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DAYARAM SHARMA

v.

NORTHERN HOTELS LIMITED

B [SUPREME COURT, 1968 (Moti Tikaram Ag. P.J.), 20th May, 12th June]

Appellate Jurisdiction

Contract—agency—authority to receive payment—payment made by open cheque—clear intimation to person paying required if agent's authority limited to receive payment in a particular form.

C *Appeal—finding by magistrate based on evaluation of witness' testimony—not disturbed on appeal in absence of cogent reasons.*

D The respondent company, being indebted to the appellant for work done, paid a cheque for the amount due to one Govind Chand, who had earlier acted as a "middleman" in relation to the work. The cheque was an open cheque and Govind Chand did not pay or account for it to the appellant. The trial magistrate held that Govind Chand was authorised or directed by the appellant to uplift the cheque from the respondent company.

Held: 1. The magistrate's finding was based on his evaluation of Govind Chand's evidence and was not an inference drawn from other facts specifically found.

E 2. In the absence of cogent reasons an appellate court would not disturb that finding, and the appellant was bound by the acts of his specifically authorised agent performed within the scope of his authority.

3. In order to restrict the authority of an agent to receive payment to a particular form of payment (e.g. by crossed cheque payable to the principal) there must be clear intimation to the third party.

F Cases referred to: *Benmax v. Austin Motor Co. Ltd.* [1955] A.C. 370; [1955] 1 All E.R. 326; *International Sponge Importers Ltd v. Watt (Andrew) & Sons* [1911] A.C. 279; 27 T.L.R. 364; *Pole v. Leask* (1863) 33 L.J. Ch. 155; 8 L.T. 645; *Brazier v. Camp* (1894) 63 L.J.Q.B. 257.

Appeal against a judgment of the Magistrate's Court.

G A. H. Sahu Khan for the appellant.

Z. K. Dean for the respondent company.

The facts sufficiently appear from the judgment.

MOTI TIKARAM J.: [12th June, 1968]—

H This is an appeal from the decision of the Magistrate's Court of the First Class sitting at Nadi whereby he dismissed the Appellant/Plaintiff's claim against the Respondents/Defendants for the sum of £168 for work done on the basis that the debt was satisfied by payment of a cheque

for £168 to one Govind Chand. The Appellant/Plaintiff being dissatisfied with the Learned Trial Magistrate's decision has appealed on the following grounds :

"1. The Learned Trial Magistrate having found as facts :-

- (a) That the Appellant was the principal in the transaction and that the fee or the price was £168.0.0.
- (b) That the Appellant had done the work for the Defendants;
- (c) That one Govind Chand, who was not an agent or employee of the appellant, except a "middleman" had received payment of that price or fees;

The Learned Trial Magistrate erred in fact and in law in not entering Judgment for the Appellant when the Respondents had failed to prove affirmatively that payment had been made to the Appellant in the sum claimed.

2. The Learned Trial Magistrate having found as facts :-

- (a) That the cheque for £168.0.0 was received by Govind Chand (who was not an agent or employee of the appellant) from the Respondents and
- (b) That this cheque was cashed by Govind Chand; consequently the Learned Trial Magistrate erred in law and in fact in not finding
 - (a) That the Respondents were negligent in paying the sum to the said Govind Chand by a cash or open cheque or at all and
 - (b) That in consequence thereof the Respondents were estopped by their own negligence, in making payment to Govind Chand, and therefore the respondents could not allege that payment to Govind Chand was payment to the Appellant and consequently the Learned Magistrate failed to enter Judgment for the Appellant whereby there has been a miscarriage of justice.

3. That the Learned Trial Magistrate having found as fact that both the defence witnesses were untruthful witnesses in view of which the Learned Trial Magistrate misdirected himself in not finding for the appellant whose evidence remained uncontradicted whereby a miscarriage of justice has occurred.

4. That the Learned Trial Magistrate failed to direct his mind to the fact of admissions of the defence witness Mr. Clark to the effect :-

"I noticed at that time the statements were in the name of D. R. Sharma and Sons" further "Sharma did not ask me to hand these to Govind Chand" and further "I agree the cheque should have been made out to D. R. Sharma and Sons and I admit that it was a mistake of fact that the cheque was made out to Govind Chand if it was so made out. It should have been made out in the name of the account which I certified. If the cheque was a cash cheque it would have been a mistake" and the evidence

A of the second witness Govind Chand;- "It was an open cheque. The cheque read "pay D. R. Sharma or bearer" and thereby the Learned Trial Magistrate erred in fact and in law in not finding for the appelland and accordingly entering judgment for the appelland.

5. That the decision of the Learned Trial Magistrate and the Judgment given thereon are unreasonable and amounts to a miscarriage of justice.

B 6. That the judgment entered for the Respondents with costs cannot be supported having regard to the evidence."

The learned trial Magistrate's finding that Govind Chand was a 'middleman' was in respect of the performance of work which created the debt.

C The Appellant, in formulating his grounds of appeal, has failed, in my view, to have regard to the following passage of the learned trial Magistrate's judgment concerning Govind Chand :

D " This witness claims that he was authorised by the Plaintiff to go to Suva and uplift the Defendant's cheque but admits that he was not authorised by the Plaintiff to cash it. On the whole of the evidence, although the Plaintiff is anxious to diminish, so far as is possible, any relationship between himself and this witness, this is in all probability true. That this witness did in fact cash the cheque is undoubted and that the Plaintiff did not receive any of the proceeds of that cheque cannot be doubted. That the witness Govind Chand probably pocketed the whole of the proceeds of that cheque for his own use may well be the matter of other proceedings.

E This is the crux of the case, and this Court finds that, in all probability, on the evidence, that Govind Chand was authorised or directed to uplift the Defendant's cheque in payment of the Plaintiff's work from the Defendant's Suva Office. That he misappropriated this cheque does not affect the Defendant."

F It is settled law that no act done by a person purporting to be an agent acting on his principal's behalf but having in fact no authority from the principal so to act is binding on the principal unless the latter is precluded by his conduct from denying the existence of the authority. However, in the case before me the learned trial Magistrate's decision is based essentially on his finding that Govind Chand was authorised to uplift the cheque. The trial Magistrate obviously did not believe the Plaintiff's denial that he had authorised Govind Chand and it is equally clear that G he believed that part of Govind Chand's evidence where he said that the Plaintiff had instructed him to collect the cheque. It is undisputed evidence that Govind Chand acknowledged in writing the receipt of the cheque for £168 for and on behalf of the Plaintiff. The finding on a balance of probabilities that Govind Chand was authorised or directed to uplift the Plaintiff's cheque is a finding of fact and not an inference drawn from facts specifically found. The learned trial Magistrate having H evaluated the witness Govind Chand's evidence in the light of other evidence before him was entitled to accept part of his evidence and disregard or reject the balance. This is so notwithstanding the fact that the learned trial Magistrate regarded Govind Chand as a rogue. There

is no rule of law that a witness's credibility is indivisible. In *Bermax v. Austin Motor Company Limited* [1955] A.C. 370 the Privy Council held — "there is a distinction between the finding of a specific fact and a finding of fact which is really an inference drawn from facts specifically found. In the case of the latter the appellate tribunal will more readily from an independent opinion than in the case of the former which involved the evaluation of the evidence of witnesses, particularly where the finding could be founded on their credibility or bearing." If the learned Magistrate's finding of fact is well founded and I have no cogent reasons for disturbing it, then the debt must be deemed to have been satisfied as the Appellant is bound by the acts of his specifically authorised agent performed within the scope of his authority. The fact that Govind Chand did not hand the cheque or its proceeds to the Appellant/Plaintiff does not affect the issue. The answer to the Appellant's complaint that the Respondents were negligent in giving a cash or open cheque to Govind Chand instead of a crossed cheque is that to restrict the authority of an agent to receive payment to a particular form of payment other than cash i.e. by crossed cheque payable to the principal there must be clear intimation to the third party, in this case the third party being the Respondent/Defendant — see *International Sponge Importers Limited v. Watt (Andrew) & Sons*, (1911) A.C. 279.

The party dealing with an agent has the onus of proving either real or ostensible authority and it is a matter of fact in each case whether such authority existed. (See: *Pole v. Leask* (1863) 33 L.J. Ch. 155; *Brazier v. Camp* (1894) 63 L.J.Q.B. 257, C.A.)

In my view, the Respondent/Defendants having satisfied the Trial Court by evidence, although on a balance of probabilities only, that Govind Chand was specifically authorised by the Plaintiff to uplift the cheque, the learned trial Magistrate was bound to come to the conclusion he did on the evidence as found by him. This appeal is, therefore, dismissed with costs.

Appeal dismissed.