

PETITIONER:
SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, WEST

Vs.

RESPONDENT:
BIRENDRA CHANDRA CHAKRAVARTY

DATE OF JUDGMENT 27/11/1973

BENCH:
BEG, M. HAMEEDULLAH
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BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.

CITATION:
1974 AIR 290 1974 SCR (2) 481
1974 SCC (3) 661

ACT:
Indian Penal Code s. 401-Respondent was acting as trustee and agent of the complainant--He transferred certain properties without knowledge of the real owner--Whether criminally liable in view of innumerable transactions between the parties.

HEADNOTE:
The respondent was convicted and sentenced by the Additional Chief Presidency Magistrate, as trustee and agent of one Saila Bala Devi, for criminal breach of trust for selling 3 bighas of land to the trustees of one Ashoka Trust and for misappropriating the profits thereof, thereby, committing an offence under s. 401 of the I.P.C. On an appeal by the respondent, the High Court held that the dispute between the parties was essentially of a civil nature. It did not decide the question whether a criminal breach of trust could be committed in respect of immovable property entrusted to an agent for management on a certain understanding. The real dispute was whether the respondent, who was the ostensible owner of some immovable property, was the real owner or a benamidar holding on behalf of the real owner. The facts are that the complainant with her family shifted to Calcutta from East Bengal after partition. The complainant and her family came under the influence of the respondent, who was very much trusted by the lady and her family. Under the advice of the respondent, the complainant transferred her house in East Bengal and paid Rs. 37,000/- to one A, but the properties to be given by A in return were actually transferred to the Respondent as a Benamidar. When the respondent executed the deed of relinquishment, the disputed properties (Bansdrani properties) were dishonestly left out and not transferred. The respondent, was alleged to have committed criminal breach of trust, in misappropriating the income of the disputed properties.

Dismissing the appeal,
HELD : (i) In view of the long and intimate relations between the respondent and the family of the complainant and the numerous transactions between them. it is difficult to decide whether the respondent is criminally liable. The respondent had claimed that he had actually bought the disputed properties himself for the use of his disciples and

that there were now trust properties -- the properties stood transferred in the name of Ashoka Trust when the F.I.R. was made, -dedicated for charitable purposes.

(ii) It is difficult to decide whether the claim of the respondent is honest. It is not possible to fasten criminal liability, beyond reasonable doubt, upon the respondent before the right and the title to the disputed properties is properly established by the complainant by means of a civil suit. Therefore, the civil nature of the dispute be first decided before any question of criminal liability by satisfactorily adjudicated upon.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No, 145 of 1970.

Appeal by special leave from the judgment and order dated the 11th September, 1969 of the High Court at Calcutta in Criminal Appeal No. 160/65.

D.N. Mukherjee, A. K. Guha, G. S. Chatterjee and P. K.

Gupta, for the appellant.

Hardayal Hardy, L. K. Das Gupta, B. R. G. K. Achar and Sukumar Ghosh, for the respondent.

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The Judgment of the Court was delivered by
BEG, J.-The respondent, Birendra Chandra Chakravarty, was tried by the Additional Chief Presidency Magistrate, Calcutta, and convicted and sentenced to undergo one year's rigorous imprisonment and to pay a fine of Rs. 2,000/- and, in default of payment of fine, to a further rigorous imprisonment for six months, on the following charge held to have been established against him:

"That you the said Birendra Chandra Chakraborty, alias Balak Brahmachari on or about the 29th day of February, 1958, at Calcutta, as trustee and agent of one Shrimati Saila Bala Dasi, from or on 26-11-1949 committed criminal breach of trust as such trustee and agent in respect of 3 Bighas of land out of about 5 Bighas of land situated in Village Bansdroni in the district of 24 Parganas by selling the said three bighas of land to (1).Birendra Lal Sarkar, (2) Birendra Nath Bose, and (3) Mahindra Lal Chakraborty, trustees of the Ashoke Trust, and misappropriated the profits thereof, and thereby you the said Birendra Chandra Chakraborty, alias Balak Brahmachari, committed an offence punishable under section 409 of the Indian Penal Code and within my cognizance".

On an appeal by the convict respondent, the High Court of Calcutta by an exceptionally long judgment of more than a 100 pages, in the course of which a number of registered documents, their correct interpretation, and their effects were discussed, held that the dispute between the parties was essentially of a civil nature. It did not decide the question whether a criminal breach of trust could be committed in respect of immovable property entrusted to an agent for management on a certain understanding. The gravamen of the charge against the respondent was that he had, in violation of this understanding, set up his own title to one of the several properties, which should have been relinquished or transferred to the complainant Smt.

Saila Bala Devi just as other properties, mentioned in the schedule to a registered deed of derelinqisbment (Ex. 8) dated 24-2-62, were actually transferred or relinquished in favour of Smt. Saila Bala Devi after acknowledging her right and title to them, although their ostensible owner, like that of the property which was said to have been dishonestly retained and not relinquished, was the respondent himself. In other words, the real dispute was whether an ostensible owner of some immovable property was really its owner or merely a benamidar holding it on behalf of the real owner.

The rather pathetic story of Smt. Saila Bala Devi was : She is the widow of Aswini Kumar Das, a retired Chief Engineer of Dacca Municipality, who died sometime in 1934, leaving her with seven daughters and four sons. The Engineer, whose monthly salary was Rs. 1,000/-, had left a two-storeyed house at Dacca, a Dispensary at Nawabpur, and 200 bighas of land in Gangarampur, in addition to a deposit of Rs. 10,000/-, a life insurance policy of Rs. 22,000/ and provident fund of Rs. 25,000/-. Smt. Saila Bala Devi had also saved

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about Rs. 25,000/- and had gold ornaments. She and her family, however, came under the evil spell of the respondent, Birendra Chandra Chakravarty, alias Balak Brahmachari, sometime about 1944. She, was so impressed by the young Brahmachari, aged about 23 years, that she looked upon him as an avatar or incarnation of God. She and her family as well as the Brahmachari (also called "Gurudev" by them) shifted to Calcutta after the partition of the country. Under the advice of the respondent, Smt. Saila Bala Devi transferred her house in East Bengal and paid Rs. 37,000/- to one Abdul Rahman, introduced to her by the respondent, but the properties to be given by Abdul Rahman in return for this consideration were actually transferred to the respondent as a benamidar (the reason for this is not clear). When the respondent executed the deed of relinquishment (Ex. 8) dated 24-2-62, she remained under the impression that her right to all the properties of which the respondent was benamidar was being recognised, but what may be called "Bansdroni properties" (which stood in the name of Ashoke Trust at the time of the First Information Report, dated 26-11-63) were dishonestly left out and not relinquished. She made demands upon the respondent to make the relinquishment or transfer after she discovered, through one of her sons, the fraud perpetrated upon her. The respondent had terrorized her by threats of letting loose goondas upon her. The police was also under the influence of the respondent who had, by wrongly not relinquishing or transferring Bansdroni properties to her and misappropriating their income, committed a criminal breach of trust. The F.I.R. dated 26-11-63 was, initially, a letter sent to Shri Profulla Chandra Sen, the Chief Minister of West Bengal, which was forwarded on to the Police.

After going through the relevant parts of the judgment of the High Court and the evidence of Smt. Saila Bala Devi, we find that the respondent was so closely and so long associated with the family of Smt. Saila Bala Devi and so implicitly trusted by the lady and there were so many transactions between him and the lady concerned that it is difficult to make out, in this case, the exact nature of the position of respondent with regard to the Bansdroni properties. The disillusionment of Smt. Saila Bala Devi and her family with the respondent actually came after the respondent had some quarrels with the sons of Smt. Saila

Bala Devi. One of the reasons for these quarrels appears to have been the refusal of a daughter of Smt. Saila Bala Devi to abandon the company of the respondent with whom she was said to be living.

it may be that Smt. Saila Bala Devi was sadly mistaken in reposing so complete a trust and faith in the supposed goodness and piety of the respondent who may have cheated her. In view of the long and intimate relations between the respondent and the family of Smt. Saila Bala Devi and the numerous transactions between them, it is difficult to determine the extent to which Smt. Saila Bala Devi was duped or persuaded by misrepresentations to part with her rights in properties. She had a remedy by civil suit, for the declaration of her

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rights in and return of Bansdroni properties, still open to her. At the time of the First Information Report the disputed Bansdroni properties stood transferred to the "Ashoke Trust" which would be a necessary party in such a dispute.

The respondent had claimed that he had actually bought Bansdroni properties himself for the use of his indigent disciples and that these were now trust properties dedicated for charitable purposes. We are unable to decide, on the evidence on record, whether the claim of the respondent is honest or a mere camouflage for cheating and roguery. We, however, think that it is not possible to fasten criminal liability, beyond reasonable doubt, upon the respondent before the right and the title to the Bansdroni properties is properly established by Smt. Saila Bala Devi by means of a civil suit. We think that the High Court was correct in coming to the conclusion, having regard to all the facts and circumstances of the case, that a dispute of an essentially civil nature had to be decided between Smt. Saila Bala Devi and the respondent before any question of criminal liability could be satisfactorily adjudicated upon.

On the view we have taken on the merits of the case we think it unnecessary to consider C.M.P. Nos. 1413 of 1973 for acceptance of additional evidence filed on behalf of respondent and C. M. P. No. 1414 of 1973 also filed by the respondent for the revocation of Special Leave to Appeal. These applications are hereby dismissed.

The result is that we dismiss this appeal by special leave against the judgment and order of acquittal by the High Court.

S.C.

Appeal dismissed

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