

Gul Bahar Vs. W.E. Farquhar

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Court : Kolkata

Decided On : Jun-22-1949

Reported in : AIR1950Cal35

Judge : Harries, C.J. and ;J.P. Mitter, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 405

Appeal No. : Criminal Revn. No. 371 of 1949

Appellant : Gul Bahar

Respondent : W.E. Farquhar

Advocate for Def. : M. Huq and ;B.L. Ghose, Advs.

Advocate for Pet/Ap. : Moni Mukherji, Adv.

Disposition : Petition allowed

Judgement :

Harries, C.J.

1. This is a petition for revision of an order of a learned Presidency Magistrate convicting the petitioner under Section 406, Penal Code and sentencing him to rigorous imprisonment for two months and to pay a fine of Rs. 200. In default of payment of the fine, the accused was sentenced to undergo a further period of 16

days' rigorous imprisonment.

2. The petitioner was a tailor and according to the prosecution the complainant entered into a contract with the petitioner whereby he was to provide the petitioner with 800 yards of khaki drill which the petitioner was to use for making shirts for which the petitioner was to obtain a sum of annas ten per shirt. Delivery was to be made within one week. The complainant alleged that though he had delivered the material, the petitioner had refused either to return the material or the shirts if they had been made out of the material.

3. The defence of the petitioner was that he had done work previously for the complainant for which he had not been paid; further, that he had not been paid for the work of making shirts out of this material. The actual cost of the work of making shirts out of the material supplied which is the subject-matter of this charge is said to be Rs. 57-8-0. According to the petitioner there was a further sum of Rs. 150 due in respect of earlier work.

4. The learned Presidency Magistrate held that it had not been established that anything was due from the complainant to the petitioner in respect of the earlier work and that finding has not been challenged. It was however, urged that the petitioner could not be guilty of criminal breach of trust in respect of the material which had been handed over to him to be made into shirts, because he had a lien upon that material for his charges. Admittedly, the complainant did not pay the cost of making these shirts, neither did he at any time tender the amount.

6. The learned Magistrate seems to have thought that until the goods were delivered or at least until the tender of delivery was made no question of a lien arose. If the complainant could have established that the petitioner had never worked on this material and had disposed of it in some other way a clear case of criminal breach of trust would have been established. But on the facts I am far from satisfied that such was the case.

6. The defence here might well be true and that these shirts were being withheld because payment was not being tendered. Upon the materials before the Court the petitioner might well have a lien on these goods and if he had a lien quite

obviously he could not be held to be dishonestly retaining these goods or be held to have dishonestly converted them to his own use. There is to my mind a very real doubt in this case and that being so the conviction cannot be maintained.

7. In the result therefore this petition is allowed ; the conviction and sentences are set aside and the petitioner is acquitted. He need not surrender to his bail and his bail bond is discharged.

8. I might mention that if tender is made of the amount due for making these shirts and they are not delivered then a case of criminal breach of trust might well arise.

J.P. Mitter.

I agree.

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