

1945

Present : Jayetileke J.

ABEYEWARDENE (P. S. 2666), Appellant, and
MUTTUNAYAGAM, Respondent.

1,539—*M. C. Colombo, 48,854.*

Attempt—Charge of attempt to cheat—Awareness of complainant that he would be cheated by accused—Guilt of accused—Penal Code, ss. 403, 490.

A person may be guilty of an attempt to cheat although the person he attempted to cheat was aware of the true facts and was, therefore, not cheated.

A PPEAL against an order of acquittal made by the Magistrate of Colombo.

V. T. Thamotheram, C.C., for the complainant, appellant.

No appearance for the accused, respondent.

Cur. adv. vult.

December 19, 1945. JAYETILEKE J.—

The accused, who is a clerk employed in the Tyre Controller's Office, was charged under section 403/490 of the Penal Code with having attempted to cheat one Perera. The evidence shows that on November 6, 1944, he represented to Perera that his motor car had been placed in category C and that he could get it transferred to category B1 if he was paid Rs. 50. After some discussion the accused agreed to accept Rs. 25. Later Perera learnt from another clerk that the representation made by the accused that his car was placed in category C was false, and he reported the matter to the Tyre Controller. The latter got the Police to take action and a trap was laid for the accused. On November 8, 1944, Perera produced before Police Sergeant Abeyewardene two ten rupee notes bearing Nos. J/5 474008 and J/6 726599 and a five rupee note bearing No. F/4 66428 and informed him that he intended to give

them to the accused in payment of the amount he demanded. Police Sergeant Abeyewardene noted the numbers on a piece of paper and requested Perera to give them to the accused. Perera handed the notes to the accused on the pavement outside the office, and the accused gave him a piece of paper on which he had noted the category assigned to the car. Perera and the accused went back to the office and a little later Police Sergeant Abeyewardene came on the scene and wanted to search the accused. Thereupon the accused dropped the money he had in his hand. Police Sergeant Abeyewardene picked up the notes and found that they corresponded with the notes which Perera had produced before him. On further search Police Sergeant Abeyewardene found in the note book of the accused an entry which had the number of Perera's car. The accused did not give evidence on his own behalf. The Magistrate held that, as Perera knew at the time he handed the money to the accused that the representation which the accused had made to him was false, the charge of attempt to cheat could not be maintained and acquitted the accused. This appeal is taken against that order with the sanction of the Attorney-General.

Mr. Thamotheram submitted to me three decisions which show that the order of the Magistrate is wrong. In *Regina v. Hensler*¹ the accused was indicted for attempting to obtain money by false pretences in a begging letter. In reply to the letter the prosecutor sent the accused five shillings. But he stated in his evidence at the trial that he knew that the statements contained in the letter were untrue. Kelly C.B. said—

“This is an attempt by the prisoner to obtain money by false pretences which might have been so obtained. The money was not so obtained because the prosecutor remembered something which had been told him previously. In my opinion, as soon as ever the letter was put into the post the offence was committed.”

In *Rez v. Light*² Rowlatt J. said—

“It is quite clear that on the charge of obtaining goods or money by false pretences, no conviction is possible unless it is shown that the mind of the prosecutor was misled by the false pretence, and that he was thereby induced to part with his money or goods. But it is a fallacy to suppose that the same principle applies when an attempt only is charged. A man makes false pretences with the intention of obtaining money, and uses the false pretences in endeavouring to obtain money. The prosecutor may not believe the false statement and does not part with his money, or he may part with his money intending to carry the matter further. In each of these cases the accused has made false pretences with the object of obtaining money, and has failed because the prosecutor has not been misled. There is, as it seems to us, no difficulty in deciding that under these circumstances a man is guilty of attempting to obtain property or money by false pretences.”

¹ 11 *Coz's Reports of Cases (1867-71)* 570.

² 24 *Coz's Reports of Cases (1913-15)* 718.

In the *Government of Bengal v. Umesh Chunder Mitter* ¹ M wrote a letter to the Currency Office at Calcutta, enclosing the halves of two government currency notes, stating that the other halves were lost, and enquiring what steps should be taken for the recovery of the value of the notes. The Currency Office, having, upon enquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M and returned by him to the Currency Office. It was held that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of an attempt to cheat.

These authorities establish that a person may be guilty of an attempt to cheat, though the person he attempted to cheat was aware of the true facts and was, therefore, not cheated.

I would set aside the order made by the Magistrate and send the case back to the Magistrate so that he may convict the accused and pass such sentence on him as he thinks fit.

Acquittal set aside.
