

Emperor Vs. C.J. Cadd

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Court : Allahabad

Decided On : May-02-1923

Reported in : (1923)ILR45All588

Judge : Walsh, J.

Appellant : Emperor

Respondent : C.J. Cadd

Judgement :

Walsh, J.

1. This is an application in revision to review an order of the Sessions Judge of Allahabad confirming a conviction by the Magistrate for breach of trust. The charge is one which is only too familiar to lawyers, namely, a charge against the hirer of an article under a hire-purchase agreement, for having sold it, as his own before he had paid up all the instalments. The case is a perfectly clear one and there is really very little to be said about the very clear and interesting judgment of the Sessions Judge. On one point, with regard to the civil aspect of the matter, I do not quite agree with him, but he guarded himself against giving a confident opinion. When one is considering the decisions, so well known in England, of *Lee v. Butler* (1893) 2 Q.B. 318 and *Helby v. Matthews* (1895) A.C. 471 which latter case (decided by the House of Lords) practically settled all legal controversy about these agreements, one must remember that in those cases the Courts were

deciding whether the hirer could confer a good title upon a purchaser. That is a totally different question from the question whether he had any legal right to sell, or any honest belief that he had a legal right to sell. It turns entirely upon Section 9 of the Factors Act in England which, corresponding to Section 43 of the Transfer of Property Act, gives a kind of statutory title to a purchaser in good faith, who has bought from a commercial factor who has been left in possession of the goods with the consent of the true owner under the conditions laid down by that section, which include a person 'who has agreed to buy,' and the question in these two cases was whether the agreement made him a person 'who had agreed to buy,' and what the House of Lords held was that, a person who has an option to return the goods and not complete the purchase, cannot be held in the eyes of the law to be a person 'who has agreed to buy.' It was never suggested in either of these cases that the hirer was in fact the owner. Nor was it doubted that the agreement was a hire-purchase agreement in the colloquial sense of the term. But this question of civil law has no bearing at all upon the relationship between the owner and the hirer and upon the state of mind of the hirer when he sells. Mr. Cadd, when he signed this agreement, knew perfectly well that he was hiring the lorry, and that he would never become the owner unless he paid the whole sum due, and that he had no right to sell it as though it were his. As the learned Sessions Judge says, 'the agreement is straightforward and clear.' There are four features in it which are conclusive against the honest belief of any commercial man signing this agreement that the car was his to sell:

(1) He calls himself the hirer.

(2) He binds himself by a legal obligation to insure the car, a thing which no owner ever did or could do.

(3) He agrees not to deal with the car. and to allow the owner to recover possession in case of default.

(4) On the very page where his signature appears, he agrees that it shall remain the property of the owner.

2. He clearly had no title other than that of a hirer with a right to become the owner if he chose to pay the last instalment, and it is idle to read a section from the Contract Act providing that the property shall pass on certain conditions, when the parties by their solemn agreement have stated that it shall not pass except on the performance of one condition only. .It is difficult to see how Mr. Cadd could possibly get a title to this car. I am not concerned to discuss this question, but unless there is something in the law of India corresponding to Section 9 of the Factors Act, the title always remained in the Motor Traders Ltd., and could not be transferred by Mr. Cadd in any way upon a third person. So that the person really defrauded is the purchaser.

3. This brings me to the question of sentence. That question was not pressed upon the Sessions Judge, but it has been pressed upon me, and rightly pressed, because it appears to me that there are grounds for interfering with the sentence. I guard myself against saying one word in justification or palliation of a dishonest act of this kind. Mr. Cadd knew quite well that it was wrong to sell. He could have tested that question by sending a reply-paid telegram to the Motor Traders Ltd. asking their permission to sell. I know, and he knew quite well, what the answer to that telegram would have been. But it does appear that he made an honest attempt to carry out his agreement. He paid the insurance, he paid the expenses of the Motor Traders Ltd.'s representative, and he paid, in the uncertain way in which these people always pay, instalments from time to time, and he went on paying even after he had sold. If these payments were made voluntarily, they show that his dishonest intention was very much qualified by a desire to do what was right and to avoid loss to the owner. If the payments were, made and accepted to prevent criminal proceedings, this is a vindictive prosecution by the Motor Traders Ltd., because they have failed to get their money. The Sessions Judge further says that the Bhagwan Ice Factory, whose disposition to do well seems to be larger than their banking account, because their cheques were dishonoured, undertook to pay instalments out of Mr. Cadd's salary, and I rather assume that that undertaking was given to the Motor Traders Ltd., so that everything points to the latter having put pressure upon the accused and his employers to get their money. In addition to that they are secured by a surety who, if he is worth the money, will indemnify the Motor Traders Ltd. against loss. He has

given assurances of his desire to pay, but he has not followed them up by a payment in cash which would be the most satisfactory proof of his good intentions, and so far he has only filed an offer before the one court which, had no jurisdiction to enforce it. But further still, in my opinion, the Motor Traders Ltd. have a claim against the purchaser for the return of the car, and if they succeed in establishing that claim they will have done rather well, except for the inconvenience of having to prosecute one of their hirers. But even, further still, it appears that the accused has been made an insolvent, and what the value of a fine may be when inflicted upon a man who has got no assets to pay it with, I do not know. As it was inflicted after the adjudication, I presume the receiver is not bound to pay, and it will, therefore, result in the accused having to serve another three months' imprisonment. Under all the circumstances, although the nature of the offence is not one to be condoned, the degree of guilt varies in different cases, and I am inclined to think that Mr. Cadd, who undoubtedly has been unfortunate, made an honest attempt to meet the foolish and wrongful course of conduct into which he had drifted. On these grounds I should certainly, if there had been an appeal to me, have cancelled the fine and the imprisonment awarded in lieu thereof. I, therefore, alter the sentence to one of three months' simple imprisonment only and direct him to surrender to his bail and serve out under simple imprisonment the balance of the three months' imprisonment to which he was sentenced. The fine, if paid, will have to be repaid to the receiver of his estate.