

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2087/2010**

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Reserved on: 8th August, 2016

Decided on: 6th January, 2017

STATE

..... Petitioner

Represented by: Ms. Rajni Gupta, APP with SI
Bhpendra Kumar PS EOW.

versus

ANIL GROVER & ORS

..... Respondents

Represented by: Mr. Prem Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. FIR No.205/1993 under Sections 420/120B IPC was registered at PS Moti Nagar, Delhi on 22nd April, 1993 on the complaint of Shri Ramu Lal who alleged that he and other similarly placed persons have been cheated by the respondents herein along with other persons by issuing an advertisement for the job for Foreman in Dubai and UAE. Money was collected from them however, the promise to arrange the jobs was not fulfilled. As no charge sheet had been filed despite considerable time, the accused filed a petition for quashing of the FIR being W.P. (Crl) No.687/2004 which was disposed of by this Court on 15th September, 2005 observing that the issues raised in the petition could be agitated before the learned Trial Court as charge sheet had been filed. A charge sheet was filed belatedly in August, 2002 for offences punishable under Sections 420/120B IPC and Sections 24/25 of The Emigration Act, 1983 against Ajay Katyal, Anil Grover, Deepak Kochar, Raj Kumar, Santosh Tandon and Ramesh Chand Manni.

2. During arguments on charge the following issues were raised:

- “1. The offence of cheating an emigrant is covered by section 24 (g) of the Emigration Act and therefore, is out of purview of section 420 IPC.*
- 2. The offence U/s 24 (g) of the Emigration Act is punishable with maximum of 2 years and therefore, the limitation prescribed for the same U/s 468 Cr.P.C. is only 3 years. The charge sheet having been filed after 10 years of commission of the offence is therefore, beyond limitation.*
- 3. The accused cannot be tried for any offence under the immigration Act for want of sanction u/s. 27 of the Act.*
- 4. In any case, from the statements of the complainant and other alleged victims, no offence of cheating is made out.”*

3. After hearing arguments, the learned Trial Court came to the conclusion that since no sanction under Section 27 of the Emigration Act was obtained, the prosecution for offence punishable under Sections 24/25 of the Emigration Act was not maintainable. As regards Section 420 IPC the learned Trial Court noting that Section 24 (g) of the Emigration Act provides for punishment with imprisonment for a period of two years and a minimum imprisonment of six months, applying the principle of interpretation of statutes that Special Act would override the provision of a general Act held that Section 420 IPC was not attracted and discharged the accused vide order dated 14th November, 2007.

4. Aggrieved by the said order, the State preferred a revision petition which was also dismissed vide the impugned order dated 25th August, 2009. The learned Additional Sessions Judge vide the impugned order noted that

though no sanction was required in view of proviso to Section 27 of the Emigration Act, 1983 as the complainant was an “intending emigrant” as defined under Section 2 (d) of the Emigration Act however, the offence under Section 24 (g) of the Emigration Act being punishable with imprisonment for a period of two years, the limitation prescribed under Section 468 Cr.P.C. to take cognizance was three years. Charge sheet was filed after ten years of the commission of the offence, thus the cognizance was beyond the period of limitation hence the revision petition filed by the State was dismissed. The learned Additional Sessions Judge also held that since offence of “cheating any emigrant” is specifically covered by Section 24 (g) of the Emigration Act, 1983, Section 420 IPC was not applicable to the facts of the present case. Hence the present petition.

5. Learned counsel for the respondents contends that in view of specific provision under the Emigration Act, no prosecution under Section 420 IPC was permissible as rightly held by the two courts. Further the punishment prescribed for offence punishable under Section 24 (g) of the Emigration Act was for a maximum period of two years imprisonment, thus cognizance of the offence by the Trial Court could have been taken within three years only. Since the cognizance was taken beyond the period prescribed, the learned Trial Court rightly discharged the respondents which order was upheld by the learned Additional Sessions Judge. Reliance is placed on the decision reported as 1983 (1) SCR 905 T. Barai vs. Henry AH HOE and Anr.

6. Learned APP for the State on the other hand contends that on the facts of the case as alleged both offences punishable under Section 420 IPC and under the Emigration Act are made out. Since Section 420 IPC is punishable for a period of seven years, no period of limitation is prescribed for taking

cognizance hence both the learned Metropolitan Magistrate and the learned Additional Sessions Judge committed error in discharging the respondents.

7. Before proceeding further it would be relevant to note the contents of the FIR as registered on the complaint of Ramu Lal. In the FIR, Ramu Lal alleged that he was working as a mason in the year 1992. M/s Raj International Consultancy Magnum House No. 1, Karampura Complex, Delhi issued an advertisement in the newspaper in respect of employment of Foreman in Dubai and UAE. After reading the advertisement, he went to their office on 15th February, 1992 where he met Anil Grover and Deepak Kochar. Ramu Lal was accompanied by Mange Ram, Nar Singh and Mahadev Prasad. Anil Grover and Deepak Kochar informed them that there was requirement of around more than 100 masons in Dubai but there were many applicants who were desirous of going there, therefore whosoever will deposit the money first, would be sent. Once the vacancies were filled up, the applicants would not be sent to a Dubai. Both Anil Grover and Deepak promised to send them to Dubai for job within 1½ months and that they would charge ₹15,000/- as advance. They asked the four of them to get the money on the next day. On 16th February, 1992 all four of them went to the office of Raj International with ₹5,000/- each and handed it over to Anil Grover and Deepak Kochar. Both of them again promised them of the job and asked them to come after one month. They also took the passports of all the four men. When they went again after one month they were called after another 15 days. Around five months passed away in this process and they were repeatedly given assurances however, no job was given to them. They again went to the office where they met Raj Grover who informed them that they had licenses of manpower supply and that the complainants need not

worry and that they would be sent to Qatar. He further said that they will board the flight from Bombay where they will meet Deepak Kochar who will arrange for everything. He gave the name of the guest house as well where they were to meet him. When the complainant along with his three friends reached Bombay, they met Deepak Kochar and stayed with him however, on the 4th day they were sent to Delhi by Deepak Kochar on the pretext that it was difficult to get a flight from Bombay and now they would get a flight from Delhi. After reaching Delhi they again went to the office of Raj International where they were shown air tickets of Delhi to Qatar via Bombay and that they were not confirmed. The complainant and his friends were asked to pay further amount of ₹10,000/- each which was given and they were assured of the ticket and visa on the next date. However, despite repeated visits neither the respondents gave them the tickets nor got them jobs abroad nor returned the money. Hence action was sought.

8. In T. Barai (supra) the Supreme Court quoted with approval the passage in Regina v. Youle [1861] 158 E.R. 311 and held

“It is settled both on authority and principle that when a later statute again describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implication. In Michell v. Brown [1959] 120 E.R. 909. Lord Cambell put the matter thus:

It is well settled rule of construction that, if a later statute again describes an offence created by a former statute and affixes a different punishment, varying the procedure, the earlier statute is repealed by the later statute See also Smith v. Benabo [1937] 1 All. E.R. 523.

In Regina v. Youle [1861] 158 E.R. 311 Martin, B. said in the oft-quoted passage:

If a statute deals with a particular class of offences, and a subsequent Act is passed which deals with precisely the same offences, and a different punishment is imposed by the later Act, I think that, in effect, the legislature has declared that the new Act shall be substituted for the earlier Act."

9. The Supreme Court in a subsequent decision reported as 1989 Cri.L.J. 1005 State of Bihar vs. Murad Ali Khan & Ors, dealing with the issue that if on the same facts if two offences are attracted, whether punishment for both the offences would amount to double jeopardy held:

"7. It was, however, suggested for the respondents that the offence envisaged by Section 9(1) read with Section 2(16) and Section 50(1) of the Act, in its ingredients and content, is the same or substantially the same as Section 429, IPC and that after due investigation the police had filed a final report that no offence was made out and that initiation of any fresh proceedings against respondents would be impermissible. Section 429, IPC, which occurs in the chapter "Of mischief" provides:

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

The offence of hunting any wild-animal as defined in Section 9(1) read with Section 2(16) of the Act is much wider.

Section 56 of the 'Act' provides:

56. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for the time being in force, for any act or omission which constitutes an offence against this Act or from being liable under such other law to any higher punishment or penalty than that provided by this Act:

Provided that no person shall be punished twice for the same offence.

We are unable to accept the contention of, Shri R. F. Nariman that the specific allegation in the present case concerns the specific act of killing of an elephant, and that such an offence, at all events, falls within the overlapping areas between Section 429, IPC on the one hand and 9(1) read with 50(1) of the Act on the other and therefore constitutes the same offence. Apart from the fact that this argument does not serve to support the order of the High Court in the present case, this argument is, even on its theoretical possibilities, more attractive than sound. The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Act, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also.

The proviso to Section 56 has also a familiar ring and is a facet of the fundamental and salutary principles that permeate penology and are reflected in analogous provisions of Section 26 of General Clauses Act, 1897; Section 71 IPC; Section 300 of the Cr.P.C, 1973, and constitutionally guaranteed under Article 20(2) of the Constitution. Section 26 of the General Clauses Act, 1897 provides:

“26. Provision as to offences punishable under two or more enactments:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”

Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against reprosecution after acquittal, a protection against reprosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:

“...The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offenses for double jeopardy purposes only if "each provision requires proof of an additional fact which the other does not" (Blockburger v. United States (1931) 284 US 299. Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately. (Jeffers v. United States (1977) 432 US 137).”

(See "Double Jeopardy" in the Encyclopaedia of Crime and Justice vol. 2, (p. 630) 1983 Edn. by Sanford H. Kadish: The Free Press, Collier Mac Millan Publishers, London)

The expressions "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in "Double Jeopardy" (Oxford 1969) says at page 108:

"The trouble with this approach is that it is vague and hazy and conceals the thought processes of the Court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are "substantially the same" may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible...."

8. *In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In Leo Roy Frey v. The Superintendent, District Jail, Amritsar 1958 CriLJ 260 the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said (at P. 121 of AIR):*

"The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences."

In State of Madhya Pradesh v. Veereshwar Rao Agnihotry, 1957 SCR 868: (AIR 1957 SC 592) the accused was tried by the special judge for offences under Section 409, IPC, and Section 5(2) of the Prevention of Corruption Act, 1947. While convicting him under Section 409, IPC, the Special Judge held that the accused could not be tried under Section 5(2) of the Prevention of Corruption Act, 1947, as there was a breach of the requirement of law that the investigation be by a police officer not below a particular rank. In appeal, the High Court set aside even the conviction under Section 409, IPC, applying the doctrine of autrefois acquit holding that the Special Judge's finding on the charge under Section 5(2) amounted to an acquittal and that punishment on a charge under Section 409, would be impermissible. This Court following the pronouncement in Omprakash Gupta v. State of U.P. 1957SCR 423 (AIR 1957 SC 458) held that the two offences were distinct and separate offences.

In The State of Bombay v. S. L. Apte (1961) 3 SCR 107 : (AIR 1961 SC 578) the question that fell for consideration was that in view of earlier conviction and sentence under Section 409, IPC a subsequent prosecution for an offence under Section 105 of Insurance Act, 1938. was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution. This Court observed (at Pp. 581 and 583 of AIR):

“To operate as a bar the second prosecution and the consequential punishment thereunder, must be for 'the same offence. The crucial, requirement therefore for attracting the Article is that the offences are the same. i.e.. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations, of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but

the ingredients of the two offences and see whether their identity is made out....”

“...Though Section 26 in its opening words refer to 'the act or omission constituting an offence under two or more enactments.' the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to 'shall not be liable to be punished twice for the same offence'. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked....”

The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law. The observations of this Court made in the context of Section 2(3) of Contempt of Courts Act might usefully be recalled. In Bathina Ramakrishna Reddy v. State of Madras 1952 SCR 425: (AIR 1952 SC 149) this Court examined the contention that the publication of an article attributing corruption to a judicial officer was not cognizable in contempt jurisdiction by virtue of Section 2(3) of the Contempt's of Courts Act, 1971, which provided that (at P. 151 of AIR):

No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

The contention before this Court was that the allegations made in the article constituted an offence under Section 499 of IPC and, that therefore, cognizance of such an offence under the Contempt's of Court Act was barred. Repelling the contention, Mukharji, J., said (at p. 151 of AIR):

“In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say 'where the act alleged to constitute such contempt is an offence'...”.

It is, however, unnecessary to explore the possibilities of this contention as indeed there has been admittedly no prior conviction and sentence for an offence under 429. IPC even assuming that the two offences are substantially "the same offence". Suffice it to notice, prima facie, that the ingredients of an offence under Section 9(1) read with Section 50(1) of the Act require for its establishment certain ingredients which are not part of the offence under Section 429 and vice versa.*

In the result, these appeals are allowed, the orders of the High Court in Crl. Misc. No. 223 of 87 dated 13-2-1987 and the two orders in Crl. Misc. No. 258 of 1987(R) and Crl. Misc. No. 259/1987(R) dated 18-2-1987 are set aside and the order dated 1-7-1986 of the learned Magistrate taking cognizance of the offence and ordering issue of summons to the respondents is restored. The criminal case initiated on the complaint will now be proceeded with in accordance with law.

10. Section 24 (1) (g) of the Emigration Act provides that whoever cheats an emigrant shall be punishable with imprisonment for a term which may extend to two years and a fine which may extend to ₹2,000/- and that such imprisonment shall not be less than six months and such fine which shall not

be less than ₹1,000/- in the absence of any special and adequate reasons to the contrary being mentioned.

11. The Emigration Act was enacted for the purpose that no Indian citizen could leave India for taking up work aboard without obtaining a certificate of emigration clearance from the Protector of Emigrants. An emigrant worker can be recruited for a job in a foreign country either by a recruiting agent registered under the Act or an employer permitted under the Act. Thus the object of the Emigration Act was to deal with concerns relating to matters of exploitation of emigrants by recruiting agents and employers and streamlining the system so that no person can function as a recruiting agent without a valid certificate and that no citizen of India shall be emigrated unless he obtains an authorization from the Protector of Emigrants in a prescribed manner and form. Section 24 (1) (g) of the Emigration Act makes punishable an offence of cheating an emigrant. No doubt, an intending emigrant also falls in the definition of an emigrant however, clause (g) of Section 24 (1) relates to cheating of an emigrant in relation to the provisions of the Act which requires licenses to be applied for and furnishing false information or suppressing material information while obtaining certificate etc. The same would not encompass cheating by taking the money from the victims, misappropriating the same and also committing the offence of criminal breach of trust for the reasons the passports for the visa were also entrusted to the respondents and as per the charge sheet 276 passports were recovered from the premises of Raj International, 268 passports from the residential premises of Anil Grover and 209 passports from the residential premises of Ajay Katiyal besides other articles. The investigation in the FIR did not stop at the cheating of Ramu Lal but of a number of other persons

who were also lured and their passports were retained by the respondents thereby committing criminal breach of trust besides luring them to part with money. As held by the Supreme Court in State of Bihar vs. Murad Ali Khan (Supra) the same set of facts in conceivable cases can constitute offences under two different laws and the trial thereon would not amount to double jeopardy. Thus, the finding of the two courts that the offence alleged being covered under Section 24(g) of the Emigration Act thus Section 420 IPC would not apply is liable to be set aside as the facts/allegations constituting the two offences are different.

12. Consequently the impugned order dated 21st August, 2009 passed by the learned Additional Sessions Judge and 14th November, 2008 passed by the learned Metropolitan Magistrate are set aside. The learned Trial Court will now proceed against the respondents in accordance with law.

13. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 06, 2017
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