

1872.
Jan. 25.

[APPELLATE CRIMINAL JURISDICTON.]

REG. v. HARGOVANDA'S AND HARKISSANDA'S.

Extraordinary jurisdiction of High Court—Offence not constituted by acts proved—Cheating—Indian Penal Code, Sec. 417.

Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners and the Court of appeal from such Court did not constitute the offence of cheating of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence.

To justify a conviction for the offence of cheating there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made.

IN this case the accused, Hargovindás and Harkíssandás, were tried by Manekjee Cowasjee Entee, Magistrate F. P. at Broach, for the offence of cheating, and on the 4th September 1871 were convicted and sentenced each to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs. 500 or, in default, to undergo imprisonment of the same kind for a further period of three months.

On appeal, the Session Judge of Surat (W. H. Newnham) upheld the conviction and sentence. The facts of the case sufficiently appear from the following decision of the Session Judge :—

“ It appears from the evidence that the two appellants owed some Rs. 900 to one Manohardás and on his threatening to sue them, Hargovandás agreed to mortgage their house, and a stamp paper was procured and a bond drawn up and Hargovandás signed it. It was to be completed by his brother's signature and attested. Afterwards, however, Hargovandás demanded an advance of Rs. 200 more for another creditor, which Manohardás refused to make; while Hargovindás refused to have the bond completed till he received this money. It never was completed, for both the appellants made a mortgage of the house to one Uchrutlal, and Manohardás, hearing of this, went to the Sub-Registrar's office to try and hinder the bond being registered. But this could not be done.

“Hargovandás tries to prove that the Rs. 919 entered in the uncompleted bond, included the Rs. 200 he demanded, and that he would not have the bond completed, because Manohardás would not pay him the Rs. 200 till it was registered, and would not make a separate entry of the 200 rupees in the bond ; but he has totally failed to shew this. I find the facts to be as set forth above.

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“The Magistrate has held that the concealment of the intention to mortgage to Uchrtlál was a deception which induced Manohardás to ‘omit to do.’ what he would naturally have done, viz., prosecute his claim against the appellants, and has convicted both of them of cheating, holding that Harkissandás, the brother, must have known of the proposed mortgage of their only immoveable property to Manohardás. I think, although Manohardás ought, perhaps, to have at once broken off negotiations and sued, when he found the Rs. 200 insisted on, that there is no doubt that he was dishonestly ‘kept in play’ till the mortgage to Uchrtlál was effected without his being informed of it. The active party in this business was Hargovandás ; but, as the Magistrate remarks, there is every reason to suspect that Harkissandás knew of the affair, although he kept himself in the back-ground. This, however, would not be enough to convict him, if it were not that Manohardás deposes that he sent to call *both* the appellants to complete the deed, and that Ichhášankar, who is in his service, says that he went and called Harkissandás, telling him for what he was wanted, on which Harkissandás promised to come, but did not. I agree with the Magistrate that both the appellants practised a fraud on Manohardás, and reject the appeal.”

On the 30th November 1871, a petition was presented to the High Court on behalf of the accused, praying that the record and proceedings of the case might be sent for under its extraordinary jurisdiction and the conviction and sentence passed by the Magistrate F. P. reversed. The petition was granted.

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 HARGOVAN- *Shántarám Náráyán* for the petitioners submitted that
 DA'S there was no evidence of intention to cheat which would
 and warrant the conviction. He contended that the transaction
 HARKISSAN- was purely a civil one.
 DA'S.

Dhirajlál Mathurádás (Government Pleader) :—The accused, with the view of obtaining time from their creditor and inducing him to delay the institution of a suit, made a pretended offer to mortgage their property and then withdrew from the bargain. (*Melvill, J.* :—Then in every case in which a man says, 'Don't sue me, I will pay you,' and does not pay, he cheats.)

If he offered to mortgage property and obtained time by that offer, never intending to complete the mortgage, that would be cheating. (*Melvill, J.* :—How does it appear that, when the mortgage was offered, he intended not to complete it?) There is no evidence to shew that, unless we look to the subsequent conduct as furnishing such evidence. (*Melvill, J.* :—The subsequent conduct shews, if anything, that the accused at first made the offer to mortgage and intended to complete it, but afterwards changed his mind and would not complete the transaction, unless Rs. 200 were paid.)

PER CURIAM :—The Court being of opinion that the facts found do not constitute the offence of cheating, reverses the conviction and sentence.

Conviction and sentence reversed.