

1930
 HARKISHEN
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 v.
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period, and, therefore, the latter amount is a permissible allowance under section 10 (2) and the assessee is entitled to deduct it from his assessable income.

I would, therefore, answer the question in favour of the assessee and allow him his costs in this Court.

GHA HAIDAR J.

AGHA HAIDAR J.—I agree.

N. F. E.

*Reference answered in
 the affirmative.*

REVISIONAL CRIMINAL.

Before Tek Chand J.

SHARAF DIN AND ANOTHER, Petitioners

versus

GOKAL CHAND, Respondent

Criminal Revision No. 562 of 1930.

*Criminal Procedure Code, Act V of 1898, section 517—
 Order disposing of property—regarding which offence com-
 mitted—Property pawned by accused (Manager of branch
 firm)—validity of pledge—Indian Contract Act, IX of 1872,
 section 178.*

The petitioners, the proprietors of the complainant firm, had a branch of their business at Pind Dadan Khan, where N. A. was the manager. N. A. pawned a number of ornaments belonging to the firm with one G. C. for Rs. 1,000, and misappropriated the proceeds. He was tried and convicted of an offence under section 408, Indian Penal Code. At the conclusion of the trial the Magistrate passed an order under section 517, Criminal Procedure Code, to the effect that the ornaments which were produced by G. C. before the Police during the investigation be made over to the complainant firm. On appeal by G. C., the Sessions Judge set aside this order and directed the ornaments to be returned to G. C.

*Held, (affirming the order of the Sessions Judge) that
 in order to determine whether a particular transaction where-*

1930

June 27.

by moveable property is pawned is valid or not, reference must be made to section 178 of the Contract Act, which lays down that a person, who is in "possession" of goods, may make a valid pledge of such goods, provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly; provided also that such goods have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud.

Held also, that "possession" in section 178, connotes "juridical possession" as distinguished from mere "physical possession" or bare "custody." Accordingly a servant entrusted by the owner with the custody of the goods during his absence cannot be said to be in "possession" thereof, so as to be entitled to make a valid pledge thereof.

But if the servant has been given authority to sell or otherwise dispose of the goods, then he has such "possession" as will enable him to make a valid pledge. The question is one of fact to be determined on the circumstances of each case.

Biddomoye Dabee v. Sittaram (1), and other cases relied upon.

Held further, that if the pledgor originally came into possession of the goods in a lawful manner, it is immaterial if, after having entered into a transaction which he had implied authority to do, he changed his mind and misappropriated the proceeds.

King-Emperor v. Nga Po Chit (2), and *Durga Bai v. Saraswati Bai* (3), followed.

Application for revision of the order of Lala Jaswant Rai Taneja, Sessions Judge, Jhelum, dated the 24th March 1930, reversing that of Sheikh Fazal Ilahi, Magistrate, 1st Class, Jhelum, dated the 3rd January 1930, and directing that the ornaments re-

(1) (1879) I. L. R. 4 Cal. 497. (2) (1923) I. L. R. 1 Rang. 199.

(3) (1929) 118 I. C. 796.

1930

SHARAF DIN

v.

GOKAL CHAND

covered from Gokal Chand, respondent, should be returned to him by the petitioners.

DIN MUHAMMAD, for Petitioners.

O'CONNOR, for Government Advocate, for Crown.

Nemo, for Respondent.

TEK CHAND J.

TEK CHAND J.—The petitioners, who reside in Calcutta and Cawnpore, are the proprietors of a firm known as Messrs. Amin Brothers, which has a branch at Pind Dadan Khan in the Jhelum district. One Niaz Ali was the manager of the business at Pind Dadan Khan, which was supervised by Abdul Rashid, a cousin of the petitioners. In December 1929 Abdul Rashid suspected Niaz Ali of having misappropriated certain sums of money belonging to the firm. On examining the safe he discovered that a number of articles, including several ornaments, were missing. The matter was reported to the police; Niaz Ali was prosecuted, and eventually convicted under section 408, Indian Penal Code.

In the course of the investigation it transpired that Niaz Ali had pawned a number of ornaments with one Gokal Chand *Kakar* for Rs. 1,000. These ornaments were taken possession of by the police from Gokal Chand and were produced before the Magistrate at the trial. At the conclusion of the trial the Magistrate passed an order, under section 517 of the Code of Criminal Procedure, that the ornaments, which had been produced by Gokal Chand (pawnee), be made over to Messrs. Amin Brothers, the proprietors of the complainant firm.

Against this order Gokal Chand filed an appeal to the Sessions Judge, who has set aside the order of the trial Magistrate and has directed that the

ornaments be returned to Gokal Chand from whom they were taken by the police. The proprietors of the firm have preferred a petition for revision, and on their behalf it has been contended that Gokal Chand being a pawnee from Niaz Ali, who had no authority to deal with the ornaments, is not a person "entitled to possession thereof" within the purview of section 517 of the Code.

In order to determine whether a particular transaction whereby moveable property is pawned is valid or not reference must be made to section 178 of the Contract Act. That section lays down that a person, who is in possession of goods, may make a valid pledge of such goods provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly; provided also that such goods have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud.

Now it is settled law that in this section "possession" connotes "juridical possession" as distinguished from mere "physical possession" or bare custody. It has been held that a servant or a relation entrusted by the owner with the custody of the goods during his absence cannot be said to be in "possession" thereof, so as to be entitled to make a valid pledge thereof, *Biddomoye Dabee v. Sittaram* (1), *Shankar Murlidhar v. Mohanlal-Jaduram* (2), *Seager v. Hukma Kessa* (3), *Naganada Davay v. Bappu Chettiar* (4), *Shankar v. Lakshmbai* (5), *Seshappier v. Subramania Chettiar* (6). If, how-

1936

SHARAF DIN
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GOKAL CHAND.
TRK CHAND J.

(1) (1879) I. L. R. 4 Cal. 497.

(4) (1904) I. L. R. 27 Mad. 424.

(2) (1887) I. L. R. 11 Bom. 704.

(5) 1928 A. I. R. (Bom.) 225.

(3) (1900) I. L. R. 24 Bom. 458.

(6) (1917) I. L. R. 40 Mad. 678.

1930

SHARAF DIN
v.
GOKAL CHAND.
TEK CHAND J.

ever, the servant has been given authority to sell or otherwise dispose of the goods, there can be no question that he has such "possession" of them, as will enable him to make a valid pledge thereof. But

in that case, two further points must be established: (a) that the pawnee acted in good faith, and (b) that the goods had not been obtained by the pledgor by means of an offence or fraud. The question in each case is, therefore, one of fact and has to be determined in accordance with its peculiar circumstances. In the case before us, the learned Sessions Judge has, on an examination of the materials before him, found these points in favour of the respondent. He has held that Niaz Ali had originally come into possession of the disputed ornaments in a rightful manner, that he began pledging these and other ornaments to Gokal Chand as far back as 1924, that several of these pledges were redeemed in due course on repayment of the amount secured, and that on not a single occasion did Messrs. Amin Brothers object to any of those transactions. The learned Judge has also observed that some of these ornaments belonged to third parties, who had deposited them with Niaz Ali as the agent of the complainant, and that he had been pledging them with different persons on his own account without protest by his employers. It cannot, therefore, be said that Niaz Ali had obtained these ornaments from the complainant unlawfully. In such a case what has to be seen is whether the pledgor originally came into possession of the goods in a lawful manner, and it seems immaterial if he subsequently changed his mind and after having entered into a transaction, which he had implied authority to do, misappropriated the proceeds.

King-Emperor v. Nga Po Chit (1), and *Durga Bai v. Saraswati Bai* (2). The learned Judge has also recorded a clear finding that in this case the pledgee had acted in good faith, and my attention has not been drawn to any facts or circumstances which would show that this finding is erroneous.

1930
SHARAF DIN
v.
GOKAL CHAND.
TEK CHAND J.

All the essential elements, required by section 178 of the Contract Act, to render a pledge valid have, therefore, been found to exist in this case, and on these findings the respondent Gokal Chand is clearly a person "entitled to possession" of the ornaments in question.

I do not think it necessary to discuss in detail all the rulings cited by Mr. Din Muhammad as the decision in each case proceeded on its peculiar facts. In *Palaniappa Chetty v. Ko Saye* (3), for instance, it had been found that the pawnee had good reason to believe that the pawnor had improperly obtained the articles pawned.

In my opinion the order of the learned Sessions Judge is correct and I see no ground for interference on the revision side. The petition is dismissed.

A. N. C.

Petition dismissed.

(1) (1923) I. L. R. 1 Rang. 199. (2) (1929) 118 I. C. 796.

(3) (1910) 3 I. C. 1204.