

CALCUTTA HIGH COURT

Deb Kumar Ray Choudhury

Vs

Anath Bandhu Sen

(Guha ,J.)

07.08.1930

JUDGMENT

Guha, J.

1. The suit out of which this appeal has arisen was brought by the plaintiff for realization of money due on a bond executed by defendants 1 and 2. Defendant 3 was surety for the defendants 1 and 2 in respect of the debt. The plaintiff's claim in suit was contested by defendant 1 on the ground that the bond on which the plaintiff's claim was based was given at a time when a criminal case was pending against him, and that after the execution of the bond the criminal case was withdrawn. It was averred that defendant 1 did not in point of fact owe any money to the plaintiff at the time when the bond was executed. It appears that the bond in suit for Rs. 480, and a kobala for Rs. 300 were executed and a cash payment of Rs. 352 odd was made during the pendency of a noncompoundable criminal case in which there was a charge of criminal breach of trust against defendant 1. The kobala and the bond in suit were executed on 28th July 1924, and the documents were registered on 14th August 1924, two days before the withdrawal of the criminal case. It is necessary to state in this connexion that the plaintiff's case was that defendant 1 served as a tahsildar and in other capacities under him, and that it was found on an adjustment of accounts that an amount of Rs 1,132-2-3 was due from defendant 1 to the plaintiff. Defendants 1 and 2 thereupon executed the bond in suit for Rs. 480 and satisfied the balance of the money due from defendant 1 by a kobala and cash payment as mentioned above. So far as the adjustment of accounts as between the plaintiff and defendant 1 was concerned, the Courts below have found that, with the exception of Rs. 180 the rest of the amount of Rs. 1,132-2 3 was due to the plaintiff, and that for the satisfaction of his liability to the plaintiff, defendant 1 did make a payment of Rs. 352 odd in cash.

2. The trial Court came to the conclusion on a consideration of the accounts as adjusted between the plaintiff and defendant 1 that an amount of Rs. 952-2-3 only was due from defendant 1 to the plaintiff at the time of the execution of the bond, and that as defendant 1 had paid Rs. 652 2-3 by the kobala and cash payment, the plaintiff in the opinion of the trial Court, was to get a decree for

Rs. 300 with interest at the rate mentioned in the bond in suit. On appeal by defendant 1 the Court of appeal below has reversed the decision and decree passed by the trial Court for the reason that the withdrawal of the criminal case was the object and consideration of the bond in suit, and the contract evidenced by the bond was against public policy and therefore void. The plaintiff's suit was accordingly dismissed by the Court of appeal below.

3. The plaintiff has appealed to this Court. Now, on the facts stated in the judgments of the Courts below, and about which there can be no dispute at the present stage, and regard being had to the adjustment of accounts as between the plaintiff and defendant 1 which is the foundation of the defendants' liability in the present case, and seeing that defendant 1 had made a payment in cash towards the satisfaction of the debt due to the plaintiff, on adjustment of accounts, there can be no doubt that the bond in suit was given as a security for a debt existing at the time of its execution, after some payment had been made in cash towards its satisfaction. The transactions evidenced by the cash payment of Rs. 352-2-3, the execution of the kobala for Rs. 300 and the execution of the bond in suit for Rs. 480, involved the satisfaction of a civil liability, in respect of which there could be, and in point of fact, there was a criminal action also. A criminal prosecution is not of itself illegal, where there is good consideration for giving a security, and where the transaction between the parties, involves a civil liability as well as a criminal act. A contract for payment of money in respect of which a criminal prosecution was permissible under the law, was not by itself opposed to public policy.

4. The consideration and object of such a contract was not illegal within the meaning of Section 23, Contract Act: see *Dwijendra Nath Mullick v. Gopiram Gobindaram*¹ As pointed out by Mukerji, J., in the case mentioned above, the withdrawal of the prosecution in the case before us might have been the motive but not certainly the object or the consideration of the contract as evidenced by the bond in suit, so as to render the agreement illegal. Reliance has been placed on behalf of defendant 1, respondent in this appeal, on the decision of the Judicial Committee of the Privy Council: in the case of *Kamini Kumar Basu v. Birendra Nath Basu*² as also upon the decision in the case of *Majibar Rahman v. Muktashed Hossain*³ and some other decisions of this Court which have followed the latter decision. These decisions are based upon the facts of the cases, showing clearly that the agreements or the contracts sought to be enforced were the foundation for the withdrawal of noncompoundable criminal cases, and were declared to be unlawful on the ground of public policy, wholly void in law, and therefore unenforceable. This class of cases has no application where, as in the present case, there was a pre-existing civil liability, based upon an adjustment of accounts between the parties concerned. In the above view of the question arising for consideration in this case, the decision arrived at by the Court of appeal cannot be supported. The decree that was passed in the plaintiff's favour by the trial Court meets with the ends of justice in this case, and, in our judgment, that decree should be restored.

5. In the result the appeal is allowed, the decision and decree passed by the Court of appeal below are set aside, and those of the trial Court are restored. The appellant is entitled to his costs

in all the Courts.

M.C. Ghose, J.

6. I agree.

Cases Referred.

1A.I.R. 1926 Cal. 59

2A.I.R. 1930 P.C. 100

3[1913] 40 Cal. 113