

Present : Jayewardene A.J.

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PANNA ALLIAR v. LEBBE *et al.*

157—C. R. Anuradhapura, 12,420.

Unlawful arrest—Money paid to obtain release—Action maintainable.

An action may be maintained to recover money paid to obtain one's release from illegal arrest and detention.

A PPEAL from a judgment of the Commissioner of Requests, Anuradhapura. The plaintiff, a Moorish trader, sued the defendants for damages for false imprisonment and for the recovery of a sum of Rs. 37.50 paid to the first and second defendants, who are headmen, to obtain his release from unlawful arrest and detention by them on a false charge of the theft of a bull belonging to the third defendant laid against the plaintiff. The learned Commissioner held that the defendants had falsely imprisoned the plaintiff and certain others, and had released them on the payment of a sum of money by each of them, viz., Rs. 37.50, and gave judgment for the plaintiff. It was contended in appeal that even if such sum of money was paid to the defendant, it could not be recovered, as it was paid in pursuance of an unlawful agreement—an agreement void as being against public policy.

Drieberg, K.C. (with him *H. V. Perera*), for defendants, appellants.

James Joseph, for plaintiff, respondent.

September 9, 1924. JAYEWARDENE A.J.—

In this case the defendants who have been condemned to pay damages to the plaintiff for false imprisonment and to return the money paid to them to obtain his release from imprisonment appeal against the judgment. The plaintiff is a Moorish villager from Puttur, a remote village in the North-Central Province. The first and second defendants are headmen, the second of the plaintiff's village, and the other of an adjoining village. The third defendant is a villager who at this time had lost a bull. The case for the plaintiff is that the first and second defendants, on the complaint of the third defendant that he had lost a bull, came to his residing land to make inquiries. Some beef was found in the house of the plaintiff and in those of five others. They explained that the beef was the flesh of a bull belonging to Uduma Lebbe which he had slaughtered. This was found to be so on inquiry. The headmen arrested the plaintiff and the others in whose houses beef was found, and detained

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them in custody that night at the house of the second defendant. Next morning, the defendants started to take them to Topawewa. But on the way the defendants demanded Rs. 500 to release them. The plaintiff and his companions offered to pay Rs. 300 which the defendants agreed to accept. Then the party returned to the village, and the plaintiff and the others raised money on six promissory notes for Rs. 40 each. Each of them paid Rs. 37.50 to the headmen, and they were released. The third defendant's bull was discovered soon after. The defendants' case is that they came to the village and held an inquiry, and as the beef found in the houses of the suspected thieves was proved to be that of Uduma Lebbe's bull, they were released. They denied having kept the plaintiff and the others in custody during the night, or having received any money from the person released. The others who were arrested and made to pay for their release have also brought actions against the defendants. The plaintiff has given evidence in support of his case, and has called three of the persons who were arrested, detained, and made to pay for their release to corroborate him. He also called one Saibu who knew all the facts and who had collected the money paid to the first defendant, and Mohideen Bawa from whom the plaintiff and the others borrowed money. He says that the plaintiff told him at the time that the money was wanted to pay the first defendant to secure their release from arrest. Some of the notes have been produced. They are in the handwriting of the third defendant, and are witnessed to by the second defendant. I accept the learned Commissioner's findings on the facts. The plaintiff has established his case beyond all doubt. It is suggested for the defendants that, if the defendants were obtaining money as alleged by the plaintiff, the second defendant would not have signed the notes. But it is proved that in these distant villages money is not lent on notes, unless the headman of the village signs the note as a witness. It might also be that the defendants never expected the transaction to come to light, and never thought that these humble villagers would dare to put forward a claim of this kind against their headman. The plaintiff's case is, however, strongly corroborated by the fact that all the men, who complain that they were arrested and released, had obtained money on notes on the same day. It is also significant that there is no entry in the note books of the first and second defendants referring to the complaint by the third defendant, the search for the lost animal, the discovery of beef, and the explanation of the accused. On these facts the Commissioner finds, I think rightly, that the defendants falsely imprisoned the plaintiff and the other suspected persons and released them on the receipt of Rs. 300.

An objection is taken to that part of the judgment which directs the payment of the Rs. 37.50, on the ground that even if the money had been so paid to the defendants, it cannot be recovered back,

as it was paid on an unlawful agreement—an agreement void as being against public policy. The arrest and detention were both illegal; even so, it is contended that money paid to obtain one's release from such detention is money paid in pursuance of an unlawful contract which cannot be recovered. It is an attempt to recover money paid as a bribe.

Courts do not allow the recovery of money paid under an immoral or unlawful contract only when the parties are *in pari delicto* or *turpitudine*, Voet 12, 5, 2. If the detention had been lawful, it may be that money paid to obtain one's release from such detention cannot be recovered back, but different considerations apply when the detention is illegal and a person is falsely imprisoned. This subject is dealt with by Voet in book 12, title 5, *De conditione ob turpem vel injustam causam*, and he points out that the object with which a thing is given may be either *ob honestam causam* or *ob turpem causam*, and the *turpitude* may be on the part of the giver and not of the receiver, or on the part of the receiver alone and not of the giver, or on the part of both.

If the *turpitude* is on the part of the receiver alone, there is an action for the return of what is paid, even when the object has been fulfilled:—*Si modo accipientis solius, non item dantis, turpitude versetur; vcluti si quis dederit alteri ne sibi vel tertio per calumniam lis moveatur, injuria inferatur, furtum fiat.* Voet 12, 5, 1.

And the *Digest* on the same subject deals with the very case we have here: “Again if a thief gives money to avoid being given up, inasmuch as it is a case of immoral behaviour on the part of both parties, there is no action to recover; but whenever the immoral behaviour occurs on the part of the receiver alone according to Celsus, there may be an action for the return of the money; for instance, when I give you money on the understanding that you will not do me wrong.” (*Digest* 12, 5, 4, 1-2); *Mouro's Translation*, p. 304; *Nathan's Common Law of South Africa*, vol. 2, s. 1070.

The English law seems to be the same. See *Pitt v. Coomes*,¹ where it was held that money paid to obtain one's release from illegal arrest on civil process can be recovered. There Denman C.J. said: “This is an application by the plaintiff to have money repaid to him which he paid into Court for obtaining his liberty. The arrest, we think, was illegal. The consequence is that the money was illegally extorted. In saying so, I do not mean to suggest that the proceeding was corrupt, but the money having been the price paid to recover liberty, when improperly taken away must be restored.”

Also *Clarke v. Wood*,² and the local case of *Saibo v. The Attorney-General*,³ where Bertram C.J. has discussed the law relating to the alternative action *condictio ob injustam causam*.

¹ (1835) 2 A & E, 459.

² (1848) 2 Ex. 395.

³ (1923) 25 N. L. R. 321.

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In the present case the arrest was not merely illegal, but also corrupt, and the payment might also be considered as part of the damages sustained by the false imprisonment. From these authorities it is perfectly clear that money paid to obtain one's release from illegal arrest and detention can be recovered.

It was also contended for the first and second defendants—the headmen—that the action has been brought against them without giving the notice required by section 461 of the Civil Procedure Code, but it has been held that a public servant who does an illegal act *mala fide* in the pretended exercise of statutory powers does not “purport” to act under the Statute which confers those powers within the meaning of section 461 and is not entitled to notice of action (*Apponsino v. Don Aron*¹ and *Abaran Appu v. Banda*²). These defendants were acting illegally, and not in the *bona fide* exercise of any statutory duty. They were accordingly not entitled to notice of action. The plaintiff has been awarded Rs. 10 only as damages for false imprisonment. This is hardly adequate. But there is no cross-appeal. I therefore dismiss the appeal of the defendants, with costs.

Appeal dismissed.



¹ (1908) 9 N. L. R. 138.

² (1913) 16 N.L. R. 49.