
(2005) 06 JH CK 0041

In the Jharkhand High Court

Case No : A.F.O.D. No. 554 of 1989 (R)

Indian Oil Corporation Ltd.

APPELLANT

Vs

Bhatia and Sons and Others

RESPONDENT

Date of Decision : 27-06-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (2005) 3 BLJR 1703 : (2005) 4 JCR 51

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : V. Shivnath and A.N. Gupta, for the Appellant; A.K. Mehta, M.S. Mittal and A.K. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Hari Shankar Prasad, J.—This appeal at the instance of the plaintiff-appellant is directed against the judgment dated 28.7.1989 and decree dated 7.8.1989 passed in Money Suit No. 7 of 1972/16 of 1988 whereby and whereunder the learned Sub-ordinate Judge 3rd, Jamshedpur has been pleased to dismiss the suit.

2. The case of the plaintiff/appellant is that the defendants/respondents No. 2, 3, and 4 at all materials times were partners of M/s. Bhatia & Sons Pvt. Ltd., the defendant/respondent No. 1. The firm was a dealer in oil and other petroleum products under the appellant. In the year 1983 there was an agreement between the appellant and the defendant/respondents No. 1 to 4 that the defendant/respondent No. 1 firm would deliver petroleum products i.e. petrol and diesel from its stock to the defendant/respondent No. 6 in its Department of Atomic Energy according to the requirements of various units of the defendant/respondent No. 6. It was also agreed that on such supplies being made by the defendant/respondent No. 1 to the defendant/ respondent No. 6 and on representation being made by the defendant/ respondent No. 1 that such supplies had actually been made by them, the appellant undertook to replace the

same to the defendant/respondent No. 1 and the partners thereof. For such supplies, the defendant/ respondent No. 1 would be entitled to handling charges in respect to the said petroleum products at the agreed rates. The agreement as aforesaid could be ascertained by implication from the course of dealings and conduct of the parties.

3. It is also the case of the appellant that the defendant/respondents No. 1 to 4 represented to the appellant from time to time that they had delivered to the defendant/respondent No. 6 diverse quantity of petroleum products and the appellant, acting on such representation between January 1968 to July 1968, delivered by way of replacement to the defendants/respondents No. 1 to 4 petroleum products of aggregate value of Rs. 2,26,710.17. It was also contended that the particulars of the products actually replaced and/or delivered by appellant would appear from AC 4 Bills submitted by the appellant to the defendant/respondent No. 1, the particulars whereof are given in the Schedule A to the plaint.

4. The further case of the appellant was that the aforementioned representation made to the appellant by the defendants/respondents No. 1 to 4 regarding delivery of petrol and diesel to the defendant/respondent No. 6 was false and fraudulent. The fraud contained in the fact that the defendant/respondent Nos. 1 to 4 assured the appellant that they had delivered petroleum products to Atomic Mineral Division of the defendant/respondent No. 6 in their Unit No. JCL (60) knowing that such assurance was incorrect and false. In order to achieve fraud, the defendants/respondents No. 1 to 4 had fabricated and manipulated the documents and coupons to show that they had delivered petroleum products to Atomic Mineral Division of the defendant/respondent No. 6 with sole purpose of deceiving and defrauding the appellant. The coupons were falsely created by the defendants/respondents 1 to 4 as evidence of delivery petroleum products and by means of such coupons, the defendant/respondents No. 1 to 4 induced the appellant to believe that the same were genuine though the said defendant/respondents knew at all material time that the coupons were not genuine.

5. The further case of the appellant is that the acting on such false coupons, the appellant supplied to the defendants/ respondents No. 1 to 4 petroleum products by way of replacement of petrol and diesel to the tune of Rs. 2,26,710.17. As a result of the fraud practiced upon them, the appellant suffered loss to the extent of the value of replenishment done to the defendants/respondents Nos. 1 to 4. The appellant in the premises aforementioned claimed recovery of Rs. 2,26,700.17 from the defendant/respondents No. 1 to 4 as damages for fraud and misrepresentation. In the alternative, the appellant pleaded with the different situation under which the appellant was entitled to recover the damages from the defendants/respondents. Apart from the above, the appellant claimed to have paid during the period between July 1968 to October 1969 a sum of Rs. 7,142.84 by way of handling charges as accounted for in Schedule B of the plaint and the same was recoverable by the appellant from the defendants/respondents

Nos. 1 to 4 as the purpose for which the said payment had been made were never carried on. The appellants also pleaded that no part of the appellant's claim was barred by limitation as the appellant could detect the fraud practice upon them by the defendants/respondents only on 16.9.1969 when the defendant/respondent No. 6 wrote to the appellant denying that any petroleum product had been supplied to them or to any of their Drilling units at Gamharia as the defendant/respondent No. 6 did not have any Drilling Unit in the name of JSL (60) at Gamharia. It was further contended that the defendant/respondent No. 5 by his letter-dated 28.8.1969 admitted and acknowledged the dues of the appellant.

6. That the defendants/respondents No. 1, 2 and 5 filed a common written statement in the suit contending that the appellant has no cause of action for the suit and the claim of the appellant against defendant/respondent is totally false. Bhatia & Sons were dealers of the appellant company only till 31.8.1968 and during the period, they supplied petroleum products to various units of Department of Atomic energy according to verbal instructions of the appellant at Jamshedpur. Subsequently by a letter dated 1/6.7.1967 (Exhibit "D") the Branch Financial Controller of Indian Oil Corporation Ltd. Instructed the defendants/respondents for supply to 18 Units of Atomic Energy Commission in Singhbhum District. A complete list of 18 Units was incorporated in the said letter, which did not include any unit known as JSL (60). Accordingly, it was submitted by the defendants/respondents that the question of supplying petroleum products to any such unit known as JSL (60), therefore, does not arise. The defendants/respondents categorically denied that any replacement of petroleum production was given by the appellant to the defendant/respondent No. 6 between January 1968 to 30.7.1969 worth Rs. 2,26,710.17 or any other amount. The defendants/respondents also denied to have been represented to the appellant that they had delivered petroleum products the defendant/respondent No. 6 in their JSL (60) Drilling Unit at Gamharia nor did they ever made any false representation to the appellant that any such supply has been made by them to the defendant/ respondent No. 6 in their JSL (60) Unit.

7. The defendant/respondent also contended that they did not send any document or any coupon to the appellant showing supplies of Motor Spirit and HSD products to the appellant as per the description given in the Schedule A to the plaint. The defendants/respondents categorically affirmed that the coupons and challans brought into use by the appellant has been filed with the paint were bogus documents fabricated at the instance of the appellant in support of its baseless claim. The defendants/respondents disclaimed any liability for the dues for which the suit had been filed. The defendants/respondents also denied that any amount was received by them from the appellant amounting to Rs. 7.132.80 as handling charges for supplies alleged to have been made to the Drilling Unit No. JSL (60) of the defendant/respondent No. 6 at Gamharia. The defendant/respondent No. 5 also denied that he had ever agreed for payment of the dues if the defendant/ respondent No. 6 refused to pay the same. The defendant/

respondent No. 5 never agreed on or about 28.8.1968 or any other date to indemnify the appellant against any loss suffered by them arising out of dealing between the appellant and the defendants/respondents No. 1 to 4.

8. The defendants/respondents further pleaded that a criminal case against the defendant/respondent No. 2 had been instituted u/s 420 of the Indian Penal Code and the defendant/respondent No. 2 was convicted. However, by the judgment dated 23.10.1979 in Criminal Appeal No. 310/1974 (Exhibit B) the defendant/respondent No. 2 was acquitted by the Hon'ble Patna High Court as the prosecution failed to prove delivery of any quantity of petrol or diesel by the appellant to the defendants/respondents. The defendants/respondents accordingly prayed that the appellant has not valid cause of action or right to sue and the suit is fit to be dismissed.

9. On the pleading of the parties, the following issues were framed by the learned Court below for determination in the suit :

1. Is the suit as framed maintainable?
2. Has the plaintiff cause of action for the suit?
3. Is the suit bad for non-joinder of parties?
4. Is the suit barred by limitation?
5. Were the defendants No. 2, 3 and 4 partners of M/s. Bhatia & Sons (defendant No. 1) as the relevant time?
6. Did the defendants No. 1 to 4 received petroleum products from the plaintiff as per description given in a Schedule A of the plaint by way of replacement?
7. Was any fraud practiced by defendant Nos. 1 to 4 on the plaintiff in obtaining such replacement?
8. Did the defendants No. 1 to 4 received the handling charges for the products mentioned in Schedule A of the plaint and if so, are they liable to refund the same to the plaintiff?
9. Is the plaintiff No. 5 also liable to pay the price of the products mentioned in Schedule A of the plaint by a reason of any acknowledgement made by them in that behalf?
10. If the plaintiff entitled to a decree as a claimed?
11. To what relief or reliefs is the plaintiff entitled to?

10. The moot question to be decided in the instant appeal is whether the respondents No. 1 to 4 made supplies of the petroleum products to the Units JSL (60), Drilling unit of respondent No. 6 and secondly as to whether the appellant replaced 1,18,600 Lt of Motor Spirit, 1,28,800 Lt of HSD to the respondents No. 1 to 4 on various dates between January 1968 to August 1968 and whether fraud

was practiced by defendants/respondents No. 1 to 4 in obtaining replacement in receiving handling charges.

11. The appellant in support of its case has examined 9 witnesses of which PW 1 to PW 4 are employees of the appellant company. PW 5 is a retired officer of the respondent No. 6. PW 6 Chittranjan Ghosh is an employee of Fox and Mundal, a Solicitor Firm. PW 9 is the retired DSP of CBI. Number of documents have also been exhibited by the appellants which have been marked as Exhibit 1 to 9 series. The appellant in support of its case regarding replacement has relied upon" the service coupons which have been marked as Exhibit 1 series, AC-4 Forms have been marked as Exhibit 2(A) to Exhibit 2(Z). Exhibit 3 series being Exhibit 3(a) and 3(b) to show that the appellant had sanctioned handling charges in favour of the respondents and much stress has been placed as Exhibit 7 which has been alleged to be admission of the respondent No. 2 in respect of the receipt of replacement. It has been forcefully argued by the learned counsel appearing on behalf of the appellant the Exhibit 1 series further corroborates the same. The learned counsel for the respondents on the other hand referring to Exhibit 1, the service coupons categorically denied that the same originated from them and it also does not bear the signatures of either respondents or their representatives.

12. The learned counsel for the appellant while assailing the judgment firstly agreed that Exhibit B, the judgment of the Hon''ble Patna High. Court in Cr. Appeal No. 310/1974, is not binding upon the civil Court. It was also argued that the judgment of the Hon''ble Patna High Court (Exhibit B) is not binding on the appellant, as the appellant was not a party in the criminal case. The learned counsel for the respondents submitted that the judgment of the Hon''ble Patna High Court marked as Exhibit B is in relation to the self-same transactions relating to supply of petroleum products of the Unit of Atomic Energy Commission at Gamharia being JSL (60) which was never in existence. The said criminal case was registered u/s 420, IPC. It was also contended by the learned counsel for the respondents that the documents marked as exhibits in the suit were mostly marked exhibits in the criminal case and hence it cannot be submitted by the appellant that the judgment of the criminal Court is only relevant to show that there was a trial resulting firstly in the conviction of the respondent No. 2 and later acquitted by the Hon''ble High Court. It was also submitted that though the judgment of the criminal Court is not binding upon the civil cases, yet, the said judgment Ext. B cannot be brushed aside as the facts in the present appeal and the facts in the criminal case before the Hon''ble Patna High Court were identical relating to fraud, dishonesty for wrongful gain.

13. The learned counsel for the respondents also submitted that law on the point of admissibility of a fact as evidence both in criminal law as also in the civil law is the same. Besides the same set of documents were filed in this suit which were also filed in the criminal Court and exhibited and the Patna High Court in appeal has not been disbelieved the documents and also the evidentiary value. This

Court can certainly consider the findings given by the Hon'ble Patna High Court regarding the admissibility of the documents which have been marked as Exhibits in the criminal case. Considering the submissions made by the respective parties and the materials on record, this Court upholds the contention of the respondents that though a judgment in a criminal case may not be binding upon a civil Court but the observations and findings regarding admissibility of the same set of documents marked Exhibits in the criminal cases as also in the civil suit cannot be brushed aside. The civil Court may rely upon its finding recorded with regards to admissibility of the sale documents exhibited before it.

14. The learned counsel for the appellant has relied upon Ext. 1 the service coupons, Ext. 2 series, the AC-4 forms, Ext. 3-A and Ext. 3-N showing handling charges were sanctioned in favour of the respondents and also Ext. 7 which has been claimed to be an admission of the respondent No. 2 in respect to receipt of replacement. The only evidence led by the appellant to connect the respondents with the coupons is from Bijendra Kishore Das (PW 4). This witness deposed that the coupons were printed forms of Bhatia & Sons and the writings on the coupon are in the pen of Gurdayal Singh Bhatia. The witness in course of his cross-examination has admitted in paragraph 6 that 56 challans were not written in his presence. He in his cross-examination has also admitted that he was a witness in the criminal case as well and in his deposition in the criminal case has stated that he was not sure that challans contained the handwriting of the said Gurdayal Singh Bhatia. Merely because the challans are printed as Bhatia & Sons Dealers Indian Oil Corporation Limited, Jugsalai, Jamshedpur it does not lead to the conclusion that the challans were issued by the respondents as the contents in the challan are to be filled by the party intending to receive supply of fuel. There is no evidence that any portion of the challan (Ext. 1 series) bears the writing of the respondents. The appellant therefore cannot connect the respondent No. 1 firm with the fraudulent transaction. Even the High Court in the Appellate Judgment (Ext. B) has recorded a finding that the coupons cannot be connected with the firm M/s. Bhatia & Sons. Apart from the above under the procedure for delivery of fuel as detailed in Ext. D the respondent No. 1 was required to raise bills on the basis of coupons under which fuel was supplied. No document has been brought in evidence by the appellant to show that bill was ever raised by the respondent No. 1 accompanied by a periodical statement.

15. The learned counsel for the appellant further relied upon the replacement Form No. AC-4 (Ext. 2 series). Form No. AC-4 is required to contain details of information which has been explained in Ext. D. This Form must contain the tank truck number i.e. the vehicle in the replacement was forwarded to the pump of the respondent No. 1 and in this document receipt was to be obtained by the respondent No. 1 or his representative in proof of the fact that replacement was received in good condition. Most of the AC-4 forms do not furnish detail of information about the vehicle by which replacement was sent. They also do not contain signature of representative of respondent No. 1. The drivers of the trucks have not been examined as witness. Thus Ext. 2 series are not sufficient to show

that petrol or diesel of the quantity claimed was sent to the pump of the respondent. In absence of truck number of the tanker as also the signature of the respondent or his authorised representative in AC-4 form the appellant has miserably failed to prove the replacements had actually been sent to the respondent No. 1. The learned counsel for the appellant has also relied upon Ext. 3, 3-A, 3-B and 3-C, Ext. 3 and 3 B are the original credit notes while Ext. 3-A and 3-C are their duplicates. Ext. 3-A is for a sum of Rs. 1,479.72 while Ext. 3-B is for a sum of Rs. 3,577.70. The appellants have claimed Rs. 7,132.84 by way of refund of handling charges paid to the respondent No. 1. The Exhibits are record however account for Rs. 5,057.42 only. The appellants has not been able to reconcile the amounts claimed and the amounts mentioned in the credit notes. The documents on record also do no mention that they relate to supplies of fuel to JSL (60). As the credit notes Ext. 3 to 3-C do not show that they relate to supply of petrol or diesel to the unit JSL (60) the said documents are also of no help to the appellant. The learned counsel for the appellant strongly relied upon Ext. 7 as an acknowledgement by the respondent No. 1 that replacements had really been received by them. This document has been proved by PW 3 Sri S.K. Mitra. In cross-examination this witness has stated that he cannot say the circumstances under which the respondent No. 2 executed the document. This witness has admitted that this document was typed in his office at Jamshedpur and the document on the basis of which Ext. 7 was prepared were also available in the office of the appellant. He has also admitted the respondent No. 2 was called in the office and was made to sign the document inside the office. The respondent No. 2 while being examined as DW 8 has stated that he was compelled to sign this document under duress, treat and inducement. Ext. 7 is a statement containing particulars which have been inserted on the basis of primary documents which have never been produced as exhibits. I have already discussed above that Ex. 1 and Ext. 2 series do not contain the signature either of DW 8, the respondent No. 2 or his authorised representatives. This document (Ext. 7) was also exhibited and marked as Exhibit 11 in the criminal case. The Patna High Court in its judgment (Exhibit B) at Para 8 has discussed this document in detail and has been pleased to observe that Ext. 11 was not prepared in the course of business by the Indian Oil Corporation but was specifically prepared for the purposes of this case. The same document has been evaluated by the Hon''ble Patna High Court and the High Court has discarded the said document from consideration. Admissibility of admission as evidence is the same in both criminal law as also in civil law. Since the circumstances show that the execution of Ext. 7 was not voluntary this document cannot be relied upon by the appellant for proving that the replacements were actually made. Further from perusal of Ext. 7, the challan numbers with date and products delivered as also quantity finds mention in the document. Those particulars were available in the office of the appellant's Depot Superintendent a Jamshedpur. However, no reason has been assigned as to why these documents were not exhibited. The suppression of these documents from the Court has also been commented upon in the judgment of the Patna High Court (Exhibit B).

16. From the facts and circumstances stated above, it can very well be said that the appellant have not been able to prove through cogent evidence that they are entitled to the amount as claimed in the suit. The appellants has not been able to prove that respondents No. 1 to 4 made supplies of the petroleum products to the ghost unit JSL (60), Drilling Unit of respondent No. 1 and that the appellant replaced 1,18,600 litres of motor spirit, 1,28,800 litres of high-speed diesel to the respondent Nos. 1 to 4 between January 1968 and August 1968. The appellant have also been able to exhibit that fraud was practiced by the respondent Nos. 1 to 4 in obtaining replacement and in receiving handling charges.

17. From the facts discussed above, I am of the view that the judgment and decree of the Court below does not require any interference. In the result, this appeal is dismissed. However, there shall be no order as to costs.