

(1909) 04 CAL CK 0012
In the Calcutta High Court

Gopal Chandra Bhattacharya

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 05-04-1909

Acts Referred:

Citation : (1909) 04 CAL CK 0012

Final Decision : Dismissed

Judgement

1. In this second appeal the plaintiff is the appellant, and he instituted the suit under the following circumstances:

2. He is a contractor under the District Board of Chittagong and for some work done by him for the District Board he was given a cheque for Rs. 1,091-12-9 by the Vice-Chairman, on the 3rd April, 1905. The District Board funds are kept in the Government Treasury at Chittagong. The plaintiff went to the Treasury for the money covered by the cheque. Defendant No. 2 was the head poddar in the Treasury and defendant No. 3 was a mohurrir there. It appears that the cheque was passed by the Accountant on its presentation by the plaintiff and it was then presented by him to the Treasurer who after obtaining the necessary orders of the Treasury Officer made it over to defendant No. 3, who in his turn, took plaintiff's signature in a receipt book in anticipation of payment and told him to apply a little later to defendant No. 2 for the money. The plaintiff says that a little after he went for the money to the defendant No. 2. But this defendant instead of paying the money told him that it had been paid to the payee. On the above facts the plaintiff sued the defendants Nos. 2 and 3 for the money, alleging that they had in collusion committed fraud and misappropriation. Defendant No. 1, the Secretary of State, is also made a party on the ground that defendants Nos. 2 and 3 were acting as his agents and that they committed fraud and misappropriation in performance of their duty as such.

3. Both the lower Courts have decreed the suit against defendants Nos. 2 and 3, holding that the misappropriation was committed by them for their own benefit and they were, therefore, liable. But the plaintiff's case as against the Secretary

of State had been dismissed.

4. The plaintiff now appeals to this Court and on his behalf it has been urged that the defendant No. 1, the Secretary of State, should have been made liable and that the Court below was wrong in holding that the misappropriation by defendants Nos. 2 and 3 was not within the scope of their employment.

5. During the course of arguments we have been referred to some English cases by the learned Vakil for the appellant. The first authority cited is the case of *Barwick v. English Joint Stock Bank* L.R. 2 Exch. 259. We find that Willes, J., makes the following observations with regard to the liability of the principal: "But 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." The above definition of the liability of the master appears to have been repeatedly referred to and approved of in many subsequent cases; it was cited with approval by Lord Selborne in the case of *Houldsworth v. City of Glasgow Bank* 5 A.C. (H.L.) 317.

6. Another authority to which our attention has been drawn is the case of *British Mutual Banking Company Ltd. v. Charnwood Forest Railway Co.* L.R. 18 Q.B.D. 714. In this case it was held that when a secretary of the defendants had made untrue answers to enquiries for his own benefit, the defendants were not liable and Lord Esher in delivering judgment in the above case observes that "although what the secretary stated related to matters about which he was authorised to give answers, he did not make the statement for the defendants but for himself; he had a friend whom he desired to assist and could assist by making false statements and as he made them in his own interest or to assist his friend he was not acting for the defendants. The rule has often been expressed in the terms that to bind the principal the agent must be acting for the benefit of the principal."

7. Another case cited was the case of *Bombay Burmah Trading Corporation Ltd. v. Mirza Mahomed Ally and the Burmah Co. Ltd.* L.R. 5 IndAp 130: 4 C. 116. In this case the principle laid down by Willes, J., above quoted was referred to and approved.

8. We find that the above cases have been fully discussed in the case of *D. McLaren Morrison v. S. Verschoyle* 6 C.W.N.429, and there also Stanley, J., has approved of the principle of the liability of the master as laid down in the above cases.

9. In the case of *Moti Lal Ghose v. Secretary of State for India* 9 C.W.N. 495, it was held that where the act complained of was done by a Government official occupying such a position that for all practical purposes, the Government had no

control over him and the Government did not cause or authorize or adopt such act and gained no profit from it, the Government cannot be made liable.

10. The next case on the point is the case of *Loll Chand v. Agra Bank Ltd.* L.R. 18 IndAp 3. In this case their Lordships of the Privy Council thought that the servant might bona fide have paid the money to the wrong person. This would have been within the purposes of the agency and the principal would be liable. But the case does not lay down that the holder of a cheque can, in all cases, sue a banker for the money covered by the cheque independently of any conversion.

11. From a perusal of the reports of the above cases it seems to us clear that the true rule of law with regard to the liability of the master for the misconduct of the servant is that a master is liable for the fraud of his servant committed 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.

12. The present case has been brought against the Secretary of State because the amount was misappropriated by the 2nd and 3rd defendants and he is responsible for their actions. This is clearly not so. Misappropriation was not within the scope of the duties entrusted to the defendants Nos. 2 and 3. These defendants did not commit the fraud and misappropriation either for the benefit of the Secretary of State or for the purposes of the agency.

13. It has been argued on behalf of the appellant that although the first defendant, the Secretary of State, may not be liable for the fraud of the other two defendants, yet he is liable to pay the amount of the cheque when he had funds of the District Board in hand at the time of the presentation of the cheque. This was not the basis of the suit and cannot now be dealt with. Nor is it at all clear that any such suit would lie, or that there is any privity between the holder of a cheque and a banker, such as would enable the former to sue the latter for the money covered by the cheque except in the form of damages for misappropriation.

14. In the above circumstances we think that the judgment of the lower appellate Court is correct, and we, therefore, dismiss the present appeal with costs.