(1922) 06 CAL CK 0001

In the Calcutta High Court

Case No : S.A. No. 1269 of 1920

Dina Bandhu Saha APPELLANT

Vs

Abdul Latif Molla RESPONDENT

Date of Decision : 15-06-1922

Acts Referred:

Citation : (1922) 06 CAL CK 0001

Judgement

1. This appeal arises out of a suit for recovery of price of certain goods delivered to the defendants for being carried from Basundia in the District of Jessore to Jhalakati in the Barisal District and which were misappropriated on the way by defendants Nos. 2 to 4.

2. The defendant No. 1 is the owner of the boat and the defendants Nos. 2 to 4 were the boatmen or manjhis.

3. The suit was decreed against all the Defendants Nos. 1 to 4 by the Court of first instance but on appeal by the defendant No. 1, it was held that the defendant No. 1 was not liable for the price of the goods and only a decree for Rs. 16 being the boat hire advanced was passed against him.

4. The plaintiff has appealed to this Court and the question for consideration is whether the defendant No. 1 is liable for the loss of the goods.

5. The Court of Appeal below found that the defendant did not enter into any contract with the plaintiff for carrying the plaintiff''s goods. What he meant, however, was that there was no contract with the defendant No. 1 personally as it would appear from the other findings arrived at by the learned Subordinate Judge. He finds that the defendant No. 1 admits that his boat is let out on hire that the boatmen settle the terms of hire, that the hire is paid to him and the defendant No. 1 pays the wages of the boatmen from the hire. There cannot be any doubt that the defendant No. 1 derives profits by letting out his boat on hire..... "In para. 5 of the written statement it is alleged by the defendant that he never goes in the boat to settle hire, that the persons who remain in the boat

settle hire, that when the hire is paid to the defendant, he gives a portion to the boatmen." Then again he says:-

It is admitted that defendant No. 1 derives benefit by letting out his boat on hire. He lets out his boat through his boatmen. Defendant No. 1 is the principal and defendants Nos. 2 to 4 are his agents.

6. There is no doubt therefore, that the Court of appeal below found that the defendants Nos. 2 to 4 as agents of defendant No. 1 entered into a contract with the plaintiff to carry his goods.

7. The learned Subordinate Judge says:

In this case it may be presumed that defendant''s agents are responsible for safely carrying plaintiff''s goods to Jhalakati. If they are guilty of negligence or for any act within the scope of the agents'' apparent authority, the principal, defendant No. 1 would have been made liable."..."The defendants Nos. 2 to 4 committed a criminal offence with respect to the goods during the carrying of goods on the way. The goods must have been misappropriated on the way. Under no circumstances, it can be held that any criminal act with respect to the goods was within the scope of the authority of the agents, defendants Nos. 2 to 4.'' Further on he observes: "There cannot be any doubt that the acts done by the agents in the present case are beyond the authority of the agents. There is no evidence to show that defendant No. 1 induced the plaintiff to believe that his manjhis had authority to misappropriate the goods on the way. Defendant No. 1 cannot be made liable for the loss accrued to plaintiff for the price of goods entrusted to defendants Nos. 2 to 4.

8. We are of opinion that the learned Subordinate Judge has not taken a correct view of the matter.

10. S. 238 of the Contract Act lays down that misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed by agents, in matters which do not fall within their authority, do not affect their principals.

11. The learned Subordinate Judge seems to be of opinion that the fraud committed by the agents must be for their principal; in other words for the benefit of their principal: and that is the argument which is advanced on behalf of the Respondent before us. But in the first place, the section does not say that the fraud must be committed for the benefit of the principal. A distinction is drawn in the section between frauds " committed by agents acting in the course of their business for their principals " and frauds " committed by agents in matters which do not fall within their authority;" the question, therefore, in each case being whether fraud was committed by the agents while acting in the course of their business for their principals.

12. It is also contended that the section does not apply because the loss of the goods was occasioned by a criminal act on the part of the defendants Nos. 2 to 4.

13. In the case of Banviok v. English Joint Stock Batik, (1867) 2 Exch. 259 at p. 265 Willes, J., observed as follows:-

With respect to the question whether a principal is answerable for the act of his agent in the course of his master''s business and for his master''s benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master''s benefit though no express command or privity of the master be-proved. That principle is acted upon every day.......It is true, he has not authorized the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in.

14. The learned Pleader for the Respondent relied upon the words "and for the master''s benefit" in the passage from the judgment of Willes, J., quoted above, as showing that the principal is not liable unless the fraud is committed by the agent for the master''s benefit as well as in the course of business for the principal. In this contention, he is supported by the decision of this Court in the case of Gopal Chandra Bhattacharya v. The Secretary of State for India in Council. (1909) 36 Cal. 617 = 13 C.W.N. 619 In that case the learned Judges held that "the true rule of law with regard to the liability of the master for the misconduct of the servant is that the master is liable for the fraud of his servant in the course of his service and for the master''s benefit and that a master is not liable for the misconduct of the servant committed for the servant''s own private benefit, and that it is not necessary that the benefit should accrue to the master." The learned Judges in enunciating that proposition relied upon the Cases of Barwick v. English Joint Stock Bank (1867) 2 Exch. 259 at p. 265, Houldsworth v. City of Glasgow Bank (1880) 5 A.C. 817 and certain other decisions.

15. Barwick''s case (1867) 2 Exch. 259 at p. 265, however has been misunderstood, as pointed out by the House of Lords in Lloyd v. Grace, Smith and Co. [1912] A.C. 716. In that case, a widow who owned two cottages and a sum of money secured on a mortgage, being dissatisfied with the income derived therefrom, consulted a firm of solicitors and saw their managing clerk, who conducted the convincing business of the firm without supervision. Acting as the representative of the firm, he induced her to give him instructions to sell the cottages and to call in the mortgage money and for that purpose to give him her deeds and by means of certain documents in the course of his business defrauded the widow and dishonestly disposed of the property of the widow for his own benefit. It was held by the House of Lords that a principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is

committed for the benefit of the principal or for the benefit of the agent. Referring to Barwick''s case (1867) 2 Exch. 259 at p. 265, Lord Macnaghten (at p. 732) observed as follows: "It was, I think, in reference to the facts of the particular case under review, where the fraud, if committed, must have been committed for the benefit of the principal, that Willes, J., expressed himself in the language which has been misunderstood. What Willes, J., said was this: "The general rule is, that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master''s benefit, though no express command or privity of the master be proved.".....''To that statement of the law, no objection of any sort can be taken. But it is a very different proposition to say that the master is not answerable for the wrong of the servant or agent, committed in the course of the service, if it be not committed for the master''s benefit. Willes, J., does not, I think, say anything of the kind. In a sentence immediately preceding the sentence I have quoted, he observes that the question whether the principal is answerable for the act of an agent was settled as early as Lord Holt''s time-a general observation not confined to the case where the principal is a gainer by the fraud. The question as to the meaning and effect of the ruling of Willes, J., may, I think, be best ascertained by reference to a few cases in which some of the learned Judges who took part in the decision in Barwick''s case (1867) 2 Exch. 259 at p. 265 delivered opinions."

16. Lord Macnaghten then discussed the cases on the point and explained Barwick''s case (1867) 2 Exch. 259 at p. 265 as also the case of Houldsworth v. City of Glasgow Bank (1880) 5 A.C. 817 in which the proposition of law enunciated by Willes, J., in Barwick''s case (1867) 2 Exch. 259 at p. 265 was quoted with approval. His Lordship pointed out at p. 738;

Is it a hardship to be liable for the fraud of your partner. But that is the law under the Partnership Act. It is less a hardship for a principal to be held liable for the fraud of his agent or confidential servant. You can hardly ask your partner for a guarantee of his honesty '', but there were such things as fidelity policies. You can insure the honesty of the person you employ in a confidential situation or you can make your confidential agent obtain a fidelity policy." His Lordship (Earl Loreburn) observed at p. 725: "Willes, J. cannot have meant that the principal is absolved whenever his agent intended to appropriate for himself the proceeds of his fraud. Nearly every rogue intends to do that.

17. The case of Gopal Chandra Bhattacharya v. The Secretary of State for India in Council (1909) 36 Cal. 617 = 13 C.W.N. 619 was decided upon a principle erroneously supposed to have been laid down in Barwick''s case (1867) 2 Exch. 259 at p. 265. Having regard to the statement of the law by the House of Lords in the case of Lloyd y. Grace Smith & Co. [1912] A.C. 716, we think that the defendant No. 1 is liable for the loss occasioned to the plaintiff''s goods by reason of the goods having been misappropriated by his agents, the defendants Nos. 2 to 4, as there is no question that the goods were entrusted to them and were being carried by them in the course of their business when the

misappropriation took place. The principle of law enunciated by the House of Lords in the case of Lloyd Grace, Smith & Co. [1912] A.C. 716 is in accordance with the law as enacted in s. 238 of the Indian Contract Act. As stated above there is nothing in that section to show that in order to render the principal liable the fraud must be committed for the benefit of the principal.

18. For these reasons, we are of opinion that the decree of the lower Appellate Court must be set aside and that of the Court of first instance restored with costs here and in the lower Appellate Court.

