
(1955) 11 AHC CK 0009
In the Allahabad High Court
Case No : Second Appeal No. 95 of 1949

Dy. Commissioner, Rae Bareli and Another	APPELLANT
Vs	
Har Narain Lal	RESPONDENT

Date of Decision : 11-11-1955

Acts Referred:

Contract Act, 1872 — Section 23, 72

Citation : AIR 1956 All 205

Hon'ble Judges : H.S. Chaturvedi, J

Bench : Single Bench

Advocate : B.K. Dhaon and B.N. Roy, for the Appellant; S.D. Misra, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Chaturvedi, J.—This is a defendants' second appeal arising out of a suit for recovery of Rs. 446/-.

2. The facts of the case, which are not disputed, are briefly given below.

3. In the year 1930 a Society was formed in village Saleempur Bhairon, district Rae Bareli. This Society was styled as "Better Living Society . Ltd.", (hereinafter referred to as the Society). Some of the inhabitants of that village became its members. Har Narain Lal, plaintiff, who is a resident of the village was its member from the very inception of the Society and later on in June 1938 he was elected to the post of the President of the Society. He continued to hold this office till 15-10-1943.

The object of the Society was generally to improve the lot of the villagers by various methods. Among other objects, the Society undertook to repair and construct roads, wells and akharas in village Saleempur. The Government of the Province too in order to improve the conditions of rural areas, were carrying on various activities through their Rural Development Department.

It was arranged that the Society will work, in co-ordination with the Government department and for works undertaken by the Society the Government would contribute up to one-half of the total costs and the remaining expenditure was to be borne by the Society either from its funds or by raising subscriptions from the public. Certain works as enumerated in annexure A to the plaint were carried out by the Society between 18-7-1943 and 18-10-1943.

The contribution of the Rural Development Department was to the extent of Rs. 1356/- while the plaintiff raised a sum of Rs. 1,506/6/6 by public subscription which included a sum of Rs. 809/- paid by the mother of the plaintiff, Har Narain plaintiff wrote to the Rural Development Department demanding a sum of Rs. 117/8/- as due to him. This letter was sent on 28-3-1945.

In the beginning of 1946, the Rural Development Department while denying their liability to pay Rs. 117/8/- made a counter-claim for Rs. 446/- alleging that the sum of Rs. 446/- had been realised in excess by the plaintiff for which no proper accounts were forthcoming. Sri Iftikhar Husain, Sub-Divisional Officer, Dalmau, was also the Secretary of the Rural Development Department and he directed the Tahsildar of Salon to see that Har Narain appeared in his Court on 16-4-1946 to explain the accounts.

Har Narain did not go, and another notice (Ex. A. 11) Was issued by the Secretary, Rural Development, Department, ordering Har Narain to appear in the Court of the Sub-Divisional Officer, Dalmau, on 10-6-1946. The laet portion of this notice contained the following threat:

"You should note that non-compliance of this order will end in issuing warrant of arrest against you as you have not cared at all of the former notices on lame excuses".

4. The last and final notice sent to Har Narain was on 2-7-1946, the concluding portion of which reads thus:

"Under the circumstances mentioned above, you are asked to refund a sum of Rs. 446/- within a week from the receipt of this order, "failing which the case will be handed over to the police".

Har Narain while denying his personal liability for the sum of Rs. 446/- deposited this amount in the treasury on 18-7-1946.

5. On 8-7-1947, Har Narain brought the suit for refund of the sum of Rs. 446/- on the allegation that he had been made to deposit the sum under coercion and that no sum was due" from him. This claim for refund was made u/s 72, Contract Act.

6. The suit was contested by the defendants mainly on the ground that the plaintiff having made payment with the object of stifling prosecution the agreement was void in law and, therefore, no claim for refund was maintainable.

7. The learned Munsif held that in view of the provisions of Section 23, Contract

Act, the plaintiff was not entitled to a refund of Rs. 446/- which was paid with the object of avoiding criminal prosecution for embezzlement of public funds. In this view of the matter, the learned Munsif dismissed the suit.

8. Dissatisfied with the decision of the learned Munsif the plaintiff went in appeal which was decided by the learned Civil Judge, Rae Bareilly. The lower appellate Court held that as the money was demanded under a threat of criminal prosecution the payment of the money by the plaintiff should be deemed to have been made under coercion as to attract the provisions of Section 72, Contract Act. On this finding, the lower appellate Court decreed the suit.

9. The defendants have now come up in second, appeal challenging the order of the lower appellate Court. This appeal raises a somewhat interesting question of law. The learned counsel for the appellants has contended that Section 72, Contract Act has no application to this case because the respondent had deposited the sum of Rs. 446/- of his own accord in order to avoid a prosecution.

The argument is that as the payment was made with the object of stifling prosecution, the plaintiff-respondent is not entitled to a refund of the money so paid under the provisions of Section 72, Contract Act. The contention of the appellants that the money was willingly paid does not stand scrutiny. Both the Courts below have held that this deposit was made by the plaintiff-respondent because of the threat held out in the letter of the Sub-Divisional Magistrate dated 2-7-1946, to the effect that if Har Narain Lal would fail to refund the sum of Rs. 446/- within a week, the case would be handed over to the police.

In view of this notice the inference is irresistible that Har Narain Lal had no option but to deposit the money, as it was feared that Har Narain Lal might be dragged to a criminal Court to stand his trial for an offence of a criminal breach of trust or for an embezzlement of Government money.

It was, therefore, to avoid publicity about the prosecution and the danger of his being convicted that Har Narain Lal chose to deposit the aforesaid sum. What Har Narain Lal did was not his voluntary act. It was because of the pressure that had been exercised on him by the two notices issued by the Sub-Divisional Magistrate that Har Narain Lal paid the money.

The threat of a criminal prosecution made by a Magistrate was sufficient to deprive the victim of the threat, i.e. Har Narain Lal, of the use of his mind and free will thus rendering him incapable of giving free and valid consent. The facts as they stand make it abundantly clear that Har Narain Lal made the payment under compulsion and not because he himself wanted to make the payment willingly.

It is manifest in this case that what Har Narain Lal did was not in pursuance of the dictation of his will but under pressure of an outside agency, and the person who put the pressure on Har Narain Lal was no other than an officer exercising magisterial powers. The fear which was caused by the threat issued by the

Magistrate was undoubtedly real and Har Narain Lal must have realised that unless he made the deposit he will have to stand his trial in a criminal Court.

There can, therefore, be no doubt that Har Narain Lal deposited the aforesaid sum of Rs. 446/- not voluntarily but under coercion or pressure. Money so paid can be recovered under Section 72, Contract Act, which runs thus:

"72. A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it".

It was held by their Lordships of the Judicial Committee in -- "*Kanhaya Lal v. National Bank of India Ltd.* 40 Ind App 56 (PC) (A) that the term "coercion" occurring in Section 72, Contract Act is not synonymous with the term "coercion" as defined in Section 15 of the Act. It was further observed by the Privy Council that the word "coercion," in Section 72 has been used in its general and ordinary sense.

As Indicated above, Har Narain Lal, had been compelled to make the deposit under threat of a criminal prosecution and if that threat had not been present, he would not have deposited the aforesaid sum. The Inference is, therefore, irresistible that Har Narain Lal had been forced to make the payment and the payment so made was no doubt made under coercion so as to attract Section 72 Contract Act.

10. The main argument of the learned counsel for the appellants was that as the money was paid to stifle prosecution it could not be recovered under the provisions of Section 23, Contract Act. No doubt where the money is paid voluntarily under an illegal contract or for an illegal purpose the person so paying the money cannot recover it in accordance with the well known maxim "*in pari delicto potior est conditio possidentis*": but this maxim will apply only when both sides are in "*in pari delicto*", that is to say when both sides stand on equal footing at the time when the unlawful agreement is made.

As already indicated, the Sub-Divisional Magistrate could have easily dragged the plaintiff to a criminal Court of law to stand his trial for a non-compoundable offence and it was to escape these consequences that the plaintiff deposited the money. The positions of the plaintiff and that of the Magistrate who held out the threat were materially different. The Magistrate was in a position to dictate, and the plaintiff had no option but to submit to the will of the Magistrate.

In view of this unequal position where one had the power to dictate and the other had no alternative but to submit, the parties could not be said to be "*in pari delicto*". Even though the money was paid in order to stifle prosecution, it could be recovered by Har Narain because he paid the money under pressure which had been exercised upon him by the Sub-Divisional Magistrate.

I am, therefore, unable to accept the contention of the learned counsel for the appellants that both parties were "*in pari delicto*" and as such the money cannot be recovered by the plaintiff. This appears to be a clear case in which Har Narain

Lal paid the money under pressure and as such he is entitled to recover it back under the provisions of Section 72, Contract Act.

The facts of this case bear close resemblance to the facts in -- " Trikamdas Udeshi Vs. Bombay Municipal Corporation, . In that case one Trikamdas Udeshi had boarded a tram-car belonging to the Bombay Municipal Corporation - without purchasing a ticket.

The traffic supervisor demanded a sum of Rs. 5/- as penalty from him and the fine was paid and 6 receipt was obtained. In the receipt it was mentioned that the amount was paid in order to avoid proceedings in a Court of law. Chagla C. J., observed as under:

"The petitioner paid this sum in order to avoid a prosecution. He knew perfectly well that if he did not pay this sum of Rs. 5/-, he would have been prosecuted before a Magistrate.....It is impossible to suggest that both the parties were so situated that the petitioner could have refused to pay the amount if he so desired. Their situation was unequal.

The Municipality could have dragged the petitioner to a criminal Court, there would have been publicity about the prosecution, the petitioner would have been convicted and would have been compelled to pay a fine. It is to escape these consequences that the petitioner paid the amount. If that is the position, then it is clear that the petitioner could not be said to be "in pari delicto" with the Bombay Municipality in the question of the payment of Rs. 5/-".

On these facts the claim of the petitioner for refund u/s 72, Contract Act was allowed. The above observations apply with equal force to the facts of the present case. It is not necessary to refer to other cases cited at the Bar because those cases were considered by Chagla, C. J. in the aforesaid case.

11. The decision of the lower appellate Court decreeing the suit, of the plaintiff was a correct decision and no good reason has been put up forward to set aside that decision. There being no force in this appeal, it is dismissed with costs.