was not right in interfering with the acquittal. Accordingly the appeal is allowed.

228