

1964

March 23

## KANUMUKKALA KRISHNA MURTHY

v.

## STATE OF ANDHRA PRADESH

[K. SUBBA RAO, K. C. DAS GUPTA AND RAGHUBAR DAYAL, JJ.]

*Indian Penal Code, 1860 (Act 45 of 1860), ss. 415, 419—Cheating—Public Service Commission, false representations to—If deception of Government.*

The appellant applied for a post advertised by the Madras Public Service Commission, making certain representations in his application which were found to be false. He was convicted under s. 419 Indian Penal Code for having cheated the commission. This conviction was confirmed by the Sessions Judge and the revision was dismissed by the High Court.

*Held:* (i) Cheating can be committed in either of the two ways described in s. 415 Indian Penal Code. 'Deceiving a person' is common in both the ways of cheating.

(ii) The appellant's misrepresentation to the Service Commission continued and persisted till the final stage of the Government itself was deceived by the misrepresentation made in the application presented to the Service Commission.

The Service Commission is a statutory adviser to the Government in the matter of appointment to the Service. Deception of such an adviser is deception of the Government which is expected to pay heed to its advice and act accordingly.

*State of U.P. v. Manbodhan Lal Srivastava* [1958] S.C.R. 533, *The Crown v. Gunput*, 1863 *Punj. Rec. Cr. Case No. 6*, P. E. Billinghamurst v. H. P. Blackburn, 27 C.W.N. 821; *Legal Remembrancer v. Manmatha Bhusan Chatterjee*, & *Legal Remembrancer v. Hriday Narian* I.L.R. 51 Cal. 250, *Emperor v. Fazal Din* (1906) 4 Cr. L.J. 355, *Queen Empréss v. Appasami*, I.L.R. 12 Mad. 151, *Ashwani Kumar Gupta v. Emperor*, I.L.R. 1937 (1) Cal. 71 and *In re: Hampshire Land Company*, [1896] (2) Ch. 743. referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 134 of 1962. Appeal by special leave from the judgment and order dated July 17, 1962 of the Andhra Pradesh High Court in Criminal Revision Case No. 298 of 1961.

*A. S. R. Chari, G. D. Gupta, S. Balakrishnan, R. K. Garg, S. C. Agarwala, D. P. Singh and M. K. Ramamurthi*, for the appellant.

*S. G. Patwardhan and B. R. G. K. Achar*, for the respondent.

March 23, 1964. The Judgment of the Court was delivered by

*Raghubar Dayal, J.*

RAGHUBAR DAYAL, J.—The facts leading to this appeal, by special leave, are these:

The Madras Public Service Commission, hereinafter referred to as the Service Commission, by its notification published

in the Fort St. George Gazette dated August 3, 1948, invited applications for appointment of Assistant Surgeons in the Madras Medical Service (Men's Section), from persons who had rendered temporary service as Assistant Surgeons in that Service at any time between September 3, 1939 and December 31, 1947 and from persons who had rendered War Service and possessed the qualifications mentioned in paragraph 3 of the notification. Paragraph 3 of the notification, *inter alia*, reads:

"Applicants must satisfy the Commission—

- (a) that they are registered practitioners within the meaning of the Madras Medical Registration Act, 1914;
- (b) that they possess the L.M.S. degree or the M.B., B.S., degree of a University in the Province or an equivalent qualification."

The appellant, who was at the time serving as a Civil Assistant Surgeon in the Madras Medical Service on a temporary basis, applied for the permanent appointment to the posts notified by the Public Service Commission. In this application he made the following representations, which have been found to be false, by the Courts below:

- (i) that his name was Kaza Krishnamurthy;
- (ii) that his place of birth was Bezwada, Krishna district;
- (iii) that his father was K. R. Rao of Bezwada; and
- (iv) that he held the degree of M.B.,B.S., II Class, from the Andhra Medical College, Vizagapatam, Andhra University.

On these facts, the appellant was convicted of the offence under s. 419 I.P.C. for having cheated the Madras Public Service Commission by personating as Kaza Krishnamurthy and misrepresenting that he had the necessary qualifications for the post advertised inasmuch as he held the degree of M.B.,B.S., and that this deception of the Service Commission was likely to have caused damage to its reputation.

It may now be mentioned that the appellant was also tried for offences under s. 420 and s. 465 I.P.C. in connection with certain acts committed by him in June and October, 1944. The trial Court acquitted him of the offence under s. 465, but convicted him of the other offence. He was, however, acquitted on appeal, by the Sessions Judge, of the offence under s. 420 I.P.C.

The appellant's conviction under s. 419 I.P.C. was confirmed by the Sessions Judge and the revision against that

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order was dismissed by the High Court. It is against this order of the High Court that the appellant has preferred this appeal, after obtaining special leave.

It has been contended for the appellant that on the facts established in the case, no offence under s. 419 I.P.C. is made out against him, as the appellant's efficiency as a surgeon is not in dispute, he having secured good reports from his superiors during the period of his service and as therefore there could be no question of the Service Commission suffering damage in its reputation.

On the contrary, it is urged for the State that the offence of cheating is made out against the appellant as he deceived the Service Commission and that such deception was likely to damage its reputation as he deceived the Service Commission and obtained from it 'property' viz., the admission card entitling him to sit at the Competitive Examination for the appointment of candidates for these posts, and as the appellant also deceived the Government of the State by his false representations and dishonestly induced it to appoint him in service and pay him salary during the period of his service.

Section 415 I.P.C., defines 'cheating' and reads:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

*Explanation*—A dishonest concealment of facts is a deception within the meaning of this section".

Cheating can be committed in either of the two ways described in s. 415 I.P.C. 'Deceiving a person' is common in both the ways of cheating. A person deceived may be fraudulently or dishonestly induced to deliver any property or to consent to the retention of any property by any person. The person deceived may also be intentionally induced to do or to omit to do anything which he would not have done if not deceived and which act of his caused or was likely to cause damage or harm in body, mind, reputation or property.

The Courts below, as already stated, found that the appellant cheated the Service Commission by deceiving that he held the degree of M.B.,B.S. and by intentionally inducing the

Commission to recommend his appointment to the post of Civil Assistant Surgeon, II Class, and that this act of the Service Commission was likely to damage its reputation as the appellant did not really possess the degree of M.B.,B.S. Assuming, without deciding, that such a deception of the Service Commission and its recommendation could, in certain circumstances, cause damage to its reputation, we are of opinion that in the circumstances of this case there was no likelihood of the causing of such damage to its reputation. There is nothing on the record to show that the Service Commission could have ordinarily detected the deception or that the appointment of the applicant to the post in the Medical Service was the appointment of a person who proved to be inefficient. On the contrary, the evidence on the record shows that for about 10 years between his appointment and the institution of this case, he served efficiently and obtained good reports from the Departmental Superiors. His incompetency for the post was due to his having not obtained the minimum academic qualifications prescribed for the candidates for these posts. We are therefore of opinion that the appellant has not committed the offence of 'cheating' as defined in the latter part of s. 415 I.P.C., even though he had deceived the Service Commission by representing himself to be a duly qualified candidate, and thus induced it to select him for the post.

It was argued for the State that the Public Service Commission held a competitive examination and must have therefore issued an admission card to the appellant entitling him to sit at that competitive examination and that therefore the appellant having induced by deception the Service Commission to deliver to him the admission card which is 'property', committed the offence of 'cheating' as defined in the first part of s. 415 I.P.C. There is no force in this contention for the simple reason that there is nothing on the record to indicate that an admission card was issued entitling the appellant to sit at the competitive examination. In fact, no examination as such took place, and the contention for the respondent appears to have been made under a misapprehension arising out of the letter of the Secretary of the Service Commission to the Surgeon-General with the Government of Madras stating that he was enclosing the list containing the names and other particulars of 45 candidates who were successful at the competitive examination held by the Commission for the direct recruitment of Civil Assistant Surgeons, Class II (Men) in the Madras Medical Service. It is however clear from the record that the candidates were simply interviewed by the Commission. There is nothing on the record to show that any written examination to which admission was by admission cards, took place. The judgment of the Magistrate states:

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“The accused was interviewed by the Service Commission as seen from Exhibit P-70, extract of Service Commission particulars”.

The same statement is made in the judgment of the Sessions Judge who said :

“The accused sent an application Ex. P-72..... showing that he passed M.B.,B.S. degree examination, and on receiving it and interviewing him, the Public Service Commission selected him as Civil Assistant Surgeon, Class I”.

The High Court states the same in its judgment. It said :

“In 1948 he sent an application to the Madras Public Service Commission for selection as class II Civil Assistant Surgeon and was selected as such following an interview by the said body”.

In these circumstances, we cannot hold merely on the basis of suggestions, that any competitive written examination was held and that any admission card was issued to the appellant entitling him to sit at the examination and, consequently, cannot hold that the offence of cheating by dishonestly inducing the Service Commission to deliver him property was committed by the appellant.

The only other question to determine now is whether the appellant deceived the Government of Madras and dishonestly induced it to deliver something in the form of salary to the appellant. It is urged that the appointment to the post lay with the Government and not with the Service Commission and that the Government would not have appointed him to the post in the Medical Service if it had not believed that the appellant possessed the necessary qualifications which, in his case, would be a degree of M.B., B.S., and that such a belief was entertained by the Government on account of the deception practised by the appellant in misrepresenting in his application that he held such a degree. On the other hand, it is contended for the appellant that the delivery of ‘property’ is to be by the person deceived, in view of the language of s. 415 I.P.C., and that the person deceived, if any, was the Service Commission and not the Government, the application containing the misrepresentation having been made to the Service Commission and not to the Government.

We accept the contention for the respondent. The appointments to the Medical Services are made by Government. The Service Commission simply selected the candidates and recommends their names to Government for appointment. This is clear from letter Exhibit P. 47 from the Secretary to the Service Commission to the Surgeon-General with the Government of Madras. The letter refers to the enclosing

of a list containing the names and other particulars of the candidates who were successful at the examination, their names being arranged in order of merit. It refers to the relaxing of a certain rule in view of the paucity of candidates and states that they may be appointed, if necessary, pending receipt of the certificate of physical fitness and a further communication from the commission.

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This is also clear from the provisions of the Government of India Act, 1935. Section 241 provided that appointments in connection with the affairs of a Province will be made by the Governor of the Province. Sub-s. (1) of s. 266 makes it a duty of the Provincial Public Service Commission to conduct examinations for appointments to the Services of a Province. Clause (a) of sub-s. (3) provides that the Provincial Public Service Commission shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts and cl. (b) provides that it shall be consulted on the principles to be followed in making appointments to civil services and posts and on the suitability of candidates for such appointments. The Public Service Commission is constituted in pursuance of the provisions of s. 264. It is thus a statutory body and independent of the Government. This aspect of a Public Service Commission was emphasized in *State of U.P. v. Manbodhan Lal Srivastava*<sup>(1)</sup> when considering the corresponding provisions of art. 320 of the Constitution. This Court said:

“Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first, to give an assurance to the Services that a wholly independent body, not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and, secondly, to afford the Government unbiassed advice and opinion on matters vitally affecting the morale of public services”.

It is in view of these provisions that the Public Service Commission invites applications for appointment to the various posts under the Government and subsequently makes a selection out of the candidates for appointment to those posts. The selection may be after holding a written examination or after interviewing candidates or after doing both. Names of the candidates selected are arranged in order of merit and forwarded to the Government. The Government is expected, as a rule,

(1) [1958] S.C.R. 533, 543.

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to make appointments to the posts from out of the list, in the same order. It has, however, discretion not to appoint any part of the persons so selected and securing a place in the order of merit which would have ordinarily led to his appointment.

Any representation made in an application for appointment is really a representation made to the Government, the appointing authority, and not only to the Public Service Commission to which the application is presented and which has to deal with that application in the first instance, up to the stage of selection. The object of the applicant was to secure an appointment and not merely to deceive the Public Service Commission and sit at the examination or to appear at the interview. The deception was practised for that purpose and therefore there seems to be no good reason for holding that the deception came to an end once the Service Commission was deceived and had taken action on it as a result of the deception. A false representation in an application to the Service Commission continues and persists to be so till the application is considered by the final authority responsible for making the appointments and must therefore be deemed to be made to that final authority as well. In the instant case, when the recommendation of the Service Commission was sent to the Government, the qualifications of the recommended candidates, including the fact that the appellant had passed the M.B.,B.S. examination were mentioned. The Government therefore believed that the appellant possessed the degree of M.B.,B.S., that as the Service Commission had scrutinized the application in that regard and had satisfied itself that the appellant possessed that degree. The consequence of that is that the Government were led to believe that fact, which thus became a false representation.

We are therefore of opinion that the appellant's misrepresentation to the Service Commission continued and persisted till the final stage of the Government passing an order of appointment and that therefore the Government itself was deceived by the misrepresentation he had made in his application presented to the Service Commission.

The fact that the Service Commission is an independent statutory authority has no relevant bearing on this question. It is a statutory body as it is constituted under the provisions of a statute. It is independent of the Government in the sense that in its selection of candidates or in its tendering advice to the Government it does not take any hint or instructions or clue from the Government. It brings to bear its own independent mind to judge the comparative merits of the candidates and their suitability to the posts they apply for. Its function is to advise the Government on the suitability of the candidates. It is therefore a statutory adviser to Government in the matter of appointment to the Services. Deception of such an adviser is

deception of the Government which is expected to pay heed to its advice and act accordingly.

There have been cases in which servants or agents of an authority have been deceived while the loss has been suffered by the authority concerned. In such cases, the person deceiving the servants or agents has been held to have deceived the authority concerned, though no direct question was raised about the deception being made not to the authority but to its servant. The principle of the cases, to our mind, fully applies to the case of candidates deceiving the Public Service Commission and thereby deceiving the Government in believing that they satisfied the various conditions prescribed for candidates for those appointments. We may refer to some such cases.

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In *the Crown v. Gunput*<sup>(1)</sup> the accused who had produced a railway pass with an altered number before the ticket collector when travelling by a train, was held to have thereby dishonestly induced the railway company to do or omit to do what they otherwise would not have done or omitted by the production of the altered pass. The deception of the ticket collector was considered to be deception of the railway company.

In *P. E. Billingham v. H. P. Blackburn*<sup>(2)</sup> certain bills were presented by a company for payment. They were checked by Government officials who were deceived by certain representations made by subordinate officials through whom the bills had passed, and consequently payments were made in satisfaction of the demands under the bills. The persons concerned in causing the deception were convicted of cheating the Government.

In *Legal Remembrancer v. Manmatha Bhusan Chatterjee and Legal Remembrancer v. Hridoy Narain*<sup>(3)</sup> it was held that if the evidence showed that responsible officers of the East Indian Railway Company and its Asansol Office were deceived and induced either to allot wagons to a certain colliery which would not otherwise have been allotted or to make out wagon chalans for the colliery which would not otherwise have been made, it was sufficient to support the allegations in the charges that the railway company was, by reason of deceit, induced to act in a certain way. The deception of the responsible officers was thus taken to be the deception of the railway company, the possible damage to whose reputation was remote.

In *Emperor v. Fazal Din*<sup>(4)</sup> it was held that the deception practised was likely to cause damage or harm to the person on

<sup>(1)</sup> 1868 Punj. Rec. Col. Case No. 6.      <sup>(2)</sup> 27 C.W.N. 821.

<sup>(3)</sup> I.L.R. 51 Cal. 250

<sup>(4)</sup> 1906 4 CrL. L.J. 355.

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whom it was practised or to the railway authorities whose agent he was in the matter of appointments.

In *Queen-Empress v. Appasami*(<sup>1</sup>) the act of the accused in obtaining, by personation, a hall ticket from the Superintendent at a University Examination and in signing the name of another person on the examination papers was held to indicate an intention on his part to lead the University authorities to believe that the examination papers were answered by the other person. This again is on the principle that the deception of the Superintendent who was working for the University was a deception of the University itself.

Similarly, in *Ashwini Kumar Gupta v. Emperor*(<sup>2</sup>) the accused personated another person at a University examination cheating the Registrar. It was held that this not only damaged the reputation of the Registrar, but also that of the University. Reference may also be made to the case reported as *In re: Hampshire Land Company*(<sup>3</sup>) in which a Society had lent money to a company on the borrowing of the directors of that company who were not competent to borrow, the resolution conferring on them the power of borrowing being invalid for certain reasons. It was held that the Society had a right to assume, in a case like that, that all the essentials of internal management had been carried out by the borrowing company. On the same principle it can be said that the Government of the State had a right to assume that the Service Commission had verified that the candidates selected by it for appointment by the Government possessed the necessary qualifications and in that view the scrutiny by the Service Commission can be said to be on behalf of the Government.

The Government appointed the appellant to a post in its Medical Service on being induced by deception that he was fully qualified for the appointment. In consequence of the appointment, Government had to pay him the salaries which fell due. It is clear therefore that the appellant, by deceiving the Government, dishonestly induced it to deliver property to him and thus committed the offence of cheating under s. 415 I.P.C. as he pretended to be Kaza Krishnamurthy which he was not. The offence really committed by him was 'cheating' by personation, punishable under s. 419 I.P.C. The conviction of the appellant for this offence is therefore correct. We accordingly dismiss his appeal and order that he will surrender to his bail and serve out the sentence.

*Appeal dismissed.*

(<sup>1</sup>) I.L.R. 12 Mad. 151.

(<sup>2</sup>) I.L.R. 1937 (1) Cal. 71.

(<sup>3</sup>) 1896 (2) Ch. 743