Seth Gulabchand

Vs

Seth Kudilal and Others

Civil Appeal No. 795 of 1963

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

22.02.1966

JUDGMENT

SIKRI, J.-

This appeal by special leave is directed against the judgment and decree of the Full Bench of the High Court of Madhya Pradesh in Civil Special Appeal No. 5 of 1949, and arises out of a suit filed by the appellant, Seth Gulabchand, hereinafter referred to as the plaintiff, against heirs and legal representatives of Seth Govindram Seksaria, are the original side of the High Court of the former Indore State for specific performance of an agreement dated February 28, 1941, entered into between the plaintiff and the deceased Govindram. Sanghi, J., decreed the suit on June 11, 1948. Against this judgment and decree, the defendants filed an appeal to a Division Bench of the Madhya Bharat High Court and the plaintiff also preferred a cross appeal. The Division Bench accepted the defendants' appeal, reversed the judgment and decree of Sanghi, J., and dismissed the plaintiff's suit as also his cross appeal. Thereafter the plaintiff filed an appeal under s. 25 of the Madhya Bharat High Court of Judicature Act, 1949, as it stood before it was amended by Madhya Bharat Act No. 3 of 1950. When this appeal came up for hearing before a Full Bench of the Madhya Pradesh High Court, a preliminary objection as to the competency of the appeal was taken on behalf of the defendants-respondents. The Full Bench held that the appeal was not competent, but this Court, on appeal, held that the appeal as competent and remitted the case to the High Court for decision on merits. On remand the Full Bench upheld the decision of the Division Bench and dismissed the appeal. The matter is now before us.

In view of the arguments urged before us by learned counsel for the appellant, Mr. C. B. Aggarwala, it is not necessary to give in detail the history of the disputes between the parties, or all the points that were debated before the High Court. To appreciate the arguments addressed to us it is only necessary to give the following facts.

Govindram Seksaria, Brijlal Ramjidas, Bilasrai Joharmal and four other persons entered into a deed of partnership on July 17, 1935 for carrying on the business of acting as Managing Agents and Selling Agents of Indore Malwa United Mills Ltd., a company owning a textile mill in Indore. Serious disputes arose between the partners. The Board of Directors of the Company appointed a Committee in November 1940 to enquire into certain allegations made against Govindram Seksaria, Brijlal and Bilasrai. The Committee consisted of Mr. R. C. Jall as Chairman, and Seth Hiralal and the plaintiff as members. In the meantime, the partners referred their differences to the arbitration of Col. Dina Nath, the Prime Minister of the former Holkar State. On February 8, 1941, the Arbitrator gave an award, inter alia deciding that Govindram Seksaria should buy up the five-annas shares of Brijlal Ramjidas and Bilasrai Joharmal at par and that the latter should sell their respective shares of

annas two and a half each in the rupee at par and also sell the debentures held by them to Govindram Seksaria at par. On February 12, 1941, Brijlal and Bilasrai instituted a suit in the Bombay High Court against Govindram and other partners of the Managing Agency contesting the validity of the award made by Col. Dina Nath. They failed before the Bombay High Court and ultimately before the Privy Council. On November 5, 1947, a deed of assignment of the four-annas share of Brijlal and Bilasrai was executed in favour of the defendants as legal representatives of Govindram, who had died in the meantime in May 1946. On November 6, 1947, the plaintiff instituted the suit out of which this appeal arises.

Various issues were raised in this suit but it is only necessary to mention issue No. 4, which was as follows :

> "Was the agreement to sell the two and a half annas share a bribe offered by the deceased Seth Govindram to the plaintiff to write a report favourable to him, the plaintiff being a member of the Committee of three persons appointed by the Directors of the Malwa Mills, Indore to enquire into and report on the management of the Mills by Seth Govindram ?"

Both the Division Bench and the Full Bench on appeal have held this issue to be proved and it is common ground that if the decision of the Full Bench on this issue cannot be successfully assailed, no further point arises and the appeal must fail.

We may here state the primary facts and the findings of the Division Bench and the Full Bench. After the award was made Govindram Addressed a letter to Mr. Jall as a member of the Enquiry Committee on February 13, 1941, intimating to him that the Prime Minister of the Holkar State had given an award on February 8, 1941, in his favour, and forwarding a copy of the award. On the same date Govindram addressed a similar letter to the plaintiff. A day or two after the receipt of this letter by the plaintiff Govindram met him at his house and made him an offer of making him a partner of the managing agency firm by assigning two and half annas shares out of the share of Brijlal and Bilasrai which he was to get under the award. The next day the plaintiff accepted the offer and on February 28, 1941, the agreement was concluded between the parties. A day before the agreement was signed by the parties, Gulabchand, plaintiff, addressed a letter to Mr. Jall, the Chairman of the Enquiry Committee, on February 27, 1941, for holding the meetings of the Committee daily so as to expedite its report. On February 8, 1941, Govindram met Mr. Jall, and offered to sell to him one anna share, which he rejected saying that "as he was the member of the Enquiry Committee, it would look as if he was making the offer to please him." The Committee gave its final report on April 7, 1941, which was favourable to Govindram, although the interim report dated December 16, 1940, was none too favourable to him. The plaintiff had no previous experience of the working of any Mill and had never been a managing agent of any textile mill. Govindram was a rich man and a millionaire. In 1942 Govindram suggested to the plaintiff that the share to be sold to him should be reduced to one and half annas, but the plaintiff did not accept the suggestion. Later, in 1942, when Mr. Jall questioned Govindram about the intended reduction in the share which was to be sold to the plaintiff, Govindram replied that he did not really intend to give any share to the plaintiff, or anyone and that he proposed to give the entire four - annas share to the Holkar State by way of charity.

From all these facts the Division bench inferred and concluded that the offer of two and a half annas share by Govindram to the plaintiff, Gulabchand, was a bribe in order to induce him to report in his favour and was accepted as such by Gulabchand. This conclusion was challenged before the full

Bench on various grounds, but the Full Bench upheld the decision. The Full Bench found that in making the offer of the sale of two and a half annas share to the plaintiff Govindram did not care for the plaintiff's money or his services in the management of the mill because "Govindram continued to manage the Mill without the plaintiff, putting him off by saying that the contract would be fulfilled after the end of litigation initiated by Bilasrai and Brijlal, and after the Enquiry Committee gave its final report Govindram actually suggested a reduction in the share and even told Mr. Jall that he was not going to sell it to the plaintiff or to anyone. The ostensible reason given for the intended partnership of Gulabchand is 'too thin to hide the real reason', and its recital in the agreement is odd in itself." The Full Bench found that the balance-sheets tendered in evidence in the case showed that Govindram had earned enough money by way of selling and managing agency commission and it was not necessary for him to find a financial partner in the plaintiff and that Govindram was prepared to give the entire four annas share he had obtained under the award to the Holkar State in charity was in itself an indication that the offer of two and half annas share to Gulabchand was not made by Govindram on account of his own financial stringency. After considering various facts the Full Bench concluded that "the share in the managing agency partnership of the mills was, therefore, not one which could be parted away easily by a partner or could be had by anyone for the mere asking and readiness to furnish the necessary proportionate capital and to purchase the debentures of the required amount, without any more. That "any more" in the present case, is, as the learned Judges of the Division Bench have suggested, nothing else than the anxiety of Govindram to get a favourable report from the Enquiry Committee and the willingness of the plaintiff to oblige him by making a favourable report. Taking into consideration the facts and circumstances narrated in the judgment of the Division Bench at pages 170 to 173 of the printed paper book, and those summarised above, the conclusion at which the learned Judges arrived that the transaction was in the nature of bribe to the plaintiff appears to us to have all the commendation which commonsense and the realities of the case can give it. It is one which legitimately can be drawn from the facts and circumstances proved in the case and in accordance with the probabilities of the case. It cannot, therefore, be maintained that the defendants have not discharged the burden of the proof that lay on them of establishing the plea of bribe. They were not required to prove that fact beyond reasonable doubt as in a criminal case."

Mr. C. B. Aggarwala, while admitting that concurrent findings of fact cannot ordinarily be assailed before this Court, contends that in this case there is no evidence in support of the findings arrived at by the Full Bench and that the findings are based on mere surmises. He further says that the Full Bench has misdirected itself in not adopting a strict standard of proof in this case. He urges that where bribery is alleged in a civil case the same standard of proof should be required as in a criminal matter. He further urges that the High Court should have held that Hiralal's evidence was not admissibly. Another argument urged by him is that there was no proof at all that the plaintiff was a party to the intention of Govindram to bribe him. He says that there is presumption that the plaintiff acted honestly and no material has been placed to displace that presumption.

We see no force in Mr. Aggarwala's first contention that there is no evidence in support of the findings of the Full Bench or that the findings are based on mere surmises. It is true that there is distinction between a probability and a mere surmise. But in this case we are satisfied that the Full Bench did not rely on any surmises.

The real complaint of Mr. Aggarwala in this case seems to be that as bribery was alleged the Full Bench should have gone into the question of bribery as if it was a criminal case. In this connection he relied on the following observations made by Woodroffe, J., in Weston v. Peary Mohan Dass ((1913) I.L.R. 40 Cal. 898 at 916).

> "And speaking for myself where, whatever be the form of the proceeding, charges of a fraudulent or criminal character are made against a party thereto, it is right to insist that such charges be proved clearly and beyond reasonable doubt, though the nature and extent of such proof must necessarily vary according to the circumstances of each case. There is a presumption against crime and misconduct, and the more heinous and improbable a crime is, the greater of necessity is the force of the evidence required to overcome such presumption. I cannot myself imagine a Court saying to a party, who, as in this case, may be a person holding a high and responsible position, with a previous unblemished record : "It is true that I have reasonable doubts whether you did grossly criminal acts with which you are charged, but I find that you did so all the same." And this exclusion reasonable doubt is all that the so-called "criminal proof" requires."

Fletcher, J., the Trial Judge, relying on Jarat Kumari Dassi v. Bissesur (I.L.R. 39 Cal. 245 : 16 C.W.N. 265) to which Woodroffe, J., was a party, had overruled the point that the standard of proof in a civil case, in which a charge of a criminal character is made, was the same as if the parties were being tried for a criminal offence. He observed that in India, under the Indian Evidence Act, there is no rule that the standard of proof in a case like the present must be the same as if the defendants were being tried on a criminal charge. This case (Jarat Kumari Dassi v. Bissesur) (I.L.R. 39 Cal. 245 : 16 C.W.N. 265) was followed in Prasannamayi Debya v. Baikuntha Nath Chattoraj (I.L.R. 49 Cal. 132). The Division Bench followed these observations of Jenkins, C. J., in Jarat Kumari Dassi's case (I.L.R. 39 Cal. 245 : 16 C.W.N. 265) :

> "Demonstrations, or a conclusion at all points logical cannot be expected nor can a degree of certainty be demanded of which the matter under investigation is not reasonably capable. Accepting the external test which experience commends, the Evidence Act in conformity with the general tendency of the day adopted the requirements of the prudent man as an appropriate concrete standard by which to measure proof.
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> The Evidence Act is at the same time expressed in terms which allow full effect to be given to circumstances or conditions of probability or improbability, so that where, as in this case, forgery comes in question in a civil suit, the presumption against misconduct is not without its due weight as a circumstance of improbability, though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable."

In s. 3 of the Indian Evidence Act, the words "proved", "disproved" and "not proved" and defined as follows :

> "Proved. - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so portable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."
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> "Disproved. - A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it dose not exist."

> "Not proved. - A fact is said not to be proved when it is neither proved nor disproved."

It is apparent from the above definitions that the Indian Evidence Act applies the same standard of proof in all civil cases. It makes no difference between cases in which charges of fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the Court will not, while striking the balance of probability, keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged. In our opinion, Woodroffe, J., was wrong in insisting that such charges must be proved clearly and beyond reasonable doubt.

Hiralal's evidence was sought to be ruled out on the ground that what he had stated in his evidence had not been put to the plaintiff. Hiralal had deposed that after the award the plaintiff saw him and told him that there was some settlement between him and Govindram. It is not necessary to decide this point because the Full Bench did not base its findings on Hiralal's evidence.

Mr. Aggarwala, relying on Raja Singh v. Chaichoo Singh (A.I.R. 1940 Patna 210 at 203) further urges that in case of circumstantial evidence the circumstances must be such so as to exclude any other reasonable possibility and he says that if this principle is applied to this case the finding of bribery must be reversed as the facts are equally consistent with the plaintiff having acted honestly. Meredith, J., had observed as follows :

> "Now it is well-settled that where fraud is to be inferred from the circumstances, and is not directly proved, those circumstances must be such as to exclude any other reasonable possibility. In other words, the criterion is similar to that which is applicable to circumstantial evidence in criminal cases."

We are unable to agree with these observations. As we have said before, the fact that the party is alleged to have accepted bribe in a civil case does not convert it into a criminal case, and the ordinary rules applicable to civil cases apply. The learned counsel has not been able to cite any other authority to show that there is any such well-settled proposition, as stated by Meredith, J.

Coming to the next contention, the fact whether the plaintiff was a party to the intention of Govindram to bribe him has to be judged like any other fact on the balance of probability. We are not satisfied that the Full Bench has misdirected itself in any manner in finding this fact.

In the end Mr. Aggarwala urges that immorality within s. 23 of the Indian Contract Act is confined to sexual immorality, but we are not concerned with the question whether the consideration is immoral or not. The case of bribery is clearly covered otherwise by s. 23.

In the result we hold that the findings of the Full Bench are, not vitiated and must be accepted. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

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