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SAFIA BIBI

v.

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JORA SINGH &amp; SONS

[SUPREME COURT, 1970 (Hammett C.J.), 13th February, 6th March]

Appellate Jurisdiction

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*Sale of goods—credit sale by retail—pleading by purchaser of non-delivery of particulars of goods—onus on vendor to prove compliance with Sale of Goods Ordinance (Cap. 206) s. 7.*

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Section 7 of the Sale of Goods Ordinance provides that a retail sale of goods on credit shall not be enforceable by action at the suit of the seller unless at the time of sale an invoice or docket containing specified particulars be made and delivered to the buyer at the time of delivery of the goods. Where, in an action by the seller to recover the purchase price of goods so sold, the purchaser specifically pleads that the seller never supplied any particulars of the goods, the onus is upon the seller to prove compliance with section 7.

Appeal from a judgment of the Magistrate's Court.

*K. Chauhan* for the appellant.

*B. C. Ramrakha* for the respondent.

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The facts sufficiently appear from the judgment of the Chief Justice.

HAMMETT C.J.: [6th March 1970]—

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This is an appeal from the decision of the Magistrates' Court sitting at Labasa whereby the plaintiff/respondent was given judgment against the defendant/appellant for \$800 (£400) on a claim for the balance of the cost of goods sold, cash lent and interest. The total claim of the plaintiff was stated to be £57.17.2d. in excess of this, but such excess was abandoned in order to bring it within the jurisdiction of a Magistrates' Court of the First Class.

The defendant/appellant appealed against this decision on three grounds, of which the second was abandoned at the hearing. Those relied on are as follows:—

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" 1. That the learned trial Magistrate erred in law in finding that Section seven (7) of the Sale of Goods Ordinance, Cap. 206 did not place the onus of proof of its compliance with the respondent/plaintiff.

3. That the verdict of the learned trial Magistrate is unreasonable and cannot be supported having regard to the weight of evidence adduced."

The plaintiff/respondent is a firm entitled " Jora Singh and Sons " which carries on business as a retail store at Labasa.

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NOTE:—On appeal (No. 10 of 1970) to the Court of Appeal from this judgment affidavits were admitted showing that in the Magistrate's Court a great number of invoices were actually tendered in evidence but not made exhibits. The Court of Appeal, in its judgment dated the 22nd July 1970, said that it was satisfied that the learned Chief Justice's judgment (which is reported above) on the question of onus under section 7 of the Sale of Goods Ordinance, was correct, and the Magistrate's judgment was wrong in this respect. As the learned Chief Justice's judgment was made on a mistaken basis in relation to the absence of the invoices the Court of Appeal ordered a new trial.

Sohan Singh, the principal witness for the plaintiff, said he was a partner and the manager of the firm, and that he had himself supplied goods to the defendant. The only other witness in support of the claim was Satya Nand who worked in the shop. He said he sometimes handed goods to the defendant in the shop when Jora Singh was not there. He also said he sometimes handed her invoices for the goods she purchased. From their evidence it appears that at least two, and possibly three, different people served the defendant at the shop and sold her the goods in respect of which the claim was made. **A**

The case for the plaintiff firm was that it began supplying the defendant with goods in 1961. From the further and better particulars of claim it is clear, however, that nothing is claimed in respect of goods supplied before 31st December, 1964, at which date, according to the plaintiff, the account was in balance. **B**

Sohan Singh said that goods were supplied to the defendant, to her husband, and to an unspecified number of "her sons", none of whom were named. He said that the price of all such goods were charged to the defendant's account at her oral request. He said he had in Court with him all the duplicate invoices, the originals of which were handed to whoever purchased the goods. He was not asked by his Counsel to tender these invoices in evidence and he did not do so. They were not admitted in evidence and were not seen by the learned trial Magistrate and do not form part of the record and evidence in this case. **C**

This witness said that in August, 1966 the defendant owed £442.8.9d., of which payment was demanded. He said that she then gave him post-dated cheques for £100, £142.8.9d. and £200 and he continued to supply her with goods. **D**

The cheque for £200, which was dated 10th June, 1967, was dishonoured on presentation to the bank and this was admitted in evidence as Exhibit B. The witness said this was the last cheque the defendant gave him and that payment of it was stopped in June, 1967. Elsewhere in his evidence he contradicted his own testimony on this point since he admitted that he had later been given two other cheques by the defendant each for £100. He said he entered all cheques that he received from the defendant in his accounts as "cash". In the further and better particulars of the account credit has in fact been given for three such cheques, each for £100, as "cash" on dates subsequent to the date in August, 1966 on which he had said the "last" cheque was given him by the defendant. **E**

In my view there is no apparent reason why any sinister inferences need be drawn from such self contradictory statements in the evidence of the witness. It does, however, point to the great importance of scrutinizing his testimony with some care as his memory was obviously not very clear about such matters of fact as these as he gave his evidence of events that had taken place some years previously. **F**

He gave evidence that he kept the books of the plaintiff firm and that according to these books the defendant still owed £457.17.2d as the balance of her account for goods sold and delivered and for agreed interest at the date the writ of summons was issued in this action. **G**

The case for the defendant, who was the only witness for the defence, was that she is an illiterate farmer. She said she purchased goods from the plaintiff firm which she paid for in advance by a cheque. She related that it was at Sohan Singh's suggestion she would give him a cheque. She was then supplied with goods until she had received goods to the value of the cheque when she would give him another cheque. She denied she authorised him to supply goods to **H**

**A** her husband or her sons and said he never supplied her with invoices. She gave evidence that there came a time when he said he would not supply her with any more goods unless she gave him a crop lien. This she refused to do and she said that as a result he stopped supplying her with goods. She said she thereupon stopped payment of the cheque for £200 that she had given him because she did not owe him anything at that time. The Court below did not find her explanation of this very satisfactory and as a result considered her an unreliable witness. Whether or not her explanation is accepted is one thing but I do not feel there is anything inherently improbable in this explanation.

**B** She asserted that she did not owe the plaintiff firm the money they now claimed or any money at all.

The learned trial Magistrate wrote a very brief judgment in the following terms:—  
“The evidence of Sohan Singh was clear, firm and believable.

**C** As to the evidence of defendant, my questions and her answers which are recorded on pages 12, 13 and 14 of this record revealed her to be, in my view, an unreliable witness.

I cannot agree that S. 7, of the Sale of Goods Ordinance places an onus of proof of compliance on the plaintiff.

**D** I find that the plaintiff firm has discharged the onus of proof in every respect, and I accordingly give judgment for the plaintiff firm in the sum claimed with costs to be taxed if not agreed.”

**E** There are no findings of fact in this judgment. In order to assess the merits of the third ground of appeal it has, therefore, been necessary to scrutinize the record of the evidence of Sohan Singh, who was believed, with some care. I have done so and I have also checked the figures he himself gave in evidence with those given in the further and better particulars of claim. It is to be noted that he said he kept the books of the plaintiff firm and that these particulars were taken from the books which he maintained.

It soon becomes clear from this that his evidence is in some respects self conflicting and in some respects inconsistent with the accounts he says he kept.

**F** For example, in his evidence under cross-examination he said that on one day in August, 1966 he received from the defendant three cheques totalling £442.8.9d and at that time the defendant owed £442.8.9d. He further added that this was before the payment of £100 on 17th August, 1966.

An examination of the further and better particulars shows that on no date in July or August, 1966 is the balance of defendant's account shown as £442.8.9d. nor does it amount to that precise figure on any date on the basis of those particulars.

**G** Again, in the particulars of claim, it is said that the balance of account claimed includes “cash lent and advanced and agreed interest calculated at the rate of 10% per annum”. A close examination of the further and better particulars filed reveal the following points:—

(1) There are no debit items entered therein as “cash lent” although there are four debit items described as “to cheques” of varying sums and one unexplained item entitled “Fees A/C”.

**H** (2) The calculation of interest is at irregular rates and, as far as I can see, in no case has it been charged at the rate of 10% per annum.

For example, interest of £2.16.10d. is charged in both January and March, 1966 whereas the capital sum on which this interest is apparently calculated appears to be different in each case. Again the interest of £2.11.10d. is charged in each of

the months of April, May, June and July, 1966 whereas the sum on which this interest is apparently calculated appears to be different in each case. There seems to be no consistency in the manner and rate at which interest has been charged.

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(3) There is no evidence that the amount of interest was ever "agreed" as stated in the statement of claim.

These items and other discrepancies and inconsistencies may well be capable of explanation but they were not explained. The existence of them certainly should have been enough to put the Court below on enquiry in a case where the claim is for such a substantial sum. Without any enquiry about them and without them being explained I cannot agree that it is appropriate to describe the evidence of Sohan Singh as being "clear".

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I now turn to the point raised in the first ground of appeal, namely:—

"That the learned trial Magistrate erred in law in finding that Section seven (7) of the Sale of Goods Ordinance, Cap. 206 did not place the onus of proof of its compliance with the respondent/plaintiff."

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The material part of section 7 of the Sale of Goods Ordinance reads as follows:—

"A sale of goods on credit . . . in the course of retail trade . . . shall not be enforceable by action at the suit of the seller unless—

(a) at the time of the sale . . . an invoice or docket forming part of a book of invoices . . . serially numbered be made in writing in duplicate both original and duplicate containing—

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(i) the serial number

(ii) the date of the transaction

(iii) the name of the buyer

(iv) the nature and . . . the quantity of the goods in English words and figures, and

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(v) the price in English words or figures; and

(b) at the time of delivery of the goods the original or duplicate of the invoice or docket be delivered to the buyer or some person to whom the goods may properly be delivered on his behalf."

In paragraph 6 of the defence, it was pleaded:—

"That the plaintiffs never supplied any particulars of goods or statements of account despite repeated requests for the same by the defendant."

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In his evidence for the plaintiff firm, Sohan Singh asserted that the originals of invoices were handed to whoever purchased the goods. He said he had the invoice books with him but they were not in fact either tendered or admitted in evidence. There is nothing on the record to show that they were even inspected and no evidence whatever of the entries made on them.

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Satya Nand, the assistant in the plaintiff's shop, said:—

"I sometimes handed her invoice for goods purchased by her."

He was not asked to clarify what he meant by this statement which is open to more than one construction. It is certainly open to the construction that sometimes when he served her he did not hand her invoices for the goods she had purchased. In her own evidence the defendant said:—

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"I did not authorise Sohan Singh to supply goods to my husband or sons. He never supplied me with invoices."

**A** In his final address Counsel for the defendant said he specifically relied on section 7 of the Sale of Goods Ordinance and complained that the invoices concerned should have been tendered in evidence by the plaintiff firm.

In his judgment the learned trial Magistrate said:—

“ I cannot agree that section 7 of the Sale of Goods Ordinance places an onus of proof of compliance on the plaintiff. ”

**B** Where a retail storekeeper sues for payment of an account in respect of goods sold on credit and the defendant specifically pleads in the defence he filed and delivered in answer to the claim that the storekeeper never supplied any particulars of the goods, an onus is clearly placed on the storekeeper by section 7 of the Sale of Goods Ordinance of proof of his compliance with the provisions of this section.

In my view, therefore, the point raised by the appellant in the first ground of appeal is a sound one.

**C** The onus of proof of compliance with section 7 did rest on the plaintiff/respondent in this case. That onus was not discharged. There was no evidence that even if invoices had been delivered to the appellant, as Sohan Singh contended, those invoices did contain all the information that is required by this section.

**D** The plaintiff/respondent's case does not appear to have been prepared or presented with the care and attention to detail that is merited in a claim of this size and a close examination of the evidence for the respondent firm in the Court below shows that it is only possible to place a limited degree of confidence in it. I have not been asked to consider whether this is a case in which it would be open to this Court to remit it to the Court below for the taking of further evidence.

In these circumstances the appeal is allowed, the judgment of the Court below is set aside, and judgment is ordered to be entered for the defendant/appellant.

**E** *Appeal allowed.*