

Privy Council Appeal No. 53 of 1938

Allahabad Appeal No. 40 of 1936

Hansraj Gupta and others - - - - - *Appellant*

v.

The Dehra Dun-Mussoorie Electric Tramway Co. Ltd. - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 18TH MARCH, 1940

Present at the Hearing:

LORD ATKIN.

LORD THANKERTON.

LORD PORTER.

[*Delivered by* LORD THANKERTON.]

This appeal is from a decree of the High Court of Judicature at Allahabad, dated the 1st September, 1936, which reversed a decree of the Subordinate Judge at Dehra Dun dated the 4th February, 1931, and granted a decree to the plaintiff-respondent for a sum of Rs.13,100 with interest at 6 per cent. from the 31st August, 1923.

The suit arises out of the misdeeds of Beltie Shah Gilani, who was the promoter and managing agent and managing director of the Dehra Dun-Mussoorie Electric Tramway, which was registered under the Indian Companies Act, 1913, on the 23rd August, 1921, and was ordered to be wound up by the High Court on the 26th March, 1926, N. P. Asthani and Bhagwati Shanker being appointed the Official Liquidators. On investigation, it was found that large sums of the Company's monies had been misappropriated by Beltie Shah.

Certain contracts with the Company were made by Lala Raghmal, who carried on business as a contractor under the name of Madho Ram-Hadreo Dass at Calcutta and under the name of Madho-Ram-Budh Sing in Delhi. He was also a large shareholder in the Company. Raghmal died in September, 1926, and the appellants Nos. 1 to 5 (appellant No. 3 being since deceased) are his legal representatives. Appellant No. 7 is the Official Receiver of the Calcutta High Court, who was appointed Receiver of the estate of Raghmal by an order of that Court dated the 16th June, 1931. Appellant No. 6, Lala Mela Ram, was in the service of Raghmal and was the manager of his Delhi business.

On the 25th June, 1929, the Company through its Official Liquidators instituted the present suit claiming a sum of Rs.39,750 with interest at 12 per cent. per annum, i.e.

Rs.30,240-14-9, and future and *pendente lite* interest, on the ground of fraudulent conspiracy of Raghumal and his authorised agent, Mela Ram, with Beltie Shah in the misappropriation of the sum of Rs.39,750 of the Company's monies.

Historically, it should be mentioned that in 1927 the Liquidators had taken misfeasance proceedings under section 235 of the Indian Companies Act against Beltie Shah, which resulted in an order dated the 3rd April, 1927, against Beltie Shah for sums amounting to over three lakhs, which included the sum of Rs.39,750 here in question. Beltie Shah was also criminally prosecuted and was sentenced to imprisonment for a period of five years. In March, 1928, the Liquidators applied under section 186 of the Indian Companies Act, for recovery from Raghumal of two sums of money, of which one was the amount here in dispute, but the application failed. The Liquidators also took misfeasance proceedings against the Company's auditors. Mukerji J., on the 26th February, 1929, decreed the Official Liquidators' application and held the auditors liable to pay Rs.89,812-8-0, including the amount here in dispute. On appeal, the High Court affirmed, with this modification:

" Though we affirm the order of the learned Judge that the auditors are to compensate the Company to the extent of Rs.39,750 we direct that execution for this amount shall be stayed until further order. The Liquidators are to be at liberty to make an application to discharge the stay order hereby granted in respect of this sum of Rs.39,750 when the contest between themselves and the contractors has been finally decided (a) adversely to the Liquidators, or (b) in favour of the Liquidators, and they, after taking all reasonable steps to recover the amount, have failed wholly or in part to do so. If the Liquidators recover a portion of the Rs.39,750 from the contractors, they should then apply to the Court giving credit to the auditors for that amount and seeking execution as to the balance only."

The auditors obtained leave to appeal to His Majesty in Council, but the appeal was compromised by the auditors paying Rs.18,500 to the Liquidators in full and final discharge of the said decree. As will be seen, their Lordships do not consider these various proceedings material to the only issue which they find it necessary to consider.

Their Lordships do not find it necessary to review the evidence in detail, as that has been fully and well done by the Subordinate Judge.

It is established that the various sums making up the amount of Rs.39,750 were misappropriated by Beltie Shah on the following dates,

	Rs.
1922, 11th April,	8,750
1922, 24th April,	6,000
1922, 18th August,	2,000
1922, 26th October,	5,000
1923, 15th January,	12,000
1923, 29th March,	6,000

Rs.39,750

Both the Courts below have found that Mela Ram was not a party to the original misappropriations, and that he was not aware of them at least until the 18th or 19th August, 1923, when he had a meeting with Beltie Shah at Dehra Dun and signed at least two of the receipts for these sums. The plaintiff's case of an original conspiracy for the misappropriation of these sums has gone; further no suggestion is now made that Raghumal was personally a party to any fraud, but his estate is sought to be made liable for the alleged fraud of Mela Ram, his employee.

The alternative case, on which the respondent succeeded in the High Court, was stated by counsel before this Board as follows,—that Mela Ram and Beltie Shah were jointly concerned in July and August 1923 in manufacturing false receipts fraudulently, to deceive the Company's auditors, thereby enabling Beltie Shah to conceal his misappropriation of the Company's monies to the amount of Rs.39,750; that they were fraudulently conspiring to that end, in order to defraud the Company; that the auditors were deceived, and that Beltie Shah was thereby enabled to conceal the misappropriations until December 1926, when the Liquidators first became aware of the misappropriations; and that the Company was entitled to recover the damages flowing from that concealment from Mela Ram and also from the estate of Raghumal.

The Subordinate Judge believed the evidence of Mela Ram, whom he saw, and, in particular, accepted Mela Ram's evidence as to the explanations given to him by Beltie Shah which induced him to sign the receipts without any suspicion. The High Court, while recognising the respect with which they were bound to regard the views of the Judge who saw the witness as to his credibility, held that they were constrained by the other evidence, particularly the documentary evidence, to reject the explanations of Mela Ram, and to hold that he was a party to the fraud practised on the Company's auditors. They rejected certain other defences maintained by the present appellants as to limitation, the liability of Raghumal's estate after his death, and the scope of Mela Ram's authority, and, after a remand to ascertain the damages, they made a decree in the respondent's favour for Rs. 13,100 as already mentioned.

The crucial question in the appeal is whether the learned Judges of the High Court were justified in declining to accept Mela Ram's evidence. Their Lordships are prepared to accept the test laid down by Niamat-ullah J. in his judgment. After stating that the party alleging fraud is bound to establish it by cogent evidence and that suspicion cannot be accepted as proof, the learned Judge says:—

“ Unless, therefore, the proved circumstances are incompatible with the hypothesis of the person charged with fraud having acted in good faith, they cannot be accepted as affording sufficient proof of fraud. I have approached the case with this point of view, and have been driven to the conclusion that the evidence, as a whole, excludes all hypothesis of good faith on the part of Mela Ram in granting the three receipts to Beltie Shah Gilani.”

Similarly, Allsop J. says:—

“ Considering all the circumstances I cannot believe that Lala Mela Ram issued these receipts in good faith. I am convinced that he issued them at the request of Beltie Shah in order to deceive the auditors and prevent them from entering upon an enquiry and that it was agreed that the liability should be cancelled as soon as the audit was over and the necessity for it ceased to exist.”

It will, therefore, be right to examine the reasons given by the learned Judges for their conclusion.

First, as to the suggestion that the third receipt, for Rs.6,000, was not signed by Mela Ram at the same time as the other two, as stated by him, but was signed after his receipt of the letter dated the 11th August, of which there is a copy in the press copy book, their Lordships are of opinion that the Subordinate Judge was right in holding that the despatch of this letter had not been proved. Allsop J. lays no stress on this point, but Niamat-ullah J. says that P. W. Lahiri had stated that the letter was sent. This is not so, as Lahiri says that he had nothing to do with the letter when it was sent, and “ it may be possible that notwithstanding that the letter of 11th August, 1923, was not cancelled it was not despatched at all ”. The evidence clearly shows that the Company’s books are very far from being reliable, and that they were frequently manipulated for Beltie Shah’s purposes. The Subordinate Judge was entitled to take the view that this letter was part of Beltie Shah’s devices to deceive the auditors.

Allsop J. relies on the previous relations of Beltie Shah and Mela Ram as justifying the conclusion that Mela Ram had at least some reason for thinking that Beltie Shah was not the absolutely honest and upright business man that he might appear to be to others who had only a casual knowledge of his affairs. This conclusion is based on the transactions relative to Raghmal’s application for 10,000 ordinary shares of Rs.10 each and 250 preference shares of Rs.100 each dated the 12th August, 1922, and the payment of the amount due on allotment of the shares by endorsement back to the Company of the cheque for Rs.31,250 in Raghmal’s favour, part of the Rs.35,000 advanced to Raghmal on contracts to be placed by him. Their Lordships are unable to agree that any dishonesty is necessarily to be inferred in these transactions. In the first place, Raghmal, against whom there is no reflection, was himself concerned in the application for shares, which is signed by him. Moreover the letter of 13th September, 1922, Ex. C., which embodies the transaction, was sent to Calcutta and not to Delhi, and there is nothing wrong *ex facie* of the transaction. Similarly, the payment of commission on the shares to Mela Ram, which he states he handed over to Raghmal, is not of such an unusual character as necessarily to justify suspicion of Beltie Shah’s honesty. The transactions are recorded in the books of the Company. Counsel for the respondent, who did not press this point, made a further suggestion, viz., that the agreement of 23rd February, 1922, between the Company

and Madho Ram-Hardeo Das was so unusual and unheard-of that it was clearly a sham and that there was all the time a secret scheme between Beltie Shah and Mela Ram for despoiling of the Company. There is no evidence to support this suggestion, every probability is against it, and, in fact, though the Company's engineers, Tata Engineering Company Ltd., at first disapproved of the agreement, they ultimately accepted it. It should be remembered that the misappropriations that Beltie Shah committed in respect of the matters in which Mela Ram was concerned was a small part of his total misappropriations and that every probability was against his making a confidant of Mela Ram, who was only an employee.

There remains the question whether the statement of Mela Ram as to the explanations given to him by Beltie Shah, which induced him to sign the receipts is such as cannot be accepted as true, and not such as may be true or may merely give rise to suspicion as to its untruth.

In the first place, their Lordships are of opinion that the learned Judges have placed too much stress on the terms of the receipts; it is true that, correctly read, they appear to acknowledge cash payments direct to Mela Ram's firm, but the word "cash" does not appear in them, and it is made clear by the evidence that they were regarded not only by Mela Ram but also by Lahiri as covering payments on the firm's account to the manufacturers in England.

In the next place, the evidence of the respondent's own witness, Lahiri, the accountant of the Company, who had knowledge of the books and of the auditors' requirements, appears to negative the validity of the conclusion of the High Court. Lahiri states:

" I understood at the time that some materials had been purchased and were awaiting delivery. I understood so on the assurance given by Beltie Shah. At that time (the end of August, 1923), I had no reason to suspect the accuracy of the assurance held out by Beltie Shah. At the time of making this reverse entry Mr. Beltie Shah explained to me that this amount had not been paid to Madho-Ram-Hardeo Das and Madho Ram-Budh Singh, but that it had been paid directly to the manufacturers on behalf of Madho Ram-Hardeo Das and Madho Ram-Budh Singh. I had no reason to doubt the accuracy of the assurance held out by Mr. Beltie Shah, because that was the usual course of business between the Company and Lala Raghmal. In other words according to the practice money could be sent either to the manufacturers direct or through Lala Raghmal. I never had any discussions concerning the disputed items either with Lala Mela Ram or with L. Raghmal. From the statement made by Mela Ram to the Liquidator I am aware that Beltie Shah got receipts about these items from Mela Ram on holding out to him the same assurance that he had held out to me."

Bearing in mind the personality of Beltie Shah and his dominating position in the Company's affairs, their Lordships are unable to agree with the opinion of the learned Judges that Mela Ram's statement cannot be accepted. It is to be remembered that Mela Ram was undoubtedly ill at this time, and, further, his lack of business-like methods in not insisting on immediate proof that the payments on account

had been made, is by no means necessarily indicative of fraud. Their Lordships would also add that, in their opinion, the conduct of Mela Ram subsequent to the granting of the receipts is—if anything—more consistent with innocence than with fraud. The reverse entries which Mela Ram obtained would be likely to draw the attention not only of the directors, but also of the auditors to the matter. Lastly, their Lordships see no reason for doubting Mela Ram's statement that he knew nothing about the audit until about the middle of August. There was no apparent reason why Mela Ram must be taken to have known about the Company's auditing arrangements, or that the receipts were required for that purpose, as the High Court hold.

Their Lordships are accordingly unable to regard as adequate the reasons given by the High Court in justification of their reversal of the finding of the Subordinate Judge as to the evidence of Mela Ram. It follows that the respondent's case of fraud has failed and the suit must be dismissed. It is therefore unnecessary to hear the parties on the remaining defences to the action, which were held over at the hearing of the appeal, pending the decision of the issue of fraud.

Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed, that the decree of the High Court should be set aside, and that the decree of the Subordinate Judge should be restored. The appellants will have their costs of this appeal, and also their costs in the High Court.

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In the Privy Council

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DELIVERED BY LORD THANKERTON

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