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IN THE PRIVY COUNCIL

No. 19 of 1957

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR.

B E T W E E N :

SAJAN SINGH (Defendant) Appellant

- and -

SARDARA ALI (Plaintiff) Respondent

UNIVERSITY OF LONDON
INSTITUTE OF LEGAL STUDIES
L
- 9 MAR 1960
25 RUSSELL SQUARE
LONDON, W.C.1.

CASE FOR THE APPELLANT

Record

10 1. This Appeal is from a Judgment and Order pp. 39-40
55 of the Supreme Court of the Federation of Malaya
268 in the Court of Appeal at Kuala Lumpur, dated the
15th March, 1957, allowing an Appeal by the pp. 22-26
Respondent against a Judgment of the Supreme
Court of the Federation of Malaya, Settlement of
Malacca, dated the 19th day of September, 1956,
dismissing the claim of the Respondent for a
declaration that he was the owner of a certain
"authorised vehicle", viz. a lorry, the subject
20 of a haulage permit, for the return of the said
lorry "as an authorised vehicle" or its value,
alternatively damages for its detention, and
for damages for loss of profit.

2. The principal issue which arises for determination on this Appeal is whether the Respondent is entitled to succeed in view of the fact that his claim to ownership of the vehicle in question is based upon an illegal contract which was, or formed part of, a transaction involving a deliberate deception of the public administration of the country. The Appellant relies upon the principle ex turpi causa non oritur actis.

pp.1-3. 3. The suit was commenced by a Writ of 10

Summons dated the 4th November, 1955, in the Supreme Court, Settlement of Malacca. By the

p.3,11. said summons the Respondent claimed a declaration
1-4.

that a Dodge motor lorry, No. M.2207 in the

p.3,11. Appellant's possession, was the property of the
5-6.

Plaintiff, the return of the said lorry or \$5000/-

p.3,11. as its value, and damages for detention and/or
7-10.

conversion thereof.

pp.3-5. 4. 4. By his Statement of Claim, dated the 4th
November, 1955, the Respondent pleaded inter alia, 20
as follows :-

p.4, 11. (A) That in December 1948 the Respondent paid
3-9. the Appellant \$1500/- with which the Appellant
purchased 6 second-hand lorries, on condition
that a Dodge lorry bearing registration No.
M. 2207, registered in the name of Appellant,
was to be the Respondent's.

(B) That the Appellant obtained a Haulage Permit for the said lorry and made it an authorised vehicle for use by the Respondent.

p.4, 11.
10-14.

(C) That on the 4th August, 1950, the Respondent and one Nihal Singh paid the Appellant ₹3500/- for which he gave them a document in Punjabi in the following terms :-

p.4, 11.
17-32.

"4.8.1950

10 "I Sajan Singh (Malacca) have sold a Dodge lorry No. M 2207 to Nihal Singh and Sardara Ali jointly for ₹3500/-. Both of them can sell this lorry but cannot sell the Haulage Permit. The Haulage Permit is to be returned to Sajan Singh. If there is anything concerning the lorry then Nihal Singh and Sardara Ali can represent.

Sajan Singh."

20 (D) That the Respondent subsequently acquired the half share therein of the said Nihal Singh.

p.4, 11.
33-37.

(E) That from the 4th August, 1950 the Respondent carried on a haulage business using the said authorised vehicle which remained in his sole possession and was maintained by him until the 27th January, 1955.

p.4, 1.42
p.5, 1.6.

(F) That on the 27th January, 1955, the Appellant took away the said authorised vehicle

p.5, 11.
12-17.

without the Respondent's knowledge or permission and thereafter refused to return it.

p.5, 11.
21-33.

The Respondent claimed and prayed, inter alia:-

(i) For a declaration that the plaintiff is the owner of the authorised vehicle despite that it is registered in the defendant's name and that the Haulage Permit No. 164A is in the defendant's name.

(ii) For the return of the Dodge Motor lorry No. M 2207 as an authorised vehicle i.e. together with the use of the Haulage Permit No. 164A until the plaintiff sells the Dodge Motor lorry No. M 2207 as agreed to by the defendant in his document dated the 4th day of August, 1950

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(iii) In the alternative damages for detinue \$5000/-

(iv) Damages at \$400/- per month for loss of earning or profit from the 27th day of January, 1955 until date of payment. "

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pp.6-7. 5. By his Defence dated the 19th November, 1955, the Appellant pleaded, inter alia, as follows :-

pp.6, 11.
17, 18
and 30-
37.

(A) He denied receiving any of the alleged monies from the Respondent, agreeing to give the said lorry to the Respondent, applying for a haulage permit for the Respondent's use, or

p.6, 11.
20-21.

- signing the alleged document dated the 4th August, 1958, and denied that the Respondent ever owned the said lorry, or carried on business as a haulier.
- (B) He alleged that he obtained the haulage permit in his own name, that he employed the Respondent to drive the said lorry, and that the Respondent had the same in his possession only as its driver.
- 10 (C) He admitted removing the said lorry from the Respondent's premises.

p.6, 11.
22-24.p.6, 11.
33-34.p.7, 11.
6-9.p.6, 11.
24-26.p.6, 11.
26-29.p.7, 11.
9-17.p.7, 11.
18-21.

Extracts from the relevant Regulations relating to motor vehicles and haulage permits are set out in the Annexure hereto.

6. The trial took place in the Supreme Court at Malacca before Smith J. on the 19th July and the 23rd August, 1956. Evidence was given by the Respondent and the Appellant in accordance with their respective pleadings, and in addition a handwriting expert was called on the Respondent's behalf who gave evidence to the effect that the alleged document dated the 4th August, 1950 was signed by the Appellant. It was conceded on behalf of the Respondent that the authorities had been deceived and his evidence included the following :-

pp. 9-21.

pp.10-13.

"In 1948 defendant bought lorries from

Military disposal board. He bought 6. I paid ₹1,500 towards purchase price. He promised to give me a lorry; he did lorry No. M 2207 a Dodge. It was registered in his name and is still now.

It was because I trusted him and the haulage permit was in his name. I could not get a haulage permit.

After this lorry had been passed as fit by RIMV Nihal Singh and I paid ₹4,500 to the defendant (altogether ₹5,000) for the ₹1500 I had no receipt. For the ₹3,500 I received this Ex.P5. " 10

7. On the 14th September, 1956, judgment was given for the Appellant. In the course of the judgment the learned Judge stated as follows :-

p.23, 11. "I am satisfied of the truth of the plaintiff's
23-27. claim.

p.23, 11. The plaintiff to prove his case has to prove
36-44. that he and the defendant practised a deceit on the public administration of this country in order to get a haulage permit for his vehicle. The question is does his conduct raise a 'moral estoppel' which will prevent him succeeding in the Courts of this country. He asks the Courts to assist him when he is cheated by his fellow conspirator. 20

p.24, 11. In my opinion it is not necessary that moral
11-28.

estoppel should be pleaded; it is the duty of the Court when it realises that a litigant is setting up his own fraud to refuse him aid. The principle is "ex turpi causa non oritur actio". The arguments advanced by Mr. Jayaswal from English Road Transport law did not appear to me to be applicable. What was done may not have been illegal in England. The plaintiff on his own shewing was party to a deceit whereby the Registrar of Motor Vehicles issued a haulage permit for lorry M 2207 which he would not have done if he had not been deceived.

For these reasons I consider myself obliged to find for the defendant. I make no order as to costs since I consider that the estoppel could have been raised on the pleadings. "

The Appellant submits that the said finding was right.

8. The Respondent's Memorandum of Appeal, dated pp.27-28. the 22nd October, 1956, stated the following grounds of appeal :-

"A. The learned Judge misdirected himself on Law that the transaction was against public policy because of Ex. P. 1, p.3,

p.28, 11.
3-14.

when there is no statute prohibiting the transaction or declaring it illegal or unlawful.

B. In the alternative the learned Judge should have separated the legal part from the illegal part of the transaction and ordered the defendant respondent to return the motor lorry No. M 2207 or its value \$5,000/- and to pay general damages to the plaintiff/appellant for the wrongful conversion. "

pp.29-38. 9. In the Court of Appeal at Kuala Lumpur 10
(Thomson, C.J. Hill and Syed Shah Barakbah, JJ.)

pp.39-40. judgments were given dated the 7th March, 1957, and
an Order was made on the 15th March, 1957, reversing
pp.29-34. the judgment of the learned trial Judge. The
judgment of the learned Chief Justice included the
following passage :-

pp.31, 1. "For the purpose of the present argument it may
24-
p.32, be accepted that the Plaintiff and the
1.3. Defendant practised a deceit on the public
administration of this country in order to 20
get a haulage permit for the vehicle. I am
unable to agree, however, that the Plaintiff
had to prove this in order to prove his case
in the present proceedings. The action was
not in contract. It was an action for
trespass to goods. In order to succeed in it
the Plaintiff had to prove that he was in

possession of the lorry and that the Defendant seized and took it away. The defence was that it was not the Plaintiff's lorry. The plaintiff's reply to that was that it was his lorry. There was no need for him to go into the question of how the lorry came to be registered in the name of the Defendant except by way of anticipating any argument that might be set up on behalf of the Defendant based on that registration. The lorry became his as a result of one or possibly two agreements with the Defendant which may well have been bad as being contrary to public policy, but the consideration that these agreements were bad did not prevent the property in the lorry passing to him (see Simpson v. Nicholis 3 M. & W. 240, 244. and Scarfe v. Morgan 4 M. & W. 270, 281.) The property having passed and the Plaintiff having obtained possession I fail to see why the Plaintiff should not have his possession protected and his property or its value restored to him. "

The judgment of Hill, J. contained the following passage :-

"Now it seems to me that in order to succeed in his claim, all that the Plaintiff had to

p.36, 11.
16-35.

prove was that he was in entitled possession of the lorry and that the Defendant had taken it away. He did not strictly have to prove ownership, though he did so, and I hold this view because, as I stated above, the plaintiff's claim was essentially and basically an action for trespass to his goods.

If this view is correct, it follows that the plaintiff was under no obligation whatever, in order to prove his case, to prove in addition 10 that he and the defendant practised a deceit on the public administration of this country with regard to a haulage permit. It is in this connection that I feel, with great respect,-that the learned trial Judge was mistaken. Indeed, the pleadings shew that the plaintiff was forced to refer to the haulage permit issue by the defence set up. "

p.40, 11.
1-5.

The Order of the Court of Appeal provided inter alia that the Appellant should pay to the Respondent the value of the lorry as at the 27th January, 1955, with interest at the rate of 6% per annum.

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The Appellant submits that judgments and the Order in the Court of Appeal were wrong in law on the facts found.

pp.40-41. 10. By Order dated the 23rd July, 1957, final

leave to appeal to Her Majesty in Council was granted.

11. The Appellant respectfully submits that this Appeal should be allowed with costs, for the following, among other,

R E A S O N S.

1. BECAUSE the judgment of the learned trial Judge is right for the reasons therein stated and other good and sufficient reasons.
2. BECAUSE the judgment of the Court of Appeal is wrong in law.
3. BECAUSE the effect of the judgment of the Court of Appeal is to enforce a contract which is illegal and void and a criminal conspiracy.
4. BECAUSE the effect of the judgment of the Court of Appeal is against public policy.
5. BECAUSE the Respondent pleaded and relied upon and had to rely upon the illegal contract in order to prove his case.
6. BECAUSE the Respondent pleaded and relied upon and had to rely upon a transaction which involved practising a deceit upon the public administration of the country, in order to prove his case.

7. BECAUSE the claim of the Respondent was for a declaration of ownership and for the return of the alleged "authorised vehicle" or damages in detinue, and for damages for loss of profit; and the learned judges in the Court of Appeal were in error in regarding the claim as merely an action for trespass to goods.
8. BECAUSE the Respondent could not prove ownership except by reliance upon the illegal contract and the deceitful transaction. 10
9. BECAUSE the Respondent could not prove possession or that he was entitled to possession except by reliance upon the illegal contract and the deceitful transaction.
10. BECAUSE the Respondent claimed to have derived his title from the Appellant, and based his claim to possession upon his alleged ownership, and the Appellant also claimed ownership and a right to possession based upon ownership, and therefore the ownership of the lorry was necessarily in issue. 20
11. BECAUSE on the Respondent's own case and the facts found the Appellant was the owner of the lorry but for the illegal

- contract and the deceitful transaction.
12. BECAUSE the Respondent claimed the return of the lorry as an "authorised vehicle".
 13. BECAUSE the property in the lorry never passed to the Respondent.
 14. BECAUSE on the Respondent's case the illegal contract remains executory and cannot be executed.
 15. BECAUSE the Respondent is not entitled to a judgment in his favour by reason of the principle ex turpi causa non oritur actio.

Signed RALPH MILNER.

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A N N E X U R E.

A. ROAD TRANSPORT PROCLAMATION

dated 6th October, 1945

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3. A Commissioner for Road Transport will be appointed by me with power, subject to my approval, to appoint District Controllers for Road Transport and Registrars of Vehicles.

4. The Commissioner shall have power :-

(a) To regulate and control the registration and Licensing of motor vehicles and the functions and duties of District Controllers for Road Transport and Registrars;

(b)

(c) To regulate and control the use and movement of motor vehicles;

(d)

(e) To issue permits or licences to operators, drivers, conductors, attendants, repairers and other persons operating or employed on or in connection with motor vehicles;

(f) To regulate and control the sale, purchase, transfer or exchange of motor vehicles and vehicle supplies;

(g) (h) (i) (j)

5. (Renumbered 5(1) by Road Transport (Amendment) Proclamation dated 7th March, 1946)

(11)

The Commissioner, with my approval, may from time to time make, alter, amend or revoke regulations relating to all or any of the matters referred to in section 4 and generally relating to the construction equipment and use of motor vehicles and trailers and may prescribe penalties for breaches thereof.

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8. Any person who without lawful excuse acts in contravention of or fails to comply with any provision of this Proclamation or any regulation made thereunder shall be liable, where no special penalty is provided, in the case of the first offence, to a fine of five hundred dollars or to imprisonment for a term not exceeding six months and, in the case of a second or subsequent offence to a fine of One thousand Dollars or to imprisonment for a term of one year, or to both such fine and imprisonment.

9. The Provisions of this Proclamation supersede such of the provisions of any written law relating to motor vehicles as are inconsistent with the provisions of this proclamation and any licences, driving licences, permits or authorizations of any kind, issued or granted under such provisions are hereby cancelled.

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B. CONTROL OF VEHICLES, SPARE PARTS AND EQUIPMENT
REGULATIONS.

dated 1st November, 1945

4. No person shall sell or transfer whether for consideration or not, or otherwise dispose of, or import, any

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motor vehicle, spare parts or equipment without a licence in that behalf issued by an authorised officer.

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11. Any person acting in contravention of the requirements of these Regulations shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding one thousand dollars or to both such fine and imprisonment.

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(The above Regulations were revoked with effect from the 1st July, 1950 by the Control of Vehicles, Spare Parts and Equipment (Revocation) Regulations, 1950).

C. REGISTRATION OF MOTOR VEHICLES REGULATIONS

dated 10th October, 1945

1. (i) Any person who has in his possession, power or control any motor vehicle shall attend at the office of the Registrar of Motor Vehicles for the area in which such person shall be or reside, at such time or times as the Registrar may by order direct, and shall there :

(a) give to the Registrar such particulars relating to the said vehicle, the title under which such person has it in his possession, and such other particulars and information relating to the vehicle, or the ownership or

(iv)

possession thereof as the Registrar may require;

(b)

(ii)

2. No person shall sell, exchange, part with the possession of, purchase, acquire or take possession of any motor vehicle without a permit in writing from the Registrar.

3. From and after the 1st day of December, 1945, no person shall use, or suffer or permit to be used a motor vehicle otherwise than in accordance with a permit in writing from the Registrar.

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D. MOTOR VEHICLES COMMERCIAL USE REGULATIONS as amended by Motor Vehicles Commercial Use (Amendment) Regulations, 1948 with effect from the 1st May, 1948.

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2. In these Regulations unless the context otherwise requires :

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"authorised vehicle" means a motor vehicle authorised to be used by a permit issued under these Regulations.

.....

"goods vehicle" means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted.

.....

3. (3) For the purpose of this Regulation a motor

(v)

vehicle shall not be deemed to be an authorised vehicle unless it is used by the holder of a permit in accordance with the conditions of such permit.

(4)

(5) No person shall use a goods vehicle or cause suffer or permit a goods vehicle to be used for the carriage of goods :-

(a) for hire or reward; or

(b) for or in connection with any trade or business carried on by him;

unless such goods vehicle is an authorised vehicle.

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4. (1) Permits shall be issued for such periods and shall have attached to them such conditions as the Commissioner may think fit.

(2) The conditions set out in second schedule hereto shall apply to and be conditions of the respective permits enumerated in parts 1, 2 and 3 of the said schedule.

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5. (8) A person applying for a licence or permit shall if required by the Commissioner submit to the Commissioner such particulars as the Commissioner may require with respect to any business as a carrier of goods carried on by the applicant at any time before the making of the application

(9) The following persons shall be entitled to

(vi)

object in the manner hereinafter prescribed to any application and to be heard on any application of which notice of objection has been given by them as aforesaid:-

(a)

(b)

(c) In the case of an application for a permit to authorise the use of a goods vehicle for the carriage of the goods of the applicant.

(1)

(2) Any person who is a provider of transport facilities whether by road, rail, sea or air in the locality to which the application relates and who avers that the transport needs of the applicant are not such as require the exclusive use of the motor vehicle which the applicant desires authorised.

(d) In the case of an application for a permit to authorise the use of a goods vehicle for hire or reward.

Any person who is providing facilities whether by means of road transport or any other kind of transport for the carriage of goods for hire or reward in the locality to which the application relates on the grounds:

(i)

(ii) that suitable transport facilities in the locality or between the places which the

(vii)

applicant intends to serve are or if the application were granted would be either generally or in respect of any particular type of vehicles in excess of requirements.

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(16) Any person who for the purpose of obtaining under the provisions of these Regulations the grant of a licence or permit to himself or to any other person makes any statement or declaration which is false or in any material respect misleading shall be guilty of an offence against the Proclamation.

6. The Commissioner may in his discretion refuse to grant any application for a permit or may cancel any permit already granted

7. Any person who uses or causes or permits to be used a motor vehicle for the carriage of goods without a permit or in breach of the conditions attached to a permit or otherwise in contravention of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

SECOND SCHEDULE.

Conditions Affecting Permits to Operate
A Goods Vehicle.

PART III

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2. The permit may not be transferred or assigned.

E. ROAD TRANSPORT (AMENDMENT) ORDINANCE, 1949.

dated 31st May, 1949

1. This Ordinance shall be read as one with the Road Transport Proclamation, hereinafter referred to as the Proclamation.

2.

3. Section 4 of the Proclamation is hereby amended by the deletion of paragraph (c) and the substitution therefor of the following new paragraph -

(c): to regulate and control the use and movement of motor vehicles, and for such purpose to issue permits and licences, and to attach to any permit or licence so issued such conditions as he may, in his discretion, deem necessary or expedient.

4. Sub-section (1) of section 5 of the Proclamation is hereby amended by the deletion of the full-stop after the word "thereof" in line 4 and the substitution therefor of a comma, and by the addition of the following words -

"and in particular, but without prejudice to the generality of the foregoing provisions, may make regulations -

(1) prescribing the forms to be used and the particulars to be furnished for any of the purposes of this

Proclamation;

(2) - (4)

(5) providing for the issue of permits or licences for the purposes of this Proclamation, and of copies thereof, and prescribing the conditions to be attached to such permits or licences;

(6) - (25)

(26) requiring any person to whom any motor vehicle is sold or disposed of to furnish the prescribed particulars in the prescribed manner;

(25) - (30)"

5. From and after the commencement of this Ordinance:

(a) all regulations made or purporting to have been made under section 5 of the Proclamation; and

(b) all permits and licences issued or purporting to have been issued under the Proclamation or any such regulations;

which would have been validly and properly made or issued if the provisions of this Ordinance had then been in force shall, for all purposes, be deemed to have been validly and properly made or issued, as the case may be.

(The above Ordinance came into force on the 6th June, 1949).

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IN THE COURT OF APPEAL
AT KUALA LUMPUR.

B E T W E E N :

SAJAN SINGH

(Defendant) Appellant

- and -

SARDARA ALI

(Plaintiff) Respondent

CASE FOR THE APPELLANT

HY. S. L. POLAK & CO.,
20/21, Tooks Court,
Cursitor Street,
London, E.C.4.