
(1982) 08 AHC CK 0064
In the Allahabad High Court
Case No : Second Appeal No. 728 of J975

Sheikh Faqir Ullah

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-08-1982

Acts Referred:

Citation : (1982) AWC 713

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; Lalji Sinha, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—A clear question of law is involved in this Second Appeal.

2. It appears that a consignment was booked through the North Eastern Railway on 30th April, 1955 by M/s. Gobardhan Sahu Bijli Sahu of 7 bales and eight bags of chewing tobacco leaves under Railway-Receipt No. 494724, from Bhagwanpur Railway Station for carriage and delivery to the consignee Sheikh Faquirullah. The consignment reached the destination station in a pilfered and damaged condition which the Plaintiff attributed to the negligence and misconduct of the Railway Administration. The Plaintiff claimed open delivery which was at first refused but was subsequently agreed to be given by the Commercial Inspector. The goods were inspected and re-weighed. It appears that after the reweighment the Plaintiff desired to endorse the condition of the consignment in the despatch register. He was allowed to do so by the Inspector, but when he desired to endorse an objection that the bag had been cut, the Inspector objected and withdrew the despatch register from his possession. He was not allowed to make this endorsement, the Plaintiff, therefore, refused to take delivery and brought the instant suit for the recovery of Rs. 6494. 10 P.

3. In defence the Union of India through the North-Eastern Rly. pleaded that the goods had reached in sound condition, that the shortage, if any, was due to

defective packing condition and dryage of the Tobacco leaves, and the Plaintiff was not entitled to any relief.

4. The trial court dismissed the suit of the Plaintiff and the lower appellate court has endorsed that decree. It appears that before the lower appellate court an argument was raised by learned Counsel appearing on behalf of the Plaintiff that the consignee had a legal right to make whatever endorsement he desired on the delivery book and that the refusal of the Railway-Administration viz. the Commercial Inspector to allow such an endorsement to be made thereon, was an illegal act on his part, as a result of which the Plaintiff was in law entitled to refuse to take delivery of the goods. On this question, the lower appellate court was of the view that the Plaintiff had no right to insist upon taking delivery of the goods only when he was allowed to make an entry about the condition of the consignment on the delivery book. In other words, the Civil Judge came to the conclusion that the Plaintiff had unjustifiably refused to take delivery of the consignment in question. With regard to the quantum of damages, the Civil Judge has, on a consideration of the evidence, assessed them at a sum of Rs. 2564/22P. This perhaps, he did, as a matter of abundant caution to avoid a remand of the case to him if the questions of law involved in the appeal were decided contrary to his conclusion.

5. I have heard learned Counsel for the parties at length and have also perused the impugned orders and the evidence on record. As I have mentioned above the clear question of law is whether a consignee is entitled to make an endorsement with regard to the condition of the consignment on the delivery register of the Railway Administration on reweighment of the consignment at destination station before effecting delivery of the goods.

6. Counsel for the Appellant has cited a number of cases before me. He has referred to two decisions of our Court which I shall deal hereinafter. The earlier decision cited by him is *The Rohilkhand and Kumaon Railway v. Ismile Khan* 13 ALJ 417 decided by Piggott, J. In that case a consignment of tins of Ghee had been sent to the Plaintiff at Bareilly. When he went to take delivery he found that one of the tins had been cut open and other were leaking. He refused to take delivery unless the Co. weighed the goods in his presence and made a note of the shortage of weight on the back of the Railway Receipt. The Co. servants did not allow him to do so. The goods deteriorated and were put to auction. The Plaintiff brought a suit for damages. It was held by the court that the Company servants were bound to offer to the consignee reasonable facilities for weighing the goods on the spot. Reliance in this judgment was also placed upon an earlier case of this Court reported in 11 ALJ 772 and it was observed that the consignee was entitled to have the goods weighed there and then before he surrendered the Railway Receipt. After the weighment had been done the consignee was also entitled to endorse on the back of the Railway Receipt the actual shortage of weight in the goods of which he had taken delivery.

7. The next case cited before me is *Bhullan Mal Asa Ram Vs. Secy. of State and*

Another, . This Division Bench case also took the view that the Railway Company is bound to offer the consignee reasonable facilities for weighing the goods on the spot. The decision in 13 Allahabad Law Journal page 417 was quoted with approval in this appeal. However, the question we have in hand is not directly covered by these decisions.

8. On behalf of the Respondent, however, some citations have also been made. The earliest case cited by the Respondent's counsel is reported in *Jwala Prasad & Co. v. Great Indian Peninsular Rly.* 11 ALJ 772. In this single Judge case, an earlier Division Bench case was relied upon : *Koka Mal v. Great Indian Peninsular Rly.* which it appears has not been separately reported in the Law Journal, but has been quoted in extenso at page 775 of the footnote in this decision. In this case the findings recorded were that the Plaintiff declined to take delivery of Chillies unless they were reweighed and he was allowed to make a note in the Companies books that the bags were torn and loose. Apart from the question of fact decided therein it was held that the Plaintiff was not entitled to make any entry in the companies books. Such a demand for making entries in the books of the Railway Administration was wholly not enforceable in law.

9. In *Gangaji Cotton Mills Co. Ltd. v. Last Indian Railway Co.* 20 ALJ 761, a Division Bench of this Court consisting of Hon. Linse and Hon. Kanhaiyalal JJ. held that the refusal by the Railway servants to make a note about the condition of the goods on their register did not amount to wrongful refusal to deliver the goods and the Plaintiffs were not entitled to maintain the suit on the ground of wrongful conversion. In his judgment Justice Lindsey has further observed as follows:

I have not shown any provision of law, or any statutory rule which obliges Railway Company to make or to allow to be made in its delivery register any note alleging that the goods are in a damaged condition.

This appears to be a correct exposition of the law with which I am bound.

10. A reference may also be made to a decision of the Lahore High Court *Bengal North Western Railway Co. v. Firm Dassundhi Mal Bishambhar Das* AIR 1928 Lah 166 which was a decision by Chief Justice Shadi Lal and Bhide, J. It was observed therein that the refusal of the Railway Authorities to reweigh the goods or to note the condition or weight in their registers at the time of delivery gives no cause of action to a consignee, and if he refuses to take delivery he cannot complain that the sale of goods was unnecessarily delayed and consequently the goods fetched a low price.

11. In the instant case, however, we find that as requested by the Plaintiff reweighment of the tobacco leaves was done by the claim Inspector, Sri C. M. Chakrawarti (DW 3). He had even granted the latitude to the Plaintiff to make entries in the delivery register with regard to the shortage to which the Plaintiff was not in law entitled but when the Plaintiff desired to insert in the delivery book an incorrect fact to the effect that one of the bags of tobacco leaves was

cut which was not so, he objected and took away the register from him which had been only partly signed by the consignee. In these circumstances the Plaintiff cannot claim any relief for damages since he was himself responsible for not taking delivery of the goods on the grounds which cannot be sustained in law.

12. For the reasons given above, this appeal is dismissed with costs.