ANDHRA PRADESH HIGH COURT

Kanuri Sivaramakrishnaiah

Vs.

Vemuri Venkata Narahari Rao

Second Appeal No. 347 of 1955. in Appeal Suit No. 94 of 1953

(Chandra Reddy, C.J. and Srinivasachari, J.)

20.03.1959

JUDGMENT

Chandra Reddy, C.J.

1. This Second Appeal has been referred to Division Bench by our learned brother Bhimasankaram, J., as he felt that an important question of law is involved in it.
2. The 1st respondent, who is the plaintiff, laid an action in the Court of the District Munsif, Gudivada, for recovery of 106 bags of paddy or their value Rs. 1,493. The claim arose under the following circumstances. The plaintiff sold some paddy, the subject-matter of the suit, to the 1st defendant at the price agreed between the parties. Defendants 2 and 3, who are not respondents here, are stated to have delivered the bags to the 1st defendant. As the 1st defendant failed to pay the price, the plaintiff was obliged to file the suit.

3. The suit was resisted, inter alia, on the defence that at the time of the transaction, there were Ordinances in force known as Madras Foodgrains Procurement Order, 1947 and Madras Foodgrains (Intensive) Procurement Order 1948, which permitted sale of foodgrains only to persons holding a license and that, as the 1st defendant was not a licensed dealer the contract was unenforceable against him and consequently the plaintiff could not recover the money claimed by him. By way of rejoinder, the plaintiff asserted that he was not aware that the 1st defendant had no license to purchase paddy, that in fact the latter represented to him that he had a license and that he acted upon his representations.

4. The trial Court found that the 1st defendant had no license at the time the plaintiff sold the paddy to him and that the latter was unaware of his disability. On this finding, the trial Court thought that the plaintiff could recover the value of the paddy. This was affirmed on appeal by the Subordinate Judge. The aggrieved 1st defendant has carried this matter in second appeal to this Court.

5. We have first to consider the effect of the relevant Ordinances on the transaction in question. The orders referred to above were promulgated by the Government of Madras in exercise of the powers conferred upon them by the Essential Supplies (Temporary Powers) Act (Act XXIV of

1946) (hereinafter referred to as the Act). Under clause 8 of the Madras Food grains Procurement. Order, a sale by a landholder of any notified food grains (of which paddy is one), or entering into a contract for the sale by him of any notified food grain with any person other than the Grain Purchase Officer or a person authorized by him under sub-clause (2) of clause 3 of the said Order was expressly prohibited. There was a similar prohibition imposed by clause 6 of the said order on persons other than those authorized by the District Collector in that behalf from purchasing any quantity of foodgrain from any person referred to in clause 3. Contravention of these Orders, is made punishable under Section 7 (2) of the Act. Section 7 (2) is in these words :

> "7. (2) If any person contravenes any order under Section 3 relating to foodstuffs :
> (a) he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine, unless for reasons to be recorded the Court is of opinion that a sentence of fine only will meet the ends of justice; and
> (b) any property in respect of which the order has been contravened or such part thereof as to the Court may seem fit shall be forfeited to the Government, unless for reasons to be recorded the Court is of opinion that it is not necessary to direct forfeiture in respect of the whole or as the case may be, any part of the property."

6. To like effect is clause 9 of the Madras Foodgrains Procurement Order, 1947.

7. The Ordinances were issued under Section 3 read with Section 4 of the Act and, therefore, they attract the penal consequences contemplated by section 7, when those orders are infringed. These orders prohibit either the sale of food grains or contracts for the sale thereof except in the manner specified therein and any transaction entered into in derogation of these orders are ab initio void in addition to the parties concerned incurring the penal consequences.

8. The next question is whether the fact that one of the parties had no knowledge of the illegal nature of these sales or contracts would render the sale valid. It is urged that transactions in which the parties are not in pari delicto, though they might be in delicto, are not hit at by these provisions. We cannot accede to this contention. These Ordinances create an absolute prohibition against sales or contracts contrary to the terms thereof. They cast an obligation on the persons concerned to satisfy themselves that they are dealing with persons duly authorized by the proper Officers; in other words, that the rules enjoin upon them not to sell to persons who are not authorized under sub-clause (2) of clause 3. Therefore, the legality of the contracts does not depend upon the knowledge of one party that the other did not have the requisite license.

9. Apart from the principles that govern such a situation, there is authority for it. We may refer to a judgment of the Court of Appeal in Mahmoud and Ispahani, In re, (1921) 2 KB 716. What happened there was this. By the Seeds, Oil and Fats Order, 1919, issued under the Defense of the Realm Regulations, no one could either on his own behalf or on behalf of any other person, buy or sell or otherwise deal in any of the articles specified in the schedule thereto except in accordance with the terms of the license under that Order. One of the terms of the license was that sales under the authority thereof could only be made to persons holding a license issued under the authority of the Food Controller authorizing them to purchase the article sold for use in the United Kingdom. Before entering into the contract, the plaintiff asked the defendant whether

he had a license under that Order and the defendant told the plaintiff that he had. The plaintiff, believing in this representation, sold to the defendant a quantity of linseed oil. The defendant refused to take delivery of the goods on the ground that the contract was illegal, he not possessing the required license. This led the plaintiff to bring an action for damages for breach of contract. The claim was dismissed because the defendant had no license and the contract of sale was prohibited by the Order and was, therefore, illegal. In the course of the judgment, Bankes, L. J., observed :

> "The Order is a clear and unequivocal declaration by the Legislature in the public interest that this particular kind of contract shall not be entered into. The respondent had a license; the appellant had no license. The respondent contends that, as he had a license, the appellant cannot be heard to say that in the circumstances he had not a license. I cannot assent to that proposition. I do not think there is any authority for it, and as the language of the Order clearly prohibits the making of this contract, it is open to a party, however shabby it may appear to be, to say that the Legislature has prohibited this contract, and therefore it is a case in which the Court will not lend its aid to the enforcement of the contract."

10. The following observations of Scrutton, L. J., are also relevant in this context :

> "Where the prohibition is for public purposes as a general rule, unless there is the word 'knowingly' or something to show that the offence can only be committed by a person who knows he is committing an offence, the person must take the risk. He must make such inquiries as will show him whether or not he is violating the prohibition in the statute."

11. There can be little doubt that the instant case falls within this doctrine. The prohibitions under the Food grains Procurement Orders were made for public benefit and with the intention that persons to whom these goods belonged should only deal with dealers who had been licensed by proper authorities. As pointed out by Atkin, L. J., in the case under examination it would

> "reduce the legislation to an absurdity to say that, notwithstanding such a statutory prohibition if the seller is deceived into believing that his purchaser has a license, he may then hand over the goods to that lying purchaser free from any restrictions whatever and leave him in control of the goods."

12. It is thus clear that contracts or agreements entered into between parties in violation of these Orders are illegal and void from the inception and therefore are unenforceable.

13. This leads us to the question whether a party, who is not in pari delicto is prevented from claiming the money he paid to the other party, who is guilty of fraud; in other words does the illegality of the transaction stand in the way of the plaintiff recovering what he had paid under the illegal agreement or contract? This has to be answered with reference to the terms of section 65 of the Indian Contract Act, which runs thus :

> "When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

14. It is manifest that in order to invoke this section, the invalidity of the contract or agreement should be discovered subsequent to the making of it. This cannot be taken advantage of by parties who knew from the beginning the illegality thereof. It only applies to a case where one of the parties enters into an agreement under the belief that it was a legal agreement, i.e., without the knowledge that the agreement is forbidden by law or opposed to public policy and as such illegal. The effect of section 65 is that, in such a situation, it enables a person not in pari delicto to claim restoration since it is not based on an illegal contract but dissociated from it. That is permissible by reason of the section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the status quo ante.

15. An attempt is made by the counsel for the respondents to show that section 65 is unavailable in a case where the transaction is not only forbidden by law or opposed to public policy but also when a contract would amount, if performed, to an offence. This is founded on the remarks of Bhimasankaram, J., in *Sriramulu v. Deputy Registrar of Co-operative Societies*[1], The learned Judge said at page 614 that there was a clear line of demarcation between contracts, which are void and unenforceable because they are illegal and contracts which, while void and unenforceable, are not illegal as being expressly forbidden. The illustration given by him of the latter category of contracts, is one entered into by a minor or one relating to a wager which, according to him, was not in the same sense a contract opposed to public policy or morality or forbidden by law. The learned Judge expressed his dissent from the following rule stated by Salmond and Williams on Contracts under the head "Duty of Agent or Trustee to Account".

> "A fourth and last exception to the principle of turpis causa sometimes occurs where the relation of principal and agent or trustee and beneficiary exists between the parties. It is clear that if property is acquired by one person by the actual doing of an illegal act as the agent of another, the principal cannot recover the property from the agent. So, if A employs B to commit a robbery, A cannot sue B for the proceeds. And the position would be the same if A were to vest property in B upon trust to carry out some fraudulent scheme. A could not sue B for an account of the profits. But if B, who is A's agent or trustee, receives on A's account money paid by C pursuant to an illegal

[1]1957 Andh LT 607 : (1957) 2 Andh WR 226

> contract between A and C the position is otherwise and A can recover the property from B, although he could not have claimed it from C. In such cases, public policy requires that, the rule of turpis causa shall be excluded by the more important and imperative rule that agents and trustees must faithfully perform the duties of their office."

16. Commenting on this passage, the learned Judge says that there is a clear distinction between collections made by an agent as a result of transactions forbidden by law or opposed to public policy or morality and collections made by him in the course of transactions, which are void for

other reasons. He added that law, no doubt, did not enforce the latter kind of transactions but receipt of money in connection with those transactions cannot be said to be in defiance of law.

17. We do not think that any exception could be taken to the rule stated by the author mentioned above. The proposition enunciated by the learned Judge is not supported either by principle or authority. When a person received money on behalf of another under an illegal or void contract, the former acts as his agent and is bound to account for the money so got by him and he cannot set up the illegality of the contract as justification for withholding the payment. In trying to recover the amount obtained by an agent, he is not doing anything pursuant to the contract which is stained by the taint. It is only in cases where the principal deals through the agent directly in regard to such illegal transactions that the doctrine of turpis causa will come into play. But when the illegal transaction is between the principal and a stranger, the agent cannot point to the nature of the transaction. We, therefore, cannot accept the proposition formulated in 1957 Andh LT 607 : 1957-2 Andh WR 226.

18. Coming now to section 65 of the Contract Act, we feel that it also does not recognise the distinction between a contract being illegal by reason of its being opposed to public policy or morality or a contract void for other reasons. The section is couched in wide language and talks of void contracts in general. There does not seem to be any ground for differentiating one contract from the other in regard to the applicability of that section. The only principle recognised is that agreements or contracts, which are forbidden by law, could not be enforced as Courts will not extend their aid to persons attempting to defeat the object of the Legislature by trying to carry out illegal contracts. At the same time, Courts will not render assistance to persons who induce innocent parties to enter into contracts of that nature by playing fraud on them to retain the benefit which they obtained by their wrong.

19. The distinction between giving effect to contracts vitiated by illegality and applying the principle underlying section 65 is a well marked one. This is brought out by Bankes, L. J. in 1921-2 KB 716. *Referring to Bloxsome v. Williams*[2], the learned Lord Justice remarks thus :

> "If the action was for damages for breach of contract and if the contract was an illegal contract I do not understand the language of that learned Judge; it seems to me to be at variance with the established rule of law. If, on the other hand, he was treating the case as one in which the plaintiff was seeking to

[2](1824) 107 ER 720 : 3 B and C 232 at p. 235

> recover back his money on the assumption that the contract was a void contract, then it seems to me that what he said is quite intelligible, and no criticism need be directed to it."

20. We are forfeited in our view regarding this differentiation by some of the decided cases. In *Hughes v. Liverpool Victoria Legal Friendly Society*[3], an agent of the defendant Insurance Company induced the plaintiff to take up policies which were effected on the lives of third parties by another person and which policies were not kept alive by reason of the insurer ceasing to pay the premiums, on the representation that everything would be all right. When it was discovered that the policies were not effectual and illegal for want of insurable interest, the plaintiff sued for recovery of the money paid in premium on the lives of third persons alleging that it was money obtained by fraud or alternatively paid on consideration that failed. Scrutton,

J., dismissed the suit in the view that the plaintiff could not recover even if the premiums had been obtained by fraudulent misrepresentation as the Assurance Companies Act 1909, had prohibited under penalty the issue of such policies. This was reversed by the Court of Appeal on the ground that the plaintiff's right was not affected by the Assurance Companies Act, which imposed a penalty upon a Friendly Society issuing such a policy as the parties were not in pan delicto. We may here mention that this illustrates the principle that even agreements, the performance of which are attended with penal consequences, are not outside the scope of section 65 of the Contract Act.

21. We may now turn to *Bowmakers Ltd. v. Barnet Instruments Ltd*[4]*.,* The facts there were these : The appellants hired machine-tools from the respondents under three written agreements. The tools were the property of one Smith, who sold them to the respondents in order that the appellants might ultimately obtain possession of the tools, provided the hire payments were made regularly to the respondents. After making some only of the agreed payments, the appellant converted the tools to their own use by selling them. The respondents thereupon terminated the contract and claimed the return of the tools or alternatively for conversion. This claim was opposed on the ground that the Sale between Smith and the respondents was illegal by reason of its violating the Control of Machine Tools Order, 1940, resulting in the agreement between the appellants and the respondents being affected by illegality arising from the original sale. Notwithstanding the illegality in the original sale, the claim was allowed despite the opinion of the Court of Appeal that Smith had committed an offence in selling the machine-tools to the plaintiffs as they had no license and that as the plaintiffs were also without a license they also committed an offence. A decree was given to the plaintiffs because they did not rely on the hiring agreement but claimed that the property in the tools still remained in them at the date of the conversion. The ratiocination of the Court of Appeal is found in the following passage :

> "In our opinion, a man's right to possess his own chattels will, as a general rule, be enforced against one who, without any claim of right, is detaining them, or has converted them to his own use even though it may appear either from the pleadings or in the course of the trial, that the chattels in question

[3](1916) 2 KB 482

[4](1944) 2 All England Reporter 579

> came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek and is not forced either to found his claim on the illegal contract or to plead its illegality in order to support his claim."

22. The same principle is illustrated by a judgment of the erstwhile Hyderabad High Court in *Budhulal v. Deccan Banking Co. Ltd*[5]*.,* What happened there was this. A Banking Company laid an action on the basis of a promissory note executed in its favour of a stated sum. The defendant in the written statement while admitting the execution of the promissory note, among other things, raised an objection that inasmuch as the promissory note was payable to a bearer, it contravened section 15 of the Hyderabad Paper Currency Act. Section 16 of the Hyderabad Paper Currency Act, corresponding to section 32 of the Reserve Bank of India Act, declared that

the making of an instrument in contravention of the provisions of section 15 was an offence punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence was committed. Section 15 enacted :

> "No person in H. E. H. the Nizam's Dominions shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, lend or take up any sum or sums of money or any such bill of exchange, hundi, promissory note or engagement."

Having regard to these provisions, the Full Bench (of five Judges) held, in agreement with the trial Judge, that the promissory note was invalid. Yet the learned Judges thought that, by reason of section 66 of the Hyderabad Contract Act, corresponding to section 65 of the Indian Contract Act, the plaintiff was entitled to recover the amount advanced under the promissory note. The learned Judges expressed the opinion that the agreement could be said to have been discovered to be void within the meaning of section 66 of the Hyderabad Contract Act and, therefore, the money was recoverable thereunder. There is a very elaborate discussion by Jaganmohan Reddy, J., on the subject in the course of which leading cases such as *Ananda Mohan Roy v. Gour Mohan Mullick*[6]*, Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd*[7]*.,* and *Mohan Manucha v. Manzoor Ahmed Khan*[8]*,* which furnish instances of the principle enunciated above, were noticed. We are in entire agreement with the reasoning of the Full Bench. In our judgment, in view of section 65 of the Indian Contract Act, the plaintiff is entitled to recover the sum claimed by him.

23. In the result, the decision of the Courts below is affirmed and the second appeal dismissed with costs.

Appeal dismissed.

[5] AIR 1955 Hyd 69 (FB)

[6] AIR 1923 PC 189

[7] AIR 1933 PC 63

[8] AIR 1943 PC 29