

## SHARP PRACTICES — CIVIL OR CRIMINAL WRONG

BEING AN unemployed youth, Ramapati's condition could gullibly get him entrapped by the accused Shyam Sundar and his father.<sup>1</sup> They assured him of a job if he paid a sum of money. Though this was paid, the promise remained unfulfilled. There was no intention to fulfil the same, right from its inception. The accused were found guilty of the offence of cheating. The court took an emphatic view that in such cases the sentence of imprisonment is a must and both the paralytic father and his youthful son were imprisoned till the rising of the court. In *Amar Chowdhary v. The State*,<sup>2</sup> the charge against the accused could not be proved beyond reasonable doubt. In another case,<sup>3</sup> Sushil Kumar Dutta projected himself as a scheduled caste candidate to appear at the I.A.S. examination and also succeeded in getting an appointment on the basis of a false representation. He was, however, convicted of the offence of cheating.

The foregoing reported cases illustrate the existing state of cruel situations which compel young men to be victims at the hands of crooks operating in the society. It is also a sad state of affairs that attempts at securing employment have yielded cheating behaviour. Increase in such criminogenic behaviour is due to the absence of any mechanism insulating against unemployment. A positive step in this direction can itself eliminate the breeding of transactions that resultantly come up before the courts as criminal matters with evident dishonest intentions.

However, the world of trade, commerce and business disclose another set of fact situations, where sharp practices have become part of their dealings. In *G. Laxminarayan Naidu v. C. Yerraiiah*,<sup>4</sup> the petitioner issued a cheque in consideration of sale. The cheque was dishonoured. The accused had earlier issued a cheque in a similar transaction which had been encashed. The victim's confidence to enter into a deal by accepting a cheque was thus normal business conduct. Bouncing of the cheque can be a designed act. Evidently, it was so because no effort or gesture was shown by the promisor to sort out the problem arising out of the unpaid arrears on account of the bounced cheque. Instead, the victim's efforts were sidelined till he was left with no option but to launch criminal proceedings which resulted in conviction on trial. The High Court quashed

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1. *Shyam Sunder Gupta v. State of U.P.*, 1984 Cr. L J. 1678 (All ).

2. 1985 Cr L.J. 1163 (Cal.).

3. *Sushil Kumar Dutta v. State*, 1985 Cr. L J. 1948 (Cal.)

4. 1985 Cr. L J. 1839 (Orissa).

the conviction since it was unable to locate the presence of any dishonest intention at the time the cheque was issued in consideration of the sale.

It is submitted that anyone, who after having conducted himself in a manner that exudes or instils confidence in the victim to carry on further dealings, can easily resort to sharp practices in a subsequent deal. The ingredient of dishonest intention should not therefore be difficult to infer. The entire transaction could be an exercise of a dishonest deal. It can be possible to act only after having won the confidence at an early stage. The commonsense view may thus be that subsequent events to the incipient dishonest intention, which must lie dormant at the inception, become evident only later. Since the courts have been looking for evidence of noticeable dishonest intention only at the time of the alleged act of cheating, it leads to the prevalent sharp practices being brought merely within the fold of civil liability.

Businessmen are often engaged in the battle of wiles. *Daungarshi v. M/s. Deviprasad Omprakash*<sup>5</sup> instances the experience of cheque bouncing without the offence of cheating having been committed. The conviction by the lower court of the accused for his sharp dealings, was quashed by the Bombay High Court. Its decision was based on the rule that the absence of dishonest intention at the time of making the promise does not fasten criminal liability; even though the subsequent behaviour may lead to the suspicion that the initial conduct could have been infected with such intention. The judicial view appears to be that the sharp practices of the business world are by and large, not the concern of criminal law despite their causing severe inconveniences in a vital sector of public activities.

The distinction between the two, *viz.*, breach of contract and cheating is very thin. The only caution that one has to take in order to keep out of the criminal jurisdiction is to build up business confidence without exhibiting any such conduct at the initial stage as may point to the intention of profiting at the cost of the victim. Likewise, in *K. Periasami v. Rajendran*,<sup>6</sup> the Madras High Court reiterated that "the intention of accused at the time of inducement ... may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole criterion. Mere breach of contract cannot give rise to a criminal prosecution."<sup>7</sup> Conclusive evidence of fraudulent intention is required to surface at the very beginning.

It may be noted that the business dealings concern the commoners, who in the course of such dealings ought to get involved into a kind of mutual trust. It is because of this trust that a victim becomes vulnerable to fraudulent behaviour. Such cases are now on the increase. The law of

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5. 1985 Cr. L.J. 1943 (Bom.).

6. 1985 Cr. L.J. 1721 (Mad.).

7. *Ibid.*

cheating can possibly regulate such misconduct if the dishonest intention at the inception is deemed to have existed in cases where the subsequent misconduct enables that intention to come up later by way of the wrongdoer's omission or commission.

*D.C. Pandey\**

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\*Research Professor, Indian Law Institute, New Delhi.