

Mohd. Sulaiman

Vs

Mohd. Ayub & Anr.

Criminal Appeal No. 128 of 1962

(CJI P.B. Gajendragadkar, K. N. Wanchoo, J. C. Shah, N. Rajgopala Ayyangar, S. M. Sikri JJ)

09.12.1964

JUDGMENT

WANCHOO, J. -

This is an appeal on a certificate granted by the Calcutta High Court. The appellant hired a westing house, D.C. Motor from the Modern Electrical Works (hereinafter referred to as the Works) on April 4, 1958 on a rent of Rs. 40 per months. The hiring period was to last for at least three months and it was agreed that if the motor or parts thereof were lost or damaged by the appellant, he would be bound to pay the whole cost of the motor and the parts. The motor remained in the use of the appellant and hire-charges were paid by him from April 1958 to January 1959. Thereafter it is said that no hire-charges were paid. On June 8, 1959, the appellant wrote a letter to the Works in which he said that he had purchased the motor in question for Rs. 600 on condition that the same would be tried for three months, and if it was found satisfactory the money would be paid and the purchase completed. The letter also stated that the agreement was that if the motor was not found satisfactory, the appellant would pay three months' hire at Rs. 40 per month and the motor would be returned thereafter. Finally, the appellant said in the letter that the Works had been paid Rs. 620 in all and thus the purchase had been completed. The appellant therefore requested the Works to give him a slip saying that the motor had been sold to the appellant, as no further money was due to the Works. On June 15, 1959, the Works sent a reply to the appellant denying that any such agreement as was alleged by the appellant had been made. It was also denied that Rs. 620 had been paid, and therefore the purchase was complete. Finally it was said that the appellant had only paid Rs. 400 and Rs. 200 were still due from him for the months of February to June 1959. The appellant replied to this letter in which he reiterated his stand taken in the earlier letter and gave details of how the payment of Rs. 620 had been made. Thereafter the Works filed a complaint through its servant Mohd. Ayub on July 1, 1959 in which after stating its case it urged that the appellant had committed criminal breach of trust and was therefore guilty under section 406 of the Indian Penal Code.

On this complaint the appellant was summoned by the Presidency Magistrate 9th Court, Calcutta and after taking some evidence for the prosecution, the Magistrate discharged the appellant holding that there was no satisfactory evidence of dishonest misappropriation or conversion of the motor by the appellant to his own use and that the dispute between the parties was essentially of a civil nature. Mohd. Ayub then went in revision to the High Court. The High Court set aside the order of discharge and directed further enquiry in the matter by another Magistrate. The case then went back to the Third President Magistrate, Calcutta, who eventually found the appellant not guilty and ordered his acquittal on the ground that there was dispute between the parties as to the actual nature of the transaction and it could not be said that there was any dishonest intention on the part of the appellant to misappropriate the motor. Mohd. Ayub then filed an appeal before the High Court under

section 417(3) of the Code of Criminal Procedure. Eventually the matter was heard by a Division Bench of the High Court, and it came to the conclusion that it was clear from the letter of June 8, 1959 (to which we have already referred) that the same could not have been written unless the appellant dishonestly in violation of the entrustment wanted to cause wrongful loss to the complainant and wrongful gain to himself. It was further held that the letter did not show that there was a bona fide claim of ownership over the property and the claim was merely a pretence which could not exonerate the appellate from being punished under section 406 of the Indian Penal Code. The appellant then applied for a certificate to enable him to file an appeal to this Court, which was granted; and that is how the matter has come up before us.

We are of the opinion that this appeal must succeed. It is not in dispute between the parties that the motor was entrusted to the appellant by the Works for his use. The dispute was whether this entrustment was merely by way of hire (which was the case of the Works) or, as was the case of the appellant, was on the basis of an agreement between the parties that the appellant would purchase the motor if he found it satisfactory after trying it for three months and pay Rs. 600 as the price and that he would return it if he found it unsatisfactory during this period of three months and pay Rs. 40 each month as hire for the that period. The real dispute between the parties therefore was as to the nature of the agreement between them when the motor was entrusted to the appellant in April 1958. That dispute was clearly of a civil nature. The Works however contended that by writing the letter of June 8, 1959 the appellant committed breach of trust and was guilty under section 406 of the Indian Penal Code. Now in that letter the appellant put forward his side of the case as to the terms of the agreement when he took delivery of the motor in April 1958. The question is whether by writing that letter the appellate could be said to have committed the offence defined in section 405 of the Indian Penal Code and punishable under section 406 thereof. Now section 405 runs as follows :-

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriate or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust."

It may be accepted that the appellant was entrusted with the motor by virtue of the agreement between him and the Works, the terms of which are seriously in dispute. The question however is whether the appellant dishonestly misappropriated or converted to his own use that motor. On the facts in the present case the motor was handed over to the appellant for his use even according to the case of the Works. Unless therefore it can be shown that the appellant by doing something to the motor which he was not entitled to do dishonestly misappropriated or converted the motor to his own use, he cannot be guilty of breach of trust under this part of section 405. Now the case of the Works is that the appellant must be deemed to have misappropriated or converted to his own use the motor by writing the letter of June 8. It is clear however that the letter shows no change in the use of the motor, which, according to the Works, the appellant had hired for his own use. Therefore it cannot be said that merely by writing that letter of June 8, the appellant dealt with the motor in such manner as would amount to its misappropriation or conversion to his own use by him. Clearly the appellant was using the motor for his own purpose before that letter and continued to use it in the same way after the letter. That letter therefore cannot in our opinion result in the misappropriation or conversion of the motor to his own use by the appellant within the meaning of these words in section 405 in the circumstances of the present case.

It is however urged that even if that be so, the appellant must be held to have dishonestly used or disposed of the motor in violation of the legal contract, express or implied, which he had made touching the discharge of such trust, because of the letter of June 8. Now it is clear from the receipt given by the appellant to the Works when he took the motor in April 1958 that he was taking it for his own use on certain terms. There is however nothing to show that by writing the letter of June 8 the appellant used the motor in violation of any legal contract, express or implied, which he had made with respect to it for use of the motor was the same before the letter as well as after it. Nor can it be said that the appellant had disposed of the motor in violation of any legal contract which he had made with respect thereto for it is not the case of the Works that the appellant had parted with the possession of the motor to somebody else. If, for example, the appellant had sold that motor, there might have been something to be said for the view that he had disposed of the motor in violation of the contract with respect to it even if it was a hire-purchase contract. But on the facts of this case all that the letter of June 8 does is to put forward the case of the appellant with respect to the transaction of April 4, 1958. So far as the use of the motor is concerned there has not been any change in it to indicate either misappropriation or conversion or disposal of it in any manner against the terms of the contract, express or implied. Clearly section 405 contemplates something being done with respect to the property which would indicate either misappropriation or conversion or its use or disposal in violation of the contract, express or implied. But where, as in the present case, nothing was done with respect to the use of the property which was not in accordance with the hiring agreement between the parties, it cannot be said that there was misappropriation or conversion of the property or its use or disposal in violation of the contract. We are not expressing any opinion as to the correctness of the case either of the appellant or of the Works in this behalf. All that we emphasise is that the letter of June 8 merely raises a dispute of civil nature between the parties and there is no question of any criminal breach of trust with respect to the motor on the basis of that letter. In this view of the matter we allow the appeal, set aside the conviction of the appellant and order his acquittal. The fine, if paid, will be refunded to him.

Appeal allowed.

</html