
(1971) 02 AHC CK 0021
In the Allahabad High Court
Case No : Second Appeal No. 3842 of 1963

Firm Laxmi Dutt Roop Chand	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 09-02-1971

Acts Referred:

Contract Act, 1872 — Section 56
Criminal Procedure Code, 1898 (CrPC) — Section 517

Citation : AIR 1971 All 479

Hon'ble Judges : K.N. Srivastava, J

Bench : Single Bench

Advocate : J.N. Chatterjee, for the Appellant; Gur Pratap Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Srivastava, J.—This is an appeal against the judgment and decree passed by the II Additional District Judge, Allahabad, dismissing the appeal filed by the plaintiff-appellant against the judgment and decree passed by the Additional Civil Judge, Mirzapur, decreeing the suit for the recovery of certain amount against Jhanak Lal, defendant No. 2 and dismissing the plaintiff's claim against the Union of India, defendant No. 1.

2. The facts giving rise to this appeal are as follows:

35 bags of brass scraps were booked from Sindi Railway Station to Mirzapur. Jhanak Lal was the consignor and the consignee of the goods. The plaintiff firm contended that it was the purchaser for value of the consignment and as such was entitled to 35 bags of brass scraps booked by Jhanak Lal at Sindi on 11-1-1956. According to the plaintiff, the goods should have reached Mirzapur within four or five days and as the goods had been diverted and converted by the negligence of the Railway Administration, therefore, the plaintiff suffered the loss. After notices u/s 77, Railways Act and Section 80, Civil P. C., the suit was filed against the Union of India. Subsequently, Jhanak Lal the consignor, was

made a party and damages were claimed from him. The defence of the contesting defendant i. e., the Union of India was that the goods were suspected by the police to be stolen property and, as soon as the goods reached at Sindi, the Railway Administration received information from the police station that the goods should not be allowed to proceed to its destination and on the next day, the goods were seized by the police. Jhanak Lal was then challenged u/s 379/411, I. P. C. in Case No. 1 of 1957. Jhanak Lal was acquitted on 27-6-1957 and the aforesaid 35 bags of brass scraps were released in favour of Jhanak Lal, The trial court ordered that the property be released in favour of Jhanak Lal after the expiry of the period of appeal.

3. A notice was sent by the plaintiff to the Railway Administration that the goods had not been received and, therefore, the Railway Administration was entitled to pay to the plaintiff the price of the goods. This notice was dated 21-3-1956. A number of reminders were then sent and the Railway Administration through Ext. A-6 dated 16-1-1957 informed the plaintiff that the police had seized the goods and the same would be delivered to the plaintiff on being, released. As the goods were not released to the Railway Administration and were released in favour of Jhanak Lal, therefore, the plaintiff filed this suit.

4. The trial court and the appellate court relied on Section 56 of the Contract Act holding that the agreement to transport the goods from Sindi to Mirzapur became impossible to perform on account of the seizure and, therefore, it had become impossible to fulfil the contract. The learned counsel for the appellant contended that the goods had been seized from the custody of the Railway Administration whose position was that of a bailee and, therefore, it was for the Railway Administration to have filed an objection u/s 517, Criminal P. C. to get the goods released in their favour so that the same may be delivered to the plaintiff who was the purchaser for the value of the same. In this very connection, it was argued that the contract had not completely become impossible to perform and the seizure of the goods being a temporary phase, the contract by the bailee to transport the goods from Sindi to Mirzapur could be performed after getting the property from the custody of the court and, therefore, the provision of Section 56 of the Contract Act would not attract the facts of this case.

5. In support of this contention, the learned counsel for the appellant relied on a decision of the Supreme Court in *Mugneeram Bangur and Co. Vs. Sardar Gurbachan Singh*, . There is no grouse against the law laid down in this Supreme Court case. If the performance of the contract was rendered unlawful by a subsequent act, the contract becomes void but if the contract becomes unlawful for a determined period of time or for an undetermined period of time, the contract would not become void unless the ban continued during the period in which the agreement had to be performed. In the reported case, the contract had not become impossible to perform permanently but was rendered unlawful for a temporary period. It has, therefore, to be seen as to whether the

performance of the contract by the Railway Administration in the instant case had become impossible only during a temporary period or permanently.

6. In order to determine this point, it has to be seen as to whether the Railway Administration was bound to file an objection u/s 517, Criminal P. C. for the release of the property in favour of the Railway Administration. In support of this contention, the learned counsel for the appellant relied on a decision of the Nagpur High Court AIR 1942 82 (Nagpur) , it was held that where the goods were seized from the custody of a pledgee, the goods must be returned to the pledgee and the pledgee's possession under the Contract Act being legal possession, therefore, the pledgee was the person entitled to possession.

7. In Section 517, Criminal P. C., the words "or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody" clearly indicate that the property produced before the court in connection with an offence has to be delivered to the person claiming to be entitled to possession. It cannot be denied that Jhanak Lal was the consignor of the disputed property. He had booked it at Sindi on 11-1-1956 for being transported to Mirzapur in his own name. He was, therefore, both the consignor and the consignee of the goods. The Railway Administration was holding the property during its transit on behalf of the person who was the consignor and consignee both i. e., Jhanak Lal. Till the date of the seizure, there was nothing on account of which the Railway Administration could know that Jhanak Lal had transferred this consignment to the plaintiff or that the plaintiff was the purchaser for value of this consignment. The consignment consisting of 35 bags of brass scraps were taken into possession by Jhanak Lal sometime after 27th June, 1957. Jhanak Lal was entitled to possession of this property and prima facie he, being the consignor and the consignee of the goods, was entitled to the same at its destination i. e., Mirzapur. Being a consignor, he had certain right which he could exercise even when the consignment was in transit. Therefore, the main question which would arise in this case would be as to whether the Railway Administration knew at the time when the property was delivered to Jhanak Lal, that the plaintiff was the purchaser for value of this consignment.

In the first notice which was sent by the plaintiff on 21-3-1956, it was only mentioned that the plaintiff was entitled to Rs. 7,097/- as the consignment has been lost. There was no mention in this notice that the plaintiff was the purchaser of the consignment for value. Even in the subsequent reminders which the plaintiff sent to the Railway Administration, there was no such mention. On 16-1-1957, the Railway Administration sent a letter Ext. A-6 informing the plaintiff that the property had been seized by the police in a theft case in which Jhanak Lal, the consignor, was challenged and, therefore it would be returned to the plaintiff if released by the court. The property was never released in favour of the Railway Administration. It was released in favour of Jhanak Lal. It was obviously returned to a person on whose behalf the Railway Administration was

the bailee. As the property was returned to the rightful owner, I don't think that there was any need for the Railway Administration to file an objection u/s 517, Criminal P. C. The facts of the Nagpur case, referred to above are quite different from the facts of the present case. In the Nag-pur case, the property was not returned to the person who was the prima facie owner and was entitled to possession of the same. In Abdul Rahim Vs. State, , this very question came for decision and it was held that the property u/s 517, Criminal P. C. should be released to the person from whose custody it was seized. It is true that the property was seized from the possession of the Railway Administration but ultimately Jhanak Lal was the owner of the same and, therefore, the Railway Administration rightly did not file any objection u/s 517, Criminal P. C. as the property had been returned to the person who was entitled to its delivery at its destination, namely, Mirzapur. There is no evidence whatsoever that till then the Railway had any knowledge of the fact that the plaintiff was the purchaser for value of this consignment. Sending notice and demanding damages by the plaintiff from the Railway Administration without mentioning the fact that the RR had been purchased by the plaintiff would not go to show that the Railway had any knowledge of the fact that the consignment was transferred to the plaintiff for value.

8. In this connection, the learned counsel for the appellant referred to the statements of Jhanak Lal, Madhukar Bithal Deshpande and Sri M. R. Agarwal. Sri M. R. Agrawal was the Commercial Inspector and he made the enquiry long after the property was released in favour of Jhanak Lal. It is true that during the enquiry, he contacted the plaintiff but that would not go to show that at the time when the property was released in favour of Jhanak Lal, the Railway Administration knew that the plaintiff was the owner of this consignment and was entitled to the delivery of the same. The statement of Deshpande also does not help the plaintiff. He investigated the case and during his investigation, Jhanak Lal told him that he had transferred the property to the plaintiff. That would not go to show that the Railway Administration had also knowledge of the same because the Railway Administration was not at all in the picture in the criminal case. The statement of Jhanak Lal was referred in this connection but all that he stated was that he had transferred this consignment to the plaintiff. He did not say that he had intimated the Railway Administration that the plaintiff was the purchaser for value of this consignment. The Allahabad case, referred to above, therefore, does not apply to the facts of this case.

9. In the Supreme Court case State Bank of India Vs. Rajendra Kumar Singh and Others, , it was laid down that the party adversely affected should be heard before the order of return is passed. In the instant case, as said above, the Railway Administration was not an adversely affected party and as the property was returned u/s 517. Criminal P. C. to the consignor who was himself the consignee, therefore, the Railway Administration was not at all an adversely affected party and as such its decision also does not go to help the plaintiff.

10. The learned counsel for the appellant contended that the property has been taken from the possession of the bailee and therefore the bailee should have filed an objection u/s 517, Criminal P. C. so that after the release, the bailee could transport the consignment at Mirzapur. If the consignor, after the release of the property did not want that the property should be transported to Mirzapur, I don't think that there was any need for the bailee to have filed an objection to take the property in its possession for transporting it to Mirzapur. The result was that in accordance with the legal proceedings, the property was taken from the custody of the Railway Administration finally and not temporarily and therefore the provision of Section 56 of the Contract Act fully applied to the facts of this case.

On 25-1-1957, the Railway Administration sent a notice Ext. A-13 to the plaintiff intimating him that the goods had been seized by the court and the plaintiff should get it released, but the plaintiff did not take any action to file any objection. He remained silent till the consignment was delivered by the Court to Jhanak Lal consignor. After the consignment was delivered to Jhanak Lal, the plaintiff started to press his claim against the Union of India and filed that suit without impleading Jhanak Lal as a defendant. Later on when this legal complication came to the notice of the plaintiff, Jhanak Lal was also made a party to the suit and a relief was claimed against him as well. The plaintiff had RR and other relevant documents showing that he was the purchaser for value of the consignment and, therefore, he should have filed an objection u/s 517, Criminal P. C. for the release of the consignment in his favour specially when a few months after the release order was passed, the plaintiff was informed by the Railway Administration that the consignment had been seized in a case and was in the custody of the court.

11. For these reasons, I am, therefore, of the opinion that the Union of India, respondent No. 1, is not liable for the damages claimed and the suit was rightly dismissed by the trial court and the appellate court against the Union of India, respondent No. 1.

12. The appeal is hereby dismissed. After taking into consideration all the facts and circumstances, I am of the opinion that the parties should bear their respective costs of this appeal.