Shib Charan Lal vs Lachmi Narain And Anr. on 8 February, 1951

Equivalent citations: AIR1951ALL613, AIR 1951 ALLAHABAD 613

ORDER

Brij Mohan Lall, J.

1. This is a revn. by a deft, against a decree of the learned Judge, Small Cause Ct., Aligarh.

2. The appct. was in the employ of the opposite-party & used to work as his agent for selling locks & other brass wares. He used to make collections from customers on behalf of the opposite-party. Accounts were settled between the parties on 31-3-1947 & a sum of Rs. 3097-2-6 was found due to the opposite-party from the appct. An entry was made to that effect in the opposite-party's account book & that entry was signed by the appct. Even after that date the appct. continued to make collections from the opposite-party's customers &, according to his version, also continued to make remittances to the opposite-party.

3. He collected a sum of Rs. 300 on behalf of the opposite-party at Cuttak &Raja Mundry & this sum he did not remit to the opposite-party. The result was that the latter, filed a criminal complaint for embezzlement against the appct. in respect of this sum of Rs. 300. It may be pointed out that the sum due to the opposite-party from the appct. on that date was, according to the finding of the Ct. below, something like Rs. 4800, but the complaint was confined to this particular item of Rs. 300 only. The rest of the amount due to the opposite-party from the appot. was not brought into controversy in that litigation.

4. On 4-12-1947 the appct. paid a sum of Rs. 300 to the opposite-party & the latter agreed to drop the criminal charge against the appct. It may be pointed out that the offence of embezzlement was not legally compoundable but, since the opposite-party ceased to take interest in the criminal prosecution, the proceedings naturally terminated in the appct's. favour. On the same date the appct. executed in favour of the opposite-party a bond for Rs. 4500 payable in quarterly instalments of Rs. 125 each.

5. The suit which has given rise to this revn. was instituted by the opposite party to recover the amount of two such instalments.

6. The defence, so far as material for the purposes of this revn. was that the bond had been executed with a view to stifle the criminal prosecution in a non-compoundable case &, as such, the transaction was opposed to public policy. This defence was overruled by the trial Ct. Hence this revn.

7. Section 10, Contract Act, says that all agreements are contracts if they are made by the free consent of parties competent to contract, "for a lawful consideration & with a lawful object". Section 23 lays down that the consideration or object of an agreement is lawful, unless it is, inter alia "opposed to public policy". Illustration (h) is as follows :

> "(h) A promises B to drop a prosecution which he has instituted against B for robbery, & B promises to restore the value of the things taken. The agreement is void, as its object is unlawful."

It will appear from this illustration that the agreement which forms the consideration for dropping the prosecution is vitiated. An agree-ment which was entered into otherwise than for the purpose of stifling the prosecution does not necessarily become void, because it is connected, directly or indirectly, with the subject-matter of a criminal prosecution. Had the sum of Rs. 300 for embezzling which the appct. was being prosecuted been promised to be paid by the appct. to the opposite-party & had a bond been executed in respect of that amount, the consideration of that bond would have certainly been against public policy & such a bond would have been void, but the opposite-party took the precaution of receiving that amount in cash. The bond which was executed was for an amount which, according to the finding of the Ct. below, was in fact due from the appct. on account of his pre-existing civil liability. According to the finding, this bond was not executed to secure the appct's. release from criminal prosecution. The learned Judge expressed himself in the following language :

> "If the bond was executed as a price for the deft's. release then it would be against public policy."

It is obvious that the learned Judge has held that the dropping of the criminal prosecution did not form part of the consideration of this bond.

8. Two kinds of cases generally arise. In one class of the cases, a bond is executed with the sole object of securing release from the criminal prosecution. In such cases the bond is void. The other class of cases is that in which there exists in fact a civil liability to pay the amount of the bond, but nonetheless one of the objects of executing the bond is a desire to secure release from the prosecution. Even such bonds are vitiated. They amount to a void contract. I am alive to the fact that the case of Ali Husain v. Mohammad Nasir Ali, 1930 A. L. T. 1297 : (A. I. R. (17) 1930 ALL. 826) is against this view. It was held therein that such a bond was valid; but this case was distinguished in the subsequent case of Banu Mal v. Ratan Deo, 1937 A. L. J. 333 : (A. I. R. (24) 1987 ALL. 370). It may be pointed out that Niamatullah J. was a member of the Bench which decided the former case & it was he who distinguished that case in the latter ruling. At page 335 he remarked that :

> "It depends entirely upon the circumstances of each case as to whether the execution of the bond in satisfaction of the civil liability was partly in consideration of the withdrawal of pending prosecution."

Obviously he was of the opinion that where the dropping of the criminal prosecution was a part of the consideration of the bond the transaction was opposed to public policy & was void.

9. But the present case is distinguishable from both types of cases mentioned above. Here the finding recorded by the learned Judge is that the bond of Rs. 4,500 had not been executed to secure the appct's. release from the prosecution. The learned counsel for the appct. has, however, placed reliance on the fact that the bond was executed on the same day on which the proceedings were dropped. This circumstance was certainly a piece of evidence which could lead a Ct. to a conclusion that the desire to save himself from the criminal prosecution was at least a part of the consideration which prompted the appct. to execute the bond. But, notwithstanding this circumstance, the learned Judge has recorded a finding that Such was not the case. This finding of fact cannot be disturbed in revn. I am, therefore, of the opinion that in face of the finding recorded by the lower Ct., viz. that the bond had nothing to do with the dropping of the criminal prosecution & that it was executed simply to discharge an existing civil liability, this revn. cannot succeed.

10. The revn. is, therefore, dismissed with costs.