

A SRI BHAGWAN SAMARDHA SREEPADA VALLABHA VENKATA
VISHWANDADHA MAHARAJ

v.

STATE OF ANDHRA PRADESH AND ORS.

JULY 15, 1999

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[K.T. THOMAS AND M.B. SHAH, JJ.]

C *Penal Code, 1860 : Sections 415 and 420—Cheating—Appellant's representation of having divine healing powers—Assurance of curing complainant's child—Money charged—Impairment not cured—Held—Appellant's representation of possessing divine powers is inducement referred in Section 415—Appellant's receiving of consideration and not giving the desired result—Commission of the offence of cheating presumed.*

D *Code of Criminal Procedure, 1973 : Section 173(8)—Investigation—Complaint lodged—Investigation conducted by the police—Report presented before the Magistrate that no offence committed—Reinvestigation ordered by the Magistrate—Report filed that an offence under Section 420 IPC committed—Petition before the High Court dismissed—Appeal filed—Held—Power of the Court to direct the police to conduct further investigation is not inhibited—There is nothing in the section to suggest that the Court is obliged to hear the accused before directing any reinvestigation.*

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H A complaint of cheating, against the appellant, was lodged with the police by the complainant alleging that the appellant claimed of possessing divine healing powers through his touches. On the basis of said representation, the complainant approached the appellant for the healing of his 15 year old daughter who was dumb by birth. The appellant assured complainant of curing is daughter's impairment through his divine powers and charged a hefty sum of money as consideration. When nothing improved even after the lapse of the time limit fixed by the appellant, the complainant began to doubt the appellant. In the meanwhile when the complainant came to know of the news of defrauding of some other persons by the appellant and his having mobilised a huge sum of money from his devotees, the complainant lodged the complaint. After investigation, the police presented a final report before the Magistrate referring it to be a case as “mistake of fact” on the ground that this was a kind of religious belief in India among devotees of God. However, disagreeing with the said report, the Magistrate ordered for

reinvestigation. The police, after reinvestigation, filed a report holding that the appellant had committed an offence under Section 420 IPC. The Magistrate, taking cognizance of the offence on the said report, issued warrant of arrest against the appellant. A

The appellant approached the High Court for quashing of the proceedings before the Magistrate on the grounds that the Magistrate had no jurisdiction to order reinvestigation without affording an opportunity to the appellant after receipt of the first report of the police and that the allegations levelled against him in the complaint failed to constitute the offence of cheating. The High Court dismissed the said petition. Hence this appeal. B
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The appellant contended that the offence of cheating was not made out from the allegations levelled against him in view of the admitted fact that the complainant reposed faith only in the divine powers which appellant would only have offered to invoke through rituals and prayers.

Dismissing the appeal, this Court D

HELD : 1. If somebody offers his prayers to God for healing the sick, there cannot normally be any element of fraud but if he represents to another that he has divine powers and either directly or indirectly makes that another person believe that he has such divine powers, it is inducement referred to in Section 415 IPC. Anybody who responds to such inducement pursuant to it and gives the inducer money or any other article and does not get the desired result is a victim of the fraudulent representation. Court can in such a situation presume that the offence of cheating falling within the ambit of Section 420 IPC has been committed. It is for the accused, in such a situation, to rebut the presumption. [873-H; 874-A-B] E
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2. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173 (8) of the Code of Criminal Procedure, 1973. Even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. The only rider provided on the said power of conducting further investigation is that it would be desirable that the police should inform the Court and seek formal permission to make further investigation. In such situation the power of the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173 (8) to suggest that the Court is obliged to hear the accused before any such H

A direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.

[874-D-F]

B *Ram Lal Narang v. State (Delhi Administration)*, AIR (1979) SC 1791, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 638 of 1999.

C From the Judgment and Order dated 12.11.98 of the Andhra Pradesh High Court in CrI. P. No. 4836 of 1998.

A.K. Bajpai and Radha Shyam Jena for the Appellant.

G. Prabhakar for the Respondents.

D The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

E A godman is now in the dock. One who was initiated by him as his devotee has later turned to be his betenoire, and the godman is facing a prosecution for the offence of cheating under Section 420 of the Indian Penal Code. When he moved the High Court to quash the criminal proceedings pending against him, the motion was dismissed as per the impugned order against which the present appeal has been filed by special leave.

Facts, thus far developed, are stated below:

F An FIR happened to be registered on the complaint lodged by one Venkatakrishna Reddy with the Town Police Station, Nellore, containing the following allegations. Appellant (Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishanandha Maharaj) who is a youngman, son of a teacher of Gummaluru Village (A.P.) claimed to possess occult faculties and attracted a number of devotees. He represented to have divine healing powers through his touches, particularly of chronic diseases. Complainant approached him for healing his 15 year old daughter who is congenitally a dumb child. Appellant assured the complainant that the little girl would be cured of her impairment through his divine powers. He demanded a sum of Rs.1 lac as consideration to be paid in instalments. The first instalment demanded was Rs.10,000 which, **H** after some bargaining, was fixed at Rs.5,000. Complainant paid that amount

and later he paid a further amount of Rs.1,000 towards incidental expenses. He waited eagerly for improvement of his dumb child till 1994 which was the time limit indicated by the appellant for the girl to start speaking. As the child remained the same, complainant began to entertain doubts. Appellant postponed the time limit till August 1994 for the girl to develop speech capacity. A little more amount of Rs.516 was collected for performance of a yagan. But unfortunately nothing of such thing brought about any change in the girl. In the meanwhile, news of some other persons defrauded by the appellant reached the ears of the complainant as newspapers started publishing such other activities indulged in by the appellant. In one such publication it was mentioned that the appellant had mobilised more than a crore of rupees from different devotees. It was then that the complainant realised the fraud committed by the appellant, according to the complainant. Hence a complaint was lodged with the police for cheating.

The police conducted investigation and on 15-12-1994 laid final report before the Magistrate concerned by referring the case as "mistake of fact" mainly on the ground that this is a kind of religious belief "prevalent in India among devotees of God." According to the appellant, this was not a case of cheating or breach of trust. But the Magistrate was not prepared to give accord to the said report. On 2-8-1995 he ordered for "reinvestigation of the case".

Pursuant to the said order, the police reinvestigated and filed a report on 15-9-1997 holding that appellant has committed the offence under Section 420 of the IPC. The Magistrate took cognizance of the offence on receipt of the said report and issued warrant of arrest against the appellant.

Appellant moved the High Court for quashing the proceedings on two grounds. First is that the Magistrate has no jurisdiction to order reinvestigation after receipt of the first report of the police, without affording an opportunity to the appellant. Second is that allegations of the complainant would not constitute an offence of cheating. But the High Court dismissed the petition for which the impugned order was passed.

Learned counsel contended that no offence of cheating can be discerned from the allegations, particularly in view of the admitted fact that the complainant reposed faith only in the divine powers which appellant would only have offered to invoke through rituals and prayers.

If somebody offers his prayers to God for healing the sick, there cannot

A normally be any element of fraud. But if he represents to another that he has divine powers and either directly or indirectly makes that another person believe that he has such divine powers, it is inducement referred to Section 415 of the IPC. Anybody who responds to such inducement pursuant to it and gives the inducer money or any other article and does not get the desired result is a victim of the fraudulent representation. Court can in such a situation presume that the offence of cheating falling within the ambit of Section 420 of the IPC has been committed. It is for the accused, in such a situation, to rebut the presumption.

C So the contention that the allegations do not disclose an offence under Section 420 of the IPC has to be repelled and we are of the opinion that the Magistrate has rightly taken cognizance of the said offence.

D Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang v. State (Delhi Admn.)*, AIR (1979) SC 1791. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

E In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the Magistrate with such an obligation.

For the aforesaid reasons, we are unable to interfere with the order passed by the Magistrate. Appeal is accordingly dismissed.

G R.C.K.

Appeal dismissed.