
(1993) 03 DEL CK 0040

In the Delhi High Court

Case No : Regular Second Appeal No. 17 of 1977

Jamit Rai and Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-03-1993

Acts Referred:

Citation : (1994) ACJ 809 : (1993) 50 DLT 279 : (1994) 1 RCR(Criminal) 377

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Bhargava and Ashish Wad, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This Regular Second Appeal has been brought against judgment dated 7/05/1976 of Additional District Judge by which he had allowed the appeal of the Union of India and had set aside the judgment and decree passed by Sub Judge dated 28/01/1975 and had dismissed the suit of the appellant seeking recovery of Rs. 2,817.92 paise.

(2) Facts, in brief, are that a consignment comprising of 236 bags of Bajra was booked from Rampur Phul Railway Station for Rohtak on 1/03/1967. The appellant is an endorsee in the railway receipt. It is the case of the appellant that at the time when the delivery of the goods was taken from the railways, 10 bags of Bajra were short delivered and it is only after two years that remaining 40 bags were offered for deliveries .on 16/07/1969 and they were in badly damaged condition. After calculating the value of the damaged goods, the plaintiff claimed the said amount Along with cost and interest.

(3) The Trial Court had held the Union of India negligent in not taking proper care of the goods during the period the goods remained either in custody of the railway or in custody of the police and thus, passed the decree.

(4) The Appellate Court, however, found that the goods had been seized in the

theft case and were in custody of the Court and efforts to get released the goods made by the appellant from the Court had not succeeded and taking resort to the provisions of Section 73(d). the first Appellate Court held that no liability can be fixed on the railway for the deterioration of the goods which took place when the goods remained in Court custody and deterioration took place due to legal process.

(5) Learned Counsel for the appellant has argued that goods had deteriorated in quality because of negligence of the railway in not taking proper care of the goods. He has urged that as the goods were stolen by the employees of the railways, mere fact that the goods were later on recovered and kept by the police in Court custody does not absolve the railway of their liability to reimburse the appellant for the damages which occurred to the goods because of they being kept in police station in that theft case. He has placed reliance on three judgments namely, E.I. Ry. Co. Vs. Janakidas Marwari and Another, , Triloki Nath, Manager and Karta of Triloki Nath Shri Nath Vs. Governor-General in Council, E.I. Ry., and Union of India (UOI) and Another Vs. Imperial Tobacco Company of India Ltd., . In these judgments ,the well-known principle of law has been laid down that if any loss occurs due to theft taking place, the railway, being the bailees, have to exercise proper care and precaution in preserving the goods.

(6) There is no dispute about the principle of law laid down in these three judgments. If the damage to the goods occurs due to not taking proper care by the railway authorities, obviously the liability of the railway authority always remains. However, in the present case, the facts are somewhat different. The goods were consigned on March I, 1967 and 40 bags were stolen by the railway officials on 15/03/1967 when the F.I.R. was registered and soon thereafter the goods were recovered from the thieves and were kept can the police station. As the goods have been recovered from the thieves soon after they were stolen, it is evident that no deterioration of the goods took place during the period the goods were stolen and subsequently recovered by the police. .The goods in its proper condition were recovered and kept in the police station by the police, so it cannot be said that the loss and deterioration had occurred on account of theft being committed in respect of the said goods.

(7) The short question is whether the railways could be held to be liable for the damage occurring to the goods when the goods remained seized and were in legal process. It is admitted by Bal Mukund, Munim of the plaintiff ,the solitary witness examined by the plaintiff, that the plaintiff/appellant had also been making applications to the Court concerned forgetting released the goods from the Court custody on superdari but without success .Ultimately, the goods were returned by the police under the orders of the Court to the railway on June 2, 1969 and thereafter the goods were delivered to the appellant/plaintiff and by that time the goods, admittedly, had deteriorated in value.

(8) Section 73 of the Indian Railway Act, 1890 clearly brings the exceptions where the railway would not be responsible and one of the exceptions carved

sets is in Clause "d" which makes it clear that the railway would not be responsible for any damage and destruction or deterioration incase of arrest, restrain or seizure under legal process.

(9) The learned Counsel for the appellant has argued that if the goods are seized from the possession of the railways, only then this provision can be taken resort by the railways in escaping the liability. I am afraid that this contention raised by the Counsel for the appellant has no force as there is no limitation placed in Clause "d". Here the goods were stolen and were soon after recovered and were seized and remained in legal process and obviously if any deterioration has taken place in the goods during this period of seizure and legal process, the liability cannot be imposed on the railways.

(10) In view of the above discussion. I find no illegality in the judgment and decree of the first appellate Court. I dismiss the appeal but leave the parties to bear their own costs in this appeal.