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Ramaswami Reddy Vs. Emperor

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Court : Chennai

Decided On : Feb-18-1930

Reported in : AIR1931Mad235

Appellant : Ramaswami Reddy

Respondent : Emperor

Judgement :
ORDER

Pandalai, J.

1. From the facts stated by the Subdivisional Magistrate, it is clear that the appellant was not, as indeed he could not be, entrusted with the promissory note in question, because he was upon the arrangement, in pursuance of which the note was taken in his name and given to him, not a mere name-lender but the holder of the note entitled to sue on it, and realize the amount due under it subject, of course, to the obligation to pay off the lessees before or after, such realization. In short the appellant was the legal owner of the note, though the proceeds of the note wore to be used by him, in a particular way to pay off the lessees or reimburse himself if he had previously paid the lessees.

2. There can be no entrustment and therefore no breach of trust in such oases merely because the owner of the property repudiates his obligations or commits other breach of contract in respect of them. The property, in respect of which

criminal breach of trust can be committed, 'must be the property of some person other than the accused or the beneficial interest in or, ownership of it must be in some other person, and the offender must hold such property on trust for such other person or in some way for his benefit : per Fox, C. J., Ngu Po Seik v. Emperor [1912] 13 Cri. L.J. 888. In this case the note was taken in the appellant's name because he offered to indemnify the lessees against demands by the lessor Valliammal and in order to secure himself against personal loss he took a promissory note from Valliammal's relatives, the intention being of course that in case Valliammal proceeded against the lessees on the lease, the appellant could proceed against the maker of the note on the note and recover the amount and with it indemnify the lessees or repay himself if he had already paid them.

3. The appellant's denial of the existence of the note or statement that he had returned it to the maker or his repudiation of his liabilities under the contract of indemnity were thus no more than a breach of contract, but not a criminal offence of breach of trust.

4. The conviction is set aside and the fine, if paid, will be refunded.

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