

APPELLATE CRIMINAL.

Before Beckett J.

KANWAR SAIN—Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 230 of 1938.

Indian Penal Code (Act XLV of 1860), S. 420 — Cheating — Framing of charge — Necessary to state precise nature of deception — Cheques — drawing of — necessary implications.

K. S. was convicted of the offence of cheating under S. 420, Indian Penal Code, for obtaining goods from a shop by tendering a post-dated cheque. The charge framed merely stated that the accused cheated the complainant by dishonestly inducing him to deliver certain property; it did not indicate the nature of the representations by which the complainant was induced to make over the goods.

Held, that in framing such a charge it is necessary to set out not merely the fact that the accused had obtained goods by dishonest means but also the deception which had been practised so that the accused may have an opportunity of saying either that he never made such representation or that representation was not in fact false, or that it was not in consequence of this representation that the goods were obtained, the need of framing a precise charge being all the stronger in a transaction of this kind in which the representation is implied rather than directly expressed.

Reg. v. Hazelton (1), referred to.

That the act of drawing a cheque implies at least three statements as to the state of affairs existing at the time when the cheque is drawn first, that the drawer has an account with the bank in question; secondly that he has authority to draw on it for the amount shown on the cheque, and thirdly, that the cheque, as drawn, is a valid order for the payment of that amount, or that in the ordinary course of events the cheque, on future presentation, will be honoured. It does not,

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however, imply any representation that the drawer already has money in the bank to the amount shown in the cheque, for he may either have authority to overdraw, or have an honest intention of paying in the necessary money before the cheque can be presented.

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Appeal from the order of Dewan Hukam Chand, Magistrate, 1st Class, exercising enhanced powers under section 30 of the Criminal Procedure Code, Lahore, dated 19th February, 1938, convicting the appellant.

Appellant, in person under Police custody.

S. N. BALI, for Advocate-General. for Respondent.

BECKETT J.—Kanwar Sain, accused, has been convicted of an offence of cheating under section 420, Indian Penal Code, the charge being that he obtained goods from a shop in Lahore by tendering payment in the form of a post-dated cheque. There is evidence to show that his banking account was in an unsatisfactory state at the time, and that he made use, or tried to make use, of post-dated cheques in four other instances at about the same time, although in two of these instances he was not successful in obtaining the goods which he wanted. Kanwar Sain has further been charged with a large number of previous convictions for cheating, most of which were admitted, with the result that he has been sentenced to rigorous imprisonment for five years as an old offender.

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While the prosecution evidence provides sufficient material for the framing of a charge of cheating, the charge itself has not been properly drafted. In framing such a charge, it is necessary to set out not merely the fact that the accused had obtained goods by dishonest means, but also the deception which has been practised. This is laid down in illustration (b)

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of section 223 of the Code of Criminal Procedure. The charge framed in the trial Court merely states that the accused cheated the complainant by dishonestly inducing him to deliver certain property, but it does not even indicate the nature of the representation by which the complainant was induced to make over the goods. It is necessary that the representation should be mentioned in the charge, so that the accused may have an opportunity of saying either that he never made such representation, or that representation was not in fact false, or that it was not in consequence of this representation that the goods were obtained.

The need of framing a precise charge is all the stronger when the charge is based on a transaction of this kind, in which the representation is implied rather than directly expressed. The definition of cheating in the Indian Penal Code follows to some extent the law on the subject of obtaining goods by false pretences in England; and the law applicable to cases arising out of the tender of worthless cheques as the mode of payment has been clearly set out in *Reg. v. Hazelton* (1). The act of drawing a cheque is held to imply at least three statements as to the state of affairs existing at the time when the cheque is drawn first, that the drawer has an account with the bank in question; secondly, that he has authority to draw on it for the amount shown on the cheque; and thirdly, that the cheque, as drawn, is a valid order for the payment of that amount, or that the present state of affairs is such that in the ordinary course of events, the cheque will on future presentment be honoured. It does not, however, imply any representation that the drawer already has money in the bank to the amount shown on the cheque, for he may either have authority

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to overdraw, or have an honest intention of paying in the necessary money before the cheque can be presented.

In *Reg. v. Hazelton* (1), the accused appears to have made payment by means of ordinary cheques payable on demand, and not by means of post-dated cheques. The case is discussed, however, on page 284 of the 15th edition of Kenny's *Outlines of Criminal Law*: and in a foot-note the author suggests that the same doctrine probably applies to post-dated cheques as well. This suggestion is made with reference to the English law in which the false representation must be shown in some way to relate to the present. In India, there seem to be even stronger reasons for applying the same doctrine to post-dated cheques; for illustrations (f) and (g) to section 415 of the Indian Penal Code clearly show that the word "deceiving" used in the definition of cheating is intended to cover false representations with regard to future intention, when these representations are false in the maker's mind at the time when they were made.

What representations are implied by the drawing of a post-dated cheque, and whether these representations can be called false in the sense just mentioned, are matters which must depend on the circumstances in which the cheque is drawn and delivered as a mode of payment. According to the prosecution evidence in the present case, the accused simply stated that he would pay by cheque, and left the complainant to discover that the cheque had been post-dated after his departure. This, if true, would probably distinguish the present case from other cases relating to post-dated cheques. For the reasons already given, however, it is necessary that the charge should set out the precise nature of the representation on the strength of which

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the complainant was induced to supply the goods, so that the accused may know exactly what charge he has to meet. The correct procedure in the present instance would probably be to set forth that the accused stated that he would pay for certain goods which he had ordered by cheque and thereupon delivered a cheque for the amount in question, and thereby implied that he had authority to draw upon the bank for that amount and that the cheque so drawn was a valid order for the payment of the amount shown thereon.

It has been suggested that the defect in the charge is covered by section 537 of the Code of Criminal Procedure and that the accused has not been prejudiced in his trial, inasmuch as he was quite well aware of the true nature of the case which he had to meet and has framed his defence accordingly. In fact, it has even been suggested that the accused, who has argued his own case both in the trial Court and in this Court, only began to tender post-dated cheques in payment for goods after a thorough study of the criminal law on the subject. However this may be, there is another aspect of the matter to be taken into consideration. From certain remarks in the judgment of the trial Court it seems possible that the learned Magistrate was himself under the impression that the gist of the charge against the accused was that his payment by cheque implied that he already had funds in the bank sufficient to cover the amount shown on the cheque; and this, as already explained, is not a statement which can be held to be implied by the cheque itself. The prosecution has produced evidence to show that the financial affairs of the accused were not such as would entitle him to represent that the cheque was a valid order for payment which would be met in the normal course of events. It is, however, still open to the accused to

repel this evidence; and in a case like this, it is important that the trial Court, before which the defence evidence is to be heard, should not mis-direct itself but should be clearly apprised of the principles by which that evidence is to be examined.

For these reasons, I set aside the present conviction and sentence, and remand the case to the lower Court for fresh trial from the stage when charge was framed, after framing a new charge in accordance with the directions contained above. To this extent only the appeal is accepted.

A. N. K.

Appeal accepted.

Case remanded.

APPELLATE CIVIL.

Before Beckett J.

CHUNI LAL AND ANOTHER (PLAINTIFFS) Appellants,

versus

BEANT SINGH AND OTHERS (DEFENDANTS)

Respondents.

Regular Second Appeal No. 400 of 1937.

Custom — grant of residential sites in abadi deh — Non-proprietors of village Bulewal, Tahsil Batala, District Gurdaspur — License — Interpretation of — Presumption — Surrender of proprietary rights by proprietary body — Onus Probandi.

Held, that the plaintiffs, on whom the *onus* rested, had failed to rebut the presumption that the grant of residential sites to non-proprietors in village Bulewal, Tahsil Batala, District Gurdaspur, had throughout been made in the form of a license which did not permit transfer without the consent of the proprietary body, and they also failed to prove that the members of the proprietary body had surrendered their proprietary rights which entitled the non-proprietors to claim partition of the *abadi*.

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