

Emperor Vs. Silas Moses

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Court : Mumbai

Decided On : Jul-14-1915

Reported in : AIR1915Bom206; (1915)17BOMLR670; 30Ind.Cas.649

Judge : Batchelor and Hayward, JJ.

Appeal No. : Criminal Appeal No. 222 of 1915

Appellant : Emperor

Respondent : Silas Moses

Disposition : Appeal dismissed

Judgement :

Batchelor, J.

1. This is an appeal from a conviction and sentence passed under Section 406 of the Indian Penal Code on a charge of criminal breach of trust in respect of a motor car of the value of about Rs. 7246.

2. When the appeal was admitted, my learned brother, Mr. Justice Seaman, took occasion to express certain doubts which, upon the arguments and the materials then before the Court, occurred to him as to the propriety of this conviction, and I desire to say in deference to that expression of doubt that full weight has been given to the circumstances to which the learned Judge made allusion. But we have

now had the advantage of a full argument on both sides together with a study of various exhibits and documents which were not before the Bench when this appeal was admitted. In the light cast upon the conviction by these fuller materials I am of opinion that the conviction is good and must be sustained.

3. The appellant was the hirer of a Charron Motor Car from the Company, and the case for the prosecution is that he dishonestly disposed of that car in violation of the terms of his legal contract with the Company, so that he was guilty of the offence of criminal breach of trust as defined in Section 405 of the Indian Penal Code. Mr. Godinho, on behalf of the appellant, made some attempt to suggest that the real transaction between the appellant and the Company was an out-and-out sale and that the hire-purchase agreement, which is Exh. A in the case, was merely extorted, or cajoled out of the appellant by way of being held in terrorem over him. After some little discussion, however, Mr. Godinho, as I understood him, was fain to concede that no such line of defence was fairly open to him, but that his client must be regarded as bound by the written contract which he accepted and executed, that is, the contract of hire-purchase embodied in Exh. A. Now that being so, Clause 5 of the contract provided that until the hirer, that is, the appellant, exercised his option to purchase in the manner prescribed and by the date prescribed, which would be the 11th October 1914, the car was to remain the absolute property of the Company, and the clause continues that 'the hirer shall not, during the hiring, assign, underlet or part with the possession of the same in any way whatsoever, nor shall have any right or interest in the same other than that of the hirer under this agreement'. Those, then, were the rights secured by the contract to the appellant; yet, on the 1st of April 1914 and on the 15th of November 1914 and on the 9th of March 1915, he mortgages the car to three other persons for the respective sums of Rs. 500, Rs. 300 and Rs. 1500. In describing all these transfers as mortgages, I am putting the case most favourably to the appellant. For it is very susceptible of argument that the last transaction of March 1915 was an out-and-out sale. This, however, there is no need to press against the appellant, and I am content to regard all the transactions as being mortgages. The argument that they cannot amount to mortgages but must be regarded as mere pledges or hypothecations seems to me inconsistent with the record, and I am satisfied that the transactions were mortgages of this motor car

and that such mortgages are allowed in India is shown by the decision in the case of Damodar v. Atmaram (1905) 8 Bom. L.R. 344. Having regard to the general terms of the contract and especially to the terms of Clause 5 which I have quoted, it is, I think, certain that the mortgaging of this car by the appellant was, in the language of Section 405 of the Indian Penal Code, a violation of the legal contract made by the appellant in regard to the hire of this car.

4. The only question, therefore, which would remain is, whether such violation is shown to have been dishonest on the part of the appellant. That term is defined in Section 24 of the Indian Penal Code which provides that 'whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another is said to do that thing dishonestly.'

5. Now, in my opinion, the natural and probable consequence of the mortgaging by the appellant was wrongful gain to the appellant and wrongful loss to the Company. And since every one must be taken to intend the natural and probable consequences of his own act, I must infer that this wrongful loss to the Company or wrongful gain to the appellant was intended by the appellant. That inference is supported by the recitals made in the mortgage-deeds and by the oral representations made to the mortgagees that the car was the absolute property of the appellant free from any incumbrance. It is impossible, in my mind, to reconcile such a representation by the appellant with any honest belief of his. Moreover, in the first of the mortgage-deeds an interest in the mortgaged car is conveyed to the mortgagee inasmuch as he is empowered to recover his debt from the sale proceeds of the car. In the second of the mortgage-deeds the appellant promised to deliver possession to the mortgagee if the appellant's payments should fall short. It appears to me that this conduct of the appellant convicts him of dishonesty, having regard to the plain terms of the contract which he had executed in English and which, I feel no doubt, he thoroughly understood.

6. These were the only points that were taken on the appellant's behalf in this argument, and for the reasons that I have stated, I think they fail. Therefore, in my judgment, the appeal must be dismissed and the conviction and sentence confirmed.

7. With reference to Mr. Wadia's application as to the disposal of the motor car, we observe that an order has already been made by the learned Magistrate under Section 517, and inasmuch as the present appeal from his judgment is dismissed, the order under Section 517 will stand. That order makes provision for the disposal of the car after the period of the appeal has expired or after the disposal of the appeal. It is consequently unnecessary for us to make any fresh order under Section 520 of the Code.

Hayward, J.

8. I concur. The appellant has been convicted of criminal breach of trust in respect of a motor car entrusted to him under a hire-purchase agreement. The appellant has not been able to dispute that agreement, nor the clause therein binding him not to assign, underlet or part with the possession of that motor car during the hire-purchase agreement. He has also had to admit the execution by him of two mortgages and one transaction purporting to be a sale of that motor car during the period of the hire-purchase agreement. But it has been urged on behalf of the appellant that he had no intent to cause wrongful loss to the owners and, therefore, did not act dishonestly in entering into those mortgage and sale transactions; and it has also been contended on his behalf that those transactions did not amount to assignments within the meaning of the hire-purchase agreement.

9. With regard to the first contention, whoever does anything with intent to cause wrongful gain to one person or wrongful loss to another is said to act dishonestly under Section 24 of the Indian Penal Code, and it must be presumed that a person intends the natural consequences of his acts under Section 114 of the Indian Evidence Act. Now there can, in my opinion, be no reasonable doubt that the appellant did, by entering into these transactions, both cause wrongful gain to himself and wrongful loss to the owners of the motor car. He caused wrongful gain to himself by obtaining moneys on the security of the motor car contrary to a legal agreement prohibiting him from assigning any interest in that car, and he caused wrongful loss to the owners by putting in their way difficulties in recovering the moneys due from him to them and by subjecting their motor car to the risks of

attachment and litigation.

10. With regard to the second contention, the first mortgage contained a provision that the mortgagee should be entitled in default of payment to take possession of the car and to recover any moneys due by sale of the car. The second mortgage contained a provision entitling the mortgagee to recover possession, and the third mortgage was in the form of a sale passing absolute ownership of the car. Now there can be no reasonable doubt, in my opinion, that these transactions did assign a valuable interest in that motor car, viz., either the possession or the right to recover money by the sale of the car, and that such assignments were clearly contrary to the express agreement in the hire purchase agreement.

11. That being so, it appears to me to follow that the appellant, being entrusted with the motor car, dishonestly disposed of it in violation of a legal contract which he had made touching the discharge of the trust of that car. In other words, he committed criminal breach of trust in respect of that car within the meaning of Section 405 and has been rightly convicted of that offence under Section 406 of the Indian Penal Code.

12. In my opinion, therefore, this appeal must be dismissed.

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