

(1921) 02 CAL CK 0014

Calcutta High Court

Case No: App. No. 619 of 1920

Aswini Kumar Chatterji

APPELLANT

Vs

The King-Emperor

RESPONDENT

Date of Decision: Feb. 18, 1921

Final Decision: Dismissed

Judgement

Teunon, J.

This case arises out of certain transactions in shares. The complainant is a clerk in the Presidency Commissioner's office, while accused is a share broker, though not a member of the stock and share association.

2. On the 25th of May last, there were, it is not disputed, two contracts between the parties, one for the sale by complainant of 100 Ghusick and Muslea at Rs. 25-8, and one for the purchase by complainant of 200 Bridge and Bolts. The case for the complainant is that the contract regarding Bridge and Bolts was that the price was Rs. 14-4, while the case for the Appellant now is that to Rs. 14-4 should be added the paid up capital per share, namely, Rs. 7-8 or Rs. 21-12 in all. In fact later on in the day the accused bought 200 Bridge and Bolts from one Sham Kesore Khanan at Rs. 12-10 "premium," that is, therefore at Rs. 20-2.

3. The further case for the complainant was that on the 25th neither he nor the accused knew that Bridge and Bolt's were only partly paid up ; that when the accused discovered his mistake, the contract was Cancelled by mutual consent. On the other hand, the accused says that complainant refused to take delivery of the Bridge and Bolts because of the fall in price.

4. It is not necessary for me in the present case definitely to find whether in fact the contract was cancelled as alleged by the complainant. If it were not cancelled there remained a contract about the terms of which the parties were not agreed. The complainant's understanding of the contract is supported by the Chit Ex. 2, and the contract itself, Ex. 3, also by the quotations in the Exchange Gazette (Exs. H and B)

while the Chit (Ex. F) now produced by the Appellant as that obtained from the complainant when the contract Ex. 3, was delivered, is denied by the complainant and when compared with other documents, e.g., Ex. 2 written and signed by the complainant does not appear in my judgment to be genuine. Having regard to Exs. 2 and 3 I see no improbability in the cancellation of this contract. But if there were no cancellation, there then remained a disputed contract which neither party could enforce otherwise than by litigation.

5. Instead of seeking his remedy in the Court, the Appellant had recourse to a trick. On the 31st of May he induced the complainant to hand over to him the scrip for the 100 Ghusick Musleas on the promise that he would forthwith bring to the complainant the proceeds of these shares (Rs. 2,550--less Rs. 15, the price of stamps, net Rs. 2,535) in cash. That promise he has never fulfilled and from his conduct as set out in his pleader's letter of the said 31st of May, (Ex. G) he never intended to fulfil. That the promise or representation was as stated by the complainant, is placed beyond all doubt by Ex.1.

6. On the 31st of May the Appellant did not bring the cash to the complainant. On the contrary by Ex. G he proposes to credit the amount against the sum due to him according to himself over the Bridge and Bolts, and later by Ex. K of 2nd of June, he tenders the amount less the loss sustained by him over Bridge and Bolts. Neither of these courses is a fulfillment of the promise or representation on the faith of which on the 31st of May the complainant handed over to the Appellant the Muslea scrip.

7. But it is said that the trick resorted to does not amount to fraud inasmuch as the sum claimed by the Appellant was in fact due to him on the Bridge and Bolt contract. But the complainant denied and still denies any liability over the Bridge and Bolt contract. In the absence of agreement or arbitration the complainant's liability, if any, to the Appellant, can be ascertained only by litigation. By the trick resorted to the Appellant, while his dispute with the complainant still remained unsettled, obtained the possession and use of the complainant's monies and to the injury of the complainant secured for himself the position of advantage properly belonging to the complainant.

8. Sharp practice of this sort, in my judgment, constitutes fraud and this appeal will, therefore, be dismissed.

Ghose, J.

9. The accused in this case, Aswini Kumar Chatterjea, who carries on business as a share and stock broker in Calcutta, was charged before the third Presidency Magistrate of Calcutta with having on or about the 31st day of May 1920, cheated one Santosh Kumar Dutt, in respect of 100 Ghusick Muslea coal shares valued at Rs. 2,535 by falsely representing to him that the accused would pay cash for the same which he never did and thereby having committed an offence punishable under sec. 420 of the Indian Penal Code. He was convicted on the 3rd September last by the

learned Magistrate under the above section and sentenced to be detained till the rising of the Court on that date and to pay a fine of Rs. 800 and in default to undergo rigorous imprisonment for a period of six months. The learned Magistrate directed that out of the fine, when realised, a sum of Rs. 650 should be paid to the complainant as compensation.

10. The facts appearing on the record, in chronological order, are as follows :--On the 25th May 1920, the complainant, one Santosh Kumar Dutt, agreed to sell to the accused 100 shares in Ghasick Muslea Coal Company, Ltd., of which he was the holder at Rs. 25-8 per share. On the same date and at the same time he agreed to purchase from the accused 200 shares in the Bengal Bridge and Bolts, Limited, at Rs. 14-4 per share. Two memoranda or slips as they are called, evidencing the contracts in question were exchanged between the parties on or about the 25th May. These are Exs. 2 and E. The contracts in respect of the said two transactions are contained in one document, viz., Ex. 3. The parties agreed that the date of delivery and payment of cash under both the above contracts should be the 28th May. At the time when Ex. 3 was handed over to the complainant, a receipt for the same was, it is alleged, taken from him by the accused. This receipt the genuineness of which is in question is Ex. F. The complainant alleges that the accused had made a mistake about the rate in respect of the shares in the Bengal Bridge and Bolts, Ltd., and that the correct rate was Rs. 14-4 on account of premium plus Rs. 7-8 on account of paid up capital per share and that on the accused discovering or admitting his mistake on or about the 26th May, the contract in respect of these shares was at the request of the accused cancelled. The complainant further alleges that he noted the fact of such cancellation on the back of Ex. 3, on the 29th May, in these words "cancelled as requested by A.K. Chatterjee." The complainant goes on to add that on the 31st May, the accused obtained from him 100 shares in the Ghusick Mnslea Coal Company, Ltd., being Nos. 128101 to 128200, and a blank transfer deed on the representation that he would bring Rs. 2,535 being the price of the shares in cash within a quarter of an hour, but that instead of bringing cash the accused caused a letter to be written to the complainant by his pleader on the same date asking the complainant to take delivery of the 200 shares in the Bengal Bridge and Bolts, Ltd., after paying the difference between the price of the latter (Rs. 4,350) and the price of the shares in the Ghusick Muslea Coal Company, Ltd., which the accused had obtained from the complainant and stating that in default of compliance the accused would resell the said share in the Bengal Bridge and Bolts, Ltd., at the complainant's risk and on his account and would hold him responsible for all losses. The letter referred to above is Ex. G. It was immediately replied to by the complainant's pleader (see Ex. 4) and in it the complainant emphatically denied having entered into any contract with the accused for the purchase of 200 shares in Bengal Bridge and Bolts, Ltd., at the price quoted in Ex. G, but stated that he had contracted with the accused for the purchase of Bengal Bridge and Bolts shares at Rs. 14-4 per share clear or for Rs. 2,850 in all. The complainant went on to add that he had sold through the accused as self for

principal 100 shares in the Ghusick Muslea Coal Company, Ltd., at Rs. 25-8 per share clear and had handed over the shares Nos. 128101 to 128200 with the blank transfer deed and a bill for Re. 2,535 after deducting the charges for stamps. The Complainant stated that if the accused failed to pay the amount of the bill or to return the shares to him, he would forthwith take criminal proceedings against the accused for breach of trust. The accused failed to comply with the complainant's request and on the 2nd June the present complaint was laid before the Chief Presidency Magistrate.

11. The case for the defence was that Ex. F was a genuine document, it being stated therein that Rs. 7-8 was the paid-up capital in respect of each share in the Bengal Bridge and Bolts, Ltd., that it was well-known to the complainant that the paid-up capital per share plus the premium or less the discount had always to be paid when shares were purchased ; that it was wholly untrue that there had been any cancellation in respect of the contract relating to the shares in question or that the accused had requested the complainant to cancel the said contract ; that on the 28th May which was the due date, the accused called upon the complainant to perform the two contracts referred to above but that the latter made excuses and put off the performance of the contracts till the 31st May ; that on the last mentioned date, the accused obtained delivery of the shares in the Ghusick Muslea Coal Co., Ltd., from the complainant ; that he pressed the complainant at the same time to pay for and take delivery of the shares in the Bengal Bridge and Bolts, Ltd., but that the price of the latter shares having meanwhile gone down, the complainant wanted to back out of the transaction relating to the shares in the Bengal Bridge and Bolts, Ltd., that off the 31st May, the accused addressed to the complainant a letter through his pleader being Ex. G ; that as the complainant did not perform the contract in respect of the Bengal Bridge and Bolts shares and as the price thereof was going down, the accused after due notice to the complainant sold the last mentioned shares and thereby incurred a loss of Rs. 650 : that on the 2nd June 1920, the accused forwarded a cheque to the complainant for a sum of Rs. 1,885 being the difference between the price of the Ghusick Muslea shares (Rs. 2,535) and the loss on the Bengal Bridge and Bolts shares; and that having regard to the fact that the accused had himself purchased, the Bengal Bridge and Bolts shares at Rs. 1240, plus Rs. 7-8 per share, it was ridiculous to suggest that the accused had offered to sell the same shares at Rs. 14-4 inclusive of the paid up capital per share.

12. The learned Magistrate has found that the accused made a mistake about the rate in respect of the Bengal Bridge and Bolts shares, that on the complainant's attention being drawn to the matter he refused to perform the contract in respect of these shares and that the contract was thereupon cancelled, that the transaction in respect of the Ghusick Muslea shares was separate and distinct from the transaction in respect of the Bengal Bridge and Bolts share, that the accused had no right to detain the sale proceeds of the Ghusick Muslea shares and set off the loss in respect of the Bengal Bridge and Bolts shares against the same and that he dishonestly

made the complainant deliver the Ghusick Muslea shares to him. Of course if the finding of the learned Magistrate about the cancellation of the contract relating to the Bengal Bridge and Bolts shares is correct, then the accused was clearly guilty of an offence punishable under sec. 420, I. P. C., and nothing more need be said about the matter. I do not think this finding is correct. In the first place, it is noteworthy that, the complainant does not mention anything about the cancellation of the contract in question either in his petition of complaint before the Magistrate or in his pleader's letter, Ex. H. If there had been such a cancellation as suggested by the complainant it is reasonable to assume that the complainant would have put the fact on record in some communication or other addressed to the accused. There was no such communication. At any rate, seeing that he was alive to the necessity of there being some record of the cancellation one would have expected that the complainant would have got the accused to agree to some such endorsement as appears on the back of Ex. 3, if his story was true. This was specially important from the complainant's point of view, namely, that the rate mentioned in respect of the Bengal Bridge and Bolts shares was an inclusive rate and that the word "clear" in Exs. 2 and E did not mean clear of brokerage as contended for on behalf of the accused. In passing it may be mentioned that the word "clear" does not appear in Ex. 3. But there was indeed no reason whatsoever why the accused should request the complainant to cancel the contract in question. The accused, it is true, denied that Ex. F bore his signature. Ex. F is a receipt, purported to have been granted by the complainant at the time when Ex. 3 was delivered, to him and it contained a reference to the fact that the paid up capital per share in the Bengal Bridge and Bolts, Ltd., was Rs. 7-8. The complainant admitted in his cross-examination that the accused had obtained a chit from him when he delivered the contract to him ; but leaving aside the question whether that chit was Ex. F or not, there cannot be any doubt on the admission of the complainant in his cross-examination that it was well-known to him that the paid up amount of a share plus the premium or less the discount had to be paid when shares were purchased. No doubt it may be said that the complainant did not know that the shares in question had been partly paid up, but however that may be, I find it difficult to accept as true the complainant's account of the cancellation of the contract in question ; in my opinion, the inference may not unreasonably be drawn that the complainant having found out that the market in respect of the Bengal Bridge and Bolts shares was against him was trying to wriggle out of the contract in respect thereof. The position therefore on the 31st May was this; the complainant did not want to perform the contract in respect of the Bengal Bridge and Bolts shares, while it was to the interest of the accused, as he had himself purchased the requisite number of these shares from another person on the 25th May (see Ex. N) for the purpose of giving delivery to the complainant, that the complainant should somehow or other be made to perform the contract or in the alternative should be made to suffer the loss on these shares by reason of the market having gone down. How was this to be done? According to both parties, the contract in respect of the Ghusick Muslea shares was subsisting; but the

complainant, in the events which had happened, was unwilling to part with them, except for cash. The accused, therefore, falsely represented to the Complainant that he would bring cash in exchange for the Ghusick Muslea shares and thereby induced the complainant to hand over the Ghusick Muslea shares to the accused. Having got possession of these shares, the accused proceeded to dictate his terms through his pleader to the complainant. (Ex. G). It is argued however on behalf of the accused that, inasmuch as the complainant was bound to give delivery of the Ghusick Muslea shares, no offence had been committed by the accused in getting possession of these shares by means of a trick. I am unable to accede to this contention. The accused's proper course was to put the matter in a Court of law, but instead of doing that he had recourse to a trickery. The action of the accused was dishonest and fraudulent and in my opinion he was guilty of an offence punishable under sec. 420, I. P. C. I am therefore of opinion that this appeal fails and it should be dismissed.