1962

November, 29.

DR. VIMLA

v.

DELHI ADMINISTRATION

(S.J. IMAM, K. SUBBA RAO, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Meaning of 'dishonestly' and 'fraudulently'—Meaning of 'false document' and 'forgery'—Indian Penal Code, 1860 (Act 45 of 1860), ss. 24, 25, 463, 464, 467, 468.

Dr. Vimla purchased a car in the name of her minor daughter Nalini aged about 6 months. The price of the car was paid by her. The transfer of the car was notified in the name of Nalini to the Motor Registration Authority. The insurance policy already issued was transferred in the name of Nalini after the proposal form was signed by Dr. Vimla. Subsequently, Dr. Vimla filed two claims on the ground that the car met with accidents. She signed the claim forms as Nalini. She also signed the receipts acknowledging the payment of compensation money as Nalini. Dr. Vimla and her husband were prosecuted under sections 120 B, 419, 467 and 468 of the Indian Penal Code. Both the accused were acquitted by the Sessions Judge. The State went in appeal and the High Court convicted Dr. Vimla under s. 467 and 468 of the Indian Penal Code. Dr. Vimla came to this Court by special leave.

Held, that appellant was not guilty of the offence under s. 467 and 468 of the Indian Penal Code. She was certainly guilty of deceit because though her name was Vimla, she signed in all the relevant papers as Nalini and made the Insurance Company believe that her name was Nalini, but the said deceit did not either secure to her advantage or cause any non-economic loss or injury to the Insurance Company. The charge did not disclose any such advantage or injury nor was there any evidence to prove the same. The entire transaction was that of Dr. Vimla and it was only put through in the name of her minor daughter. Nalini was in fact either a Benamidar for Dr. Vimla or her name was used for luck or other sentimental considerations. The Insurance Company would not have acted differently even if the car stood in the name of Dr. Vimla.

1962

Dr. Vimla
v.
Delhi Administration

The definition of 'false document' is a part of the definition of 'forgery' and both must be read together. If so read, the ingredients of the offence of forgery relevant to the present case are as follows: (1) fradulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another under his authority; and (2) making of such a document with an intention to commit fraud or that fraud may be committed.

The expression 'fraud' involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

Haycraft v. *Creasy*, (1801) 2 East 92, *in re. London and Globe Finance Corporation Ltd.*, (1903) 1 Ch. 732, *R.* v. *Welham*, (1960) 1 All. E R. 260, *Kotamraju Venkatrayadu* v. *Emperor* (1905) I. L. R. 28 Mad. 90, *Surendra Nath Ghose* v. *Emperor*, (1910) I. L. R. 38 Cal. 75, *Sanjiv Ratnappa* v. *Emperor*, A. I. R. 1932 Bom. 545 and *Emperor* v. *Abdul Hamid*, A. I. R. 1944 Lah. 380, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 213 of 1960.

Appeal by special leave from the judgment and order dated March 24, 1960, of the Punjab High Court (Circuit Bench) Delhi in Criminal Appeal Case No. 41-D of 1958.

H. L. Anand, and *K. Baldev Mehta*, for the appellant.

V. D. Mahajan and *P. D. Menon*, for the respondent.

1962. November 29. The Judgment of the Court was delivered by

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J

SUBBA RAO, J.—This appeal by Special leave raises the question as to the true meaning of the expression 'fraudulently' in s. 464 of the Indian Penal Code.

The facts either admitted or found by the courts below may be briefly stated. The appellant is the wife of Siri Chand Kaviraj. On January 20, 1953, she purchased an Austin 10 Horse Power Car with the registration No. DLA. 4796 from Dewan Ram Swarup in the name of her minor daughter Nalini aged about six months at that time. The price for the car was paid by Dr. Vimla. The transfer of the car was notified in the name of Nalini to the Motor Registration Authority. The car at that time was insured against a policy issued by the Bharat Fire & General Insurance Co., Ltd., and the policy was due to expire sometime in April, 1953. On a request made by Dewan Ram Swarup, the said policy was transferred in the name of Nalini. In that connection, Dr. Vimla visited the Insurance Company's Office and signed the proposal form as Nalini. Subsequently, she also filed two claims on the ground that the car met with accidents. In connection with these claims, she signed the claim forms as Nalini and also the receipts acknowledging the payments of the compensation money as Nalini. On a complaint made by the company alleging fraud on the part of Dr. Vimla and her husband, the police made investigation and prosecuted Dr. Vimla and her husband Siri Chand Kaviraj in the Court of Magistrate 1st Class Delhi. The Magistrate committed Dr. Vimla and her husband to Sessions to take their trial under ss. 120-B, 419, 467 and 468 of the Indian Penal Code. The learned Sessions Judge held that no case had been made out against the accused under any one of those sections and on that finding, acquitted both of them. The State preferred an appeal to the High Court of Punjab and the appeal was disposed of by a Division Bench of that court comprising Falshaw

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

and Chopra, JJ. The learned Judges confirmed the acquittal of Siri Chand; but in regard to Dr. Vimla, they confirmed her acquittal under s. 419 of the Indian Penal Code, but set aside her acquittal under ss. 467 and 468 of the Code and instead, convicted her under the said sections and sentenced her to imprisonment till the rising of the court and to the payment of a fine of Rs. 100/- or in default to undergo simple imprisonment for two weeks. Dr. Vimla has preferred the present appeal by special leave against her conviction and sentence.

The facts found may be briefly summarised thus : Dr. Vimla purchased a motor car with her own money in the name of her minor daughter, had the insurance policy transferred in the name of her minor daughter by signing her name and she also received compensation for the claims made by her in regard to the two accidents to the car. The claims were true claims and she received the moneys by signing in the claim forms and also in the receipts as Nalini. That is to say, Dr. Vimla in fact and in substance put through her transactions in connection with the said motor car in the name of her minor daughter. Nalini was in fact either a benamidar for Dr. Vimla or her name was used for luck or other sentimental considerations. On the facts found, neither Dr. Vimla got any advantage either pecuniary or otherwise by signing the name of Nalini in any of the said documents nor the Insurance Company incurred any loss, pecuniary or otherwise, by dealing with Dr. Vimla in the name of Nalini. The Insurance Company would not have acted differently even if the car stood in the name of Dr. Vimla and she made the claims and received the amounts from the insurance company in her name. On the said facts, the question that arises in this case is whether Dr. Vimla was guilty of offences under ss. 463 and 464 of the Indian Penal Code.

Learned Counsel for the appellant contends that on the facts found, the appellant would not be guilty of forgery as she did not "fraudulently" sign the requisite forms and the receipts in the name of Nalini, as, by so signing, she did not intend to cause injury to the insurance company. In other words, the contention was that a person does not act fraudulently within the meaning of s. 464 unless he is not only guilty of deceit but also he intends to cause injury to the person or persons deceived, and as in the present case the appellant had never had the intention to cause injury to the insurance company and as on the facts found no injury had been caused at all to the company, the appellant could not be found guilty under the said sections.

Before we consider the decisions cited at the Bar it would be convenient to look at the relevant provisions of the Indian Penal Code.

> *Section 463:* Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.
>
> *Section 464:* A person is said to make a false document—First—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document/or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

at which he knows that it was not made, signed, sealed or executed; or

... ..."

The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows: (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority; (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both *mens rea* described in s.464 *i. e.*, "fradulently" and the intention to commit fraud in s. 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in s. 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of may decisions. We shall consider that question at a later stage in the light of the decisions bearing on the subject. The second thing to be noticed is that in s. 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus:

> "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".

"Fraudulently" is defined in s. 25 thus:

> "A person is said to do a thing fraudulently if he does that thing with intent to

defraud but not otherwise".

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expresssion "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and *vice versa*, it need not necessarily be so. Should we hold that the concept of 'fraud" would include not only deceit but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.

Let us now consider some of the leading text book writers and, decisions to ascertain the meaning of the word "fraudulently"

The classic definition of the word "fraudulently" is found in Stephen's History of the Criminal Law of England, Vol. 2, at p. 121 and it reads :

> "I shall not attempt to construct a definition which will meet every case which might

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

be suggested, but there is little danger in saying that whenever the words "fraud" or "intent to defraud" or "fraudulently" occur in the definition of a crime two elements at least are essential to the commission of the crime: namely, first, deceit or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or to a risk of possible injury by means of that deceit or secrecy.....This intent is very seldom the only, or the principal, intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. ..... A practically conclusive test of the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which could not have been had if the truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to someone else, and if so, there was fraud."

It would be seen from this passage that "fraud" is made up of two ingredients, deceit and injury. The learned author also realizes that the principal object of every fraudulent person in nearly every case is to derive some advantage though such advantage has a corresponding loss or risk of loss to another. Though the author has not visualized the extremely rare situation of an advantage secured by one without a corresponding loss to another, this idea is persued in later decisions.

As regards the nature of this injury, in Kenny's Outline of Criminal Law, 15th Edn., at p. 333, it is stated that pecuniary detriment is unnecessary.

In *Haycraft* v. *Creasy* (1) LeBlanc, J., observed:

(1) (1801) 2 East 92.

> "by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial."

This passage for the first time brings out the distinction between an advantage derived by the person who deceives in contrast to the loss incurred by the person deceived. Buckley, J., in *Re London & Globe Finance Corporation Ltd.* (1) brings out the ingredients of fraud thus :

> "To deceive is, I apprehend, to induce a man to believe that a thing is true, which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

The English decisions have been elaborately considered by the Court of Criminal Appeal in *R.* v. *Welham* (2). In that case, hire-purchase finance companies advanced money on a hire-purchase form and agreement and on credit-sale agreements witnessed by the accused. The form and agreements were forgeries. The accused was charged with offences of uttering forged documents with intent to defraud. It was not proved that he had intended to cause any loss of money to the finance companies. His intention had been by deceit to induce any person who was charged with the duty of seeing that the credit restrictions then current were observed to act in a way in which he would not act if he had known the true facts, namely, not to prevent the advancing of large sums of money exceeding the limits allowed by law at the time. The court held that the said intention amounted to intend to defraud.

(1) (1903) 1 ch. 732. (2) (1960) 1 All. E. R. 260, 264, 266.

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

Hilbery, J., speaking for the court, pointed out the distinction between deceit and defraud and came to the conclusion that "to defraud" is to deprive by deceit." Adverting to the argument that the deprivation must be something of value, i. e. economic loss, the learned Judge observed :

> "We have, however, come to the conclusion that this is too narrow a view. While, no doubt, in most cases of an intention to defraud the intention is to cause an economic loss, there is no reason to introduce any such limitation. Provided that the intention is to cause the person deceived to act to his real detriment, it matters not that he suffers no economic loss. It is sufficient if the intention is to deprive him of a right or to induce him to do something contrary to what it would have been his duty to do, had he not been deceived."

On the basis of the said principle, it was held that the accused by deceit induced the finance companies to advance moneys contrary to the credit restrictions and that he was guilty of the offence of forgery. This decision is therefore a clear authority for the position that the loss or the injury caused to the person deceived need not be economic loss. Even a deprivation of a right without any economic consequences would be enough. This decision has not expressed any definite opinion on the question whether a benefit to the accused without a corresponding loss to the person deceived would amount to fraud. But it has incidentally touched upon that aspect. The learned Judge again observed :

> ".....This the appellant was doing in order that he might benefit by getting further loans."

This may indicate that a benefit derived by the

person deceiving another may amount to an act to defraud that other.

A full Bench of the Madras High Court, in *Kotamraju Venkatrayudu* v. *Emperor* (1) had to consider the case of a person obtaining admission to the matriculation examination of the Madras University as a private candidate producing to the Registrar a certificate purporting to have been signed by the headmaster of a recognized High School that he was of good character and had attained his 20th year. It was found in that case that the candidate had fabricated the signature of the headmaster. The court held that the accused was guilty of forgery. White, C.J., observed :

> "Intending to defraud means, of course, something more than deceiving."

He illustrated this by the following example:

> "A tells B a lie and B believes him. B is deceived but it does not follow that A intended to defraud B. But, as it seems to me, if A tells B a lie intending that B should do something which A conceives to be to his own benefit or advantage, and which, if done, would be to the loss or detriment of B, A intends to defraud B."

The learned Chief Justice indicated his line of thought, which has some bearing on the question now raised, by the following observations :

> "I may observe, however, in this connection that by s. 24 of the Code a person does a thing dishonestly who does it with the intention of causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention

(1) (1905) I.L.R. 28 Mad. 99, 96, 97.

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

to secure a benefit or advantage on the one hand, or to cause loss or detriment on the other, by means of deceit, is an intent to defraud."

But, he found in that case that both the elements were present. Benson, J., pointed out at p. 114 :

> "I am of opinion that the act was fraudulent not merely by reason of the advantage which the accused intended to secure for himself by means of his deceit, but also by reason of the injury which must necessarily result to the University and, through it to the public from such acts if unrepressed. The University is injured, if through the evasion of its bye-laws, it is induced to declare that certain persons have fulfilled the conditions prescribed for Matriculation and are entitled to the benefits of Matriculation, when in fact, they have not fulfilled those conditions, for the value of its examinations is depreciated in the eyes of the public if it is found that the certificate of the University that they have passed its examinations is no longer a guarantee that they have in truth fulfilled the conditions on which alone the Univerisity professes to certify them as passed, and to admit them to the benefis of Matriculation."

Boddam, J., agreed with the learned Chief Justice and Benson, J. This decision accepts the principle laid down by Stephen, namely, that the intention to defraud is made up of two elements, first an intention to deceive and second, the intention to expose some person either to actual injury or risk of possible injury; but the learned Judges were also inclined to hold on the analogy of the definition of "dishonestly" in s. 24 of the Code that intention to secure a benefit or advantage to the deceiver satisfies the second condition.

The Calcutta High Court dealt with this question in *Surendra Nath Ghose* v. *Emperor* (1). There, the accused affixed his signature to a kabuliat, which was not required by law to be attested by witnesses, after its execution and registration, below the names of the attestings witnesses but without putting a date or alleging actual presence at the time of its execution. The court held that such an act was not fraud within the first clause of s. 464 of the Penal Code inasmuch as it was not done dishonestly or fraudulently within the meaning of ss. 24 and 25 thereof. Mookerjee, J., defined the words "intention to defraud" thus:

> "The expression, "intent to defraud" implies conduct coupled with intention to deceive and thereby to injure; in other words, "defraud" involves two conceptions, namely, deceit and injury to the person deceived, that is, infringement of some legal right possessed by him, but not necessarily deprivation of property."

This view is in accord with the English decisions and that expressed by the Full Bench of the Madras High Court. This decision does not throw any light on the other question whether advantage to the deceiver without a corresponding loss to the deceived would satisfy the second ingredient of the expression "intent to defraud".

A division Bench of the Bombay High Court in *Sanjiv Ratnappa* v. *Emperor* (2) had also occasion to consider the scope of the expression "fraudulently" in s. 464 of the Penal Code. The court held that for an act to be fraudulent there must be some advantage on the one side with a corresponding loss on the other. Adverting to the argument that an advantage secured by the deceiver would constitute fraud, Broomfield, J., observed thus :

> "I think in view of the Bombay decisions to which I have referred we must hold that that

(1) (1910) I.L.R. 38 Cal. 75, 89-90. (2) A.I.R. 1932 Bom. 545, 550,

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

is an essential ingredient in the definition of forgery. In the great majority of cases, the point is not very material.....But there many occasionally be a case in which the element of loss or injury is absent and I think the present is such a case."

This decision therefore does not accept the view of White C. J., of the Madras High Court.

A Division Bench of the Lahore High Court, in *Emperor* v. *Abdul Hamid* (1) had also expressed its view on the meaning of the word "fraudulently." The learned Judges accepted Stephen's definition but proceeded to observe as follows :

> "It may be noted in this connection that the word "injury" as defined in s. 44, Penal Code, is very wide as denoting "any harm whatever, illegally caused to any person, in body, mind, reputation or property."

The learned Judges were willing to assume that in almost every case an advantage to one would result in an injury to the other in the widest sense indicated by s. 44 of the Penal Code.

The other decided case cited at the Bar accept the necessity for the combination of a deceit by one and injury to other constitute an act to defraud and therefore, it is not necessary to multiply citations. No other decision cited at the Bar throws any light on the further question, namely, whether an advantage secured to the deceiver without a corresponding loss to the deceived would satisfy the second condition laid down by the decisions.

To summarize : the expression "defraud" inoslves two elements, namely, deceit and injury to the person deceived. injury is something other than

(1) A.I.R. 1944 Lah. 380. 382.

economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

Now let us apply the said principles to the facts of the present case. Certainly, Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said deceit did not either secure to her advantage or cause any non-economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and it was only put through in the name of her made minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term.

In the result, we allow the appeal and hold that the appellant was not guilty of the offence under

1962

Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

ss. 467 and 468 of the Indian Penal Code. The conviction and sentence passed on her are set aside. Fine, if paid, is directed to be refunded to the appellant.

Appeal allowed.

1962

November, 29.

CITY OF NAGPUR CORPORATION

v.

JOHN SERVAGE PHILLIP & ANR.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Corporation—Power of sending delegation—Jurisdiction of civil court—Power of corporation to provide for expenses of delegation—The city of Nagpur Corporation Act, 1948, (C.P. and Berar II of 1950), ss. 58 (s), 88.

The appellant Corporation passed a resolution deciding to send two of its members to a health conference at Harrogate in U.K. On the application of the respondent, the High Court of Bombay issued a write restraining the appellant from carrying out the resolution.

Held, that s. 58 (s) of the Nagpur Corporation Act, 1948, which gave power to the appellant Corporation to provide for any matter likely to promote public health authorised the resolution and it was for the appellant Corporation to decide how a thing which it had the power to do was to be done. It was not a case where it could be said that the delegation would have been of no benefit to the appellant Corporation at all and that was enough to prevent an interference by the Courts in the method of the exercise of its undoubted power by the appellant Corporation.

Mayor etc. of Westminster v. *London & North Western Railway Company*, [1905 A.C. 426] relied upon.