

Union of India

Vs

M/s. Chaturbhai M. Patel & Co.

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Union of India

Civil Appeals Nos. 972-973 of 1968

(K. K. Mathew, Syed M. Fazal Ali JJ)

09.12.1975

JUDGMENT

FAZAL ALI, J. -

1. This is a defendant's appeal by certificate granted by the High Court of Allahabad under Article 133(1) of the Constitution of India. The plaintiff which is a registered partnership firm at Benaras dealing in bidi tobacco filed the present suit for damages against the defendant Union of India on the allegation that it had despatched a consignment containing tobacco at Benaras for Gaya in Bihar for delivery to the firm Chaturbhai M. Patel & Co. at Gaya. This consignment was booked under invoice No. 107 railway receipt No. 89551 dated July 9, 1954. The plaintiff's allegation was that due to negligence of the railway the identical goods despatched by the plaintiff did not reach the consignee at Gaya but the goods containing inferior type of tobacco reached there which caused serious loss to the plaintiff. The suit was filed after notice under Section 80 of the Code of Civil Procedure was given. The Plaintiff also claimed refund of the excise duty which was paid by the plaintiff. The suit was resisted by the defendant mainly on the ground that due to fraud and collusion between the plaintiff in Benaras and his father's firm in Gujarat the consignment at Benaras was interchanged by manipulation and deliberation so that the inferior goods were sent to Gaya and the superior goods were sent to Gujarat which were sold by the firm at Gujarat and huge profit was earned by the aforesaid firm.

2. The trial Court framed a number of issues and accepted the defence and accordingly dismissed the suit. The plaintiff then filed an appeal in the High Court of Allahabad which reversed the judgment and decree of the trial Court and decreed the plaintiff's suit for damages but refused to pass a decree regarding the amount of the excise duty said to have been paid by the plaintiff.

3. Mr. Gobind Das appearing for the appellant submitted that there were number of suspicious circumstances which clearly went to show that some amount of fraud had been played on the defendant by the collusion of the plaintiff with his father at Gujarat whose firm was known as Mangal Bhai Prabhu Das. In support of his contention he has relied on three or four circumstances which have been fully discussed by the High court.

4. On a perusal of the judgment of the High Court we find that the case is concluded by findings of fact and normally the appellant could not have been granted the certificate for leave to appeal but the fact that the judgment of the High Court was one of reversal and the valuation of the suit was over Rs. 20,000. Nevertheless the High Court has discussed the suspicious circumstances relied upon by the defendant/appellant and has held that there was no conclusive or reliable evidence to prove the fraud or collusion as alleged by the defendant. One of the circumstances was that on June 9, 1954 a consignment of 191 bags of tobacco was booked by Mangal Bhai Prabhu Das the father of the plaintiff from railway station Vasad in Gujarat to Indian Zarada Factory, Benaras which was owned by the plaintiff. This consignment was taken delivery of by one Mohanlal an agent of the Indian Zarada Factory at Benaras and was re-warehoused in the bonded warehouse of the factory at Benaras. On the same day the consignment of the plaintiff was also warehoused at the same place. Thereafter a forwarding note was presented at Benaras on June 24, 1954 on behalf of the Indian Zarada Factory for despatch of 174 bags of tobacco to his father Mangal Bhai Prabhu Das Patel in Gujarat on the ground that the goods were of an inferior quality. It is said that the goods of inferior quality were deliberately despatched to Gaya, whereas the other consignment was sent to Gujarat by changing the marks on the bags. The High Court, however, has pointed out that there was absolutely no evidence to show that such a manipulation or changing the marks was done either by the plaintiff or his agent at Benaras.

5. Similarly reliance was placed on the fact that although the consignment reached Gaya on July 17, 1954 yet the delivery of the aforesaid consignment was taken by the plaintiff's cousin at Gaya more than a month thereafter i.e. on August 25, 1954 and that too after the railway authorities at Gaya wrote a letter to the consignee on August 23, 1954. The High Court has pointed out that there is no evidence to show that the consignee at Gaya knew that the goods had arrived there on July 17, 1954, and the letter which was sent to the uncle of the plaintiff at Gaya was received by him after a long time. There is no doubt that there was some amount of negligence on the part of the railway authorities because they wrote a letter to the consignee at Gaya more than a month after the goods were received and if they had sent the letter immediately after receipt of the consignment and if in spite of that there was delay in taking delivery, something could be said for the plaintiff.

6. Lastly it was urged by Mr. Gobind Das for the appellant that the plaintiff who was the owner of the Indian Zarada Factory at Benaras and his father who was the owner of the firm in Gujarat appear to have entered into a conspiracy to defraud the defendant in view of their close relationship. The High Court has rightly pointed out that the plaintiff is a separated son and has nothing in common with his father except the business in tobacco which is carried on at two different places. It has also been pointed out by the High Court that the father has married a second wife and that shows that there is no close affinity between the plaintiff and his father. Furthermore, there is absolutely no evidence to show any prior meeting of minds between the plaintiff and his father before the consignment was sent either to Gujarat or Gaya so as to raise an inference that these two persons had hatched up a conspiracy in order to defraud the defendant. This argument, therefore, has no force and must be overruled.

7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in *A. L. N. Narayanan Chettyar v. Official Assignee*. High Court, Rangoon (AIR 1941 PC 93 : 196 IC 404). However suspicious may be the circumstances however strange the coincidences, and however grave the doubt, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplained

phenomenon and strange coincidences. For as it is said truth is stranger than fiction. In these circumstances, therefore, after going through the judgment of the High Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High Court. As such As such the High Court was fully justified in negating the plea of fraud and in decreeing the suit of the plaintiff.

8. Cross objections have been filed by the plaintiff/respondent for disallowing the amount of excise duty paid by the plaintiff. After perusing the judgment of the High Court, we find absolutely no merit in these cross objections.

9. The result is that the appeal and the cross objections are dismissed but in the circumstances of the case without any order as to costs.

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