

Menon (1)], the claim against him for such salary and perquisites is not barred. I shall not finally decide just now whether, in law it could be so held.

In the result, I would modify the order of remand by confirming it to the plaintiff's claims against the defendants Nos. 1, 2 and 4 alone. The appeal has substantially failed against the contesting respondents. The first defendant (appellant) will therefore pay the plaintiff's (contesting respondents') costs in this appeal.

BAKEWELL, J.—I agree.

K.R.

BARADWAJA
MUDALIAR
v.
ARUNACHALA.
GURUKKAL.

SADASIVA
AYYAR, J.

BAKEWELL, J.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Phillips.

SUNDARAM AYYAR (ACCUSED), APPELLANT,

v.

THE KING-EMPEROR, RESPONDENT.*

1917,
November,
21.

Criminal Procedure Code (Act V of 1898), sec. 562—Indian Penal Code (Act XLV of 1860), sec. 420—Section 562, whether applicable to a conviction under section 420.

The word "cheating" in section 562 of the Code of Criminal Procedure does not cover the form of cheating punishable under section 420 of the Indian Penal Code.

Emperor v. Ramjan Dudubhai (1915) 16 Cr. L.J. 781, approved and followed.

Harnarain v. Runji Das (1915) 12 A.L.J., 465, dissented from.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by G. F. PADDISON, the District Magistrate of Madura, in his letter, dated the 7th September 1917, R.O.C. No. 1370/17 Magl.

Two women were waiting in the Madura railway passenger shed to purchase tickets for Sholavandan. There was a crowd at the ticket-door and so the women could not get near. The

(1) (1912) 14 I.C., 254.

* Criminal Revision Case No. 655 of 1917 (Referred case No. 98 of 1917).

SUNDARAM
 AYYAR
 v.
 THE KING-
 EMPEROR.

accused offered to buy the tickets for them. The women trusted the accused and each gave him three annas which they thought was the price of a ticket for their destination. Accused received the money and went away promising to get the tickets for them. After some time the accused returned and gave a ticket and three pies to each of the women. The women could not understand how they received three pies each. The accused tried to satisfy them by saying that it was a local train for which the fare was three pies less. While this was going on, a police constable turned up and looked at the tickets and found that the two tickets were for Sholavandan which cost accused only one anna nine pies each. On searching the accused, the two annas he had saved by the deception practised by him on the two women was found on him. The constable seized the accused, took a statement from one of the women and charged him before the Subdivisional First-class Magistrate of Madura. The accused pleaded guilty and was convicted by the Magistrate of an offence under section 420, Indian Penal Code, but considering the youth of the accused and the readiness with which he admitted his guilt, the Magistrate took action under section 562 of the Code of Criminal Procedure. The District Magistrate of Madura doubting the legality of the procedure of the First-class Subdivisional Magistrate, reported the case to the High Court under section 438 of the Code of Criminal Procedure.

K. S. Jayarama Ayyar for the accused.

C. Narasimha Achariyar for the Public Prosecutor for the Crown.

The ORDER of the Court was delivered by

AYLING, J.

AYLING, J.—The question for decision in this case is whether we can give an extended meaning to the word “cheating” in section 562 of the Criminal Procedure Code so as to cover an offence under section 420 of the Indian Penal Code (cheating and dishonestly inducing delivery of property, etc.).

We should be glad to do so, as we recognize that equally strong reasons on public and humanitarian grounds may exist for lenient treatment of an offence under either section. On the other hand a careful consideration of the wording of section 562 of the Criminal Procedure Code seems to preclude the possibility of such a construction. If the term “cheating” is to be held to

cover offences under section 418, 419 and 420 of the Indian Penal Code which are included with section 417 in the same group in schedule II to the Criminal Procedure Code, a similar extension must be allowed to the terms "theft" and "dishonest misappropriation." The former must be held to cover offences under sections 380, 381 and 382 of the Indian Penal Code and the latter offences under section 404 of the Indian Penal Code. But such a construction is impossible in face of the fact that the legislature has specifically mentioned "theft in a building" (section 380, Indian Penal Code), in section 562 of the Criminal Procedure Code in addition to simple theft (section 379). The inference is irresistible that "theft in a building" was not intended to be included in the term "theft," and we cannot give a narrow interpretation in the case of "theft" and a wide one in the case of "cheating."

The view we have taken is in accord with that expressed by a Bench of the Bombay High Court in *Emperor v. Ramjan Dadubhai*(1). The only authority to the contrary is that of a single Judge in *Harnarain v. Ramji Das*(2), from which we must respectfully dissent.

We set aside the Order of the Subdivisional Magistrate and direct him to dispose of the case according to law.

S.V.

SUNDARAM
 AYYAR
 v.
 THE KING-
 EMPEROR.
 —
 AYLING, J.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

PARAMASIVA UDAYAN (PLAINTIFF), APPELLANT,

v.

KRISHNA PADAYACHI AND ANOTHER (DEFENDANT),
 RESPONDENTS.*

1917,
 November,
 21.

Evidence Act (I of 1872), sec. 68—Attesting witness, meaning of—Writer of a document, whether can be regarded as an attesting witness.

The writer of a document who signed the same as a scribe, can be regarded as an attesting witness, if he saw the signing of the document by the executant.

(1) (1915) 16 Cr.L.J., 781.

(2) (1915) 12 A.L.J., 465.

* Second Appeal No. 262 of 1916.