

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 325 OF 1980

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Between:

JAGDISH CHAND s/o Kasi Ram

PLAINTIFF

- and -

BURNS PHILP (S.S.) CO. LTD.

DEFENDANT

Mr. Anil Singh for the Plaintiff.

Mr. Jaswant Singh for the Defendant.

J U D G M E N T

The plaintiff's claim against the defendant company is for damages arising out of his arrest on the 19th October, 1979, for alleged shoplifting by a security guard employed by the defendant company.

The plaintiff's story is that on the day in question, which was a busy day just before the Dewali Festival holiday, he went to the defendant's store in Suva and having purchased some goods, for which he paid, he received a cash register record of his purchases and left the store.

When he got outside the store a security guard from the department store grabbed him by the hand and started pulling him saying he was arresting him because he had not paid for some goods. The guard said he would hand him over to the police. The plaintiff said he pleaded with the guard to check the items he had purchased and also to check with the cashier. The guard would not do so and rang the police from the company's bulk store where the guard had taken him.

Three police officers arrived to whom the plaintiff complained that he had been arrested and that the guard would not check the items he had purchased.

The police took the plaintiff outside the store to a landrover into which he says the guard, after grabbing him by the neck, pushed him.

At the police station he told the police that before they charged him they should check the things he had purchased. They agreed to do so and they took the articles out of the bag. One officer checked the prices on the cash register record and the other checked the items against what the plaintiff called a "receipt ticket". This was the cash register tape record showing the number of items purchased cost and other information which he tendered (Exhibit A.).

The plaintiff said that the result of the check "was all right" which I assume means the check tallied. Later in cross examination he said police found items in bag correct and he denied there were 3 packets of crackers short in the bag. The police, he says, castigated the security guard for not having checked the purchases and the guard is alleged to have admitted his mistake.

After about an hour at the police station he was released. He has not since been charged by the police. He denies having stolen anything from the company and now seeks damages for wrongful arrest and detention.

The security guard who arrested the plaintiff, George Fiu, had a different version to relate. He says that his attention was drawn to the plaintiff by his suspicious actions in the company's supermarket. The shop was very busy that day. He saw the plaintiff pick up 3 fire crackers from a table in the store and later put them in his hip pocket. He saw the plaintiff go to the checkout counter after going back again to the table and picking up some more crackers. He saw him pay for the items he was carrying but not for the fire crackers he had in his pocket.

He followed the plaintiff outside and tapped him on the shoulder and told him he had not paid for the 3 fire crackers in his pocket. The plaintiff is then alleged to have apologised saying he had forgotten to pay. George Fiu said he told the plaintiff to accompany him back to the office and he came voluntarily. He says he was not holding the plaintiff. He says that when he first approached the plaintiff he had asked him to take the fire crackers out of his pocket. The plaintiff did so and handed them to him.

He took the plaintiff to the company's despatch room which is a large room where they stood by some cartons.

One Vijay Narayan, a company employee, who was going past at the time, was asked by the guard to call the chief security officer, Isireli Ratuyawa, who later arrived. He said Isireli spoke to the plaintiff who again said he was sorry, that he could pay and that he should be let go. Isireli did not agree and told the plaintiff he was handing him over to the police. Isireli then rang for the police who later arrived.

George Fiu said he had, before Isireli arrived and spoke to the plaintiff asked the plaintiff his name and he was told his name was Jadish Ram son of Ram Singh and that he was a labourer. When the police arrived George Fiu reported the matter to them and told them he had arrested the plaintiff for shoplifting. He accompanied the plaintiff to the police station. He denied pushing the plaintiff or touching him at all on that occasion.

At the police station he says the police checked the items in the plaintiff's parcel and found there were more items recorded on the tape than were in the bag. A police inspector then asked the guard whether they should charge the plaintiff or release him. He says he had shown the crackers to the police. He was advised by the police they would have to release the plaintiff because of insufficient evidence. He then returned to the store where he returned the 3 crackers to stock.

After returning to the shop from the police station he met Vijay Narayan again who spoke to him and then took him to the despatch area where he was shown 3 fire crackers near a stack of cartons. George Fiu picked them up and later handed them to Isireli. He said the value of the crackers was 15 cents each and the value of the missing items at the police station was 45 cents. He said Exhibit 'A' was produced at the police station. He did not check the list himself but the police did.

He said under cross examination that the plaintiff had possession of the parcel of his purchases at all times. The guard said he did not take the parcel away from him because he knew the plaintiff had paid for the items in the bag as he had seen him pay for them.

He also stated under cross-examination that when the police checked the bag there were no fire crackers in it.

Vijay Narayan who is employed by the defendant company testified that on the day in question he saw the plaintiff with the guard George Fiu who asked him to call chief security officer Isireli. When he was called by the guard he had looked back and had seen the plaintiff take some fire crackers from a bag he was holding and drop them near some cartons. He did not mention the matter to the guard at the time because he thought the guard had seen the incident. Later that day after the guard returned from the police station he was informed the plaintiff had been released and he asked the guard if he had picked up the fire crackers the plaintiff had dropped on the floor. He took the guard to the spot where the guard picked up 3 fire crackers. Mr. Narayan said that fire crackers do not lie loose on the despatch area floor.

Mr. Isireli Ratuyawa, the head security officer employed by the defendant, confirmed that Mr. Narayan passed on a message to him. He went to the despatch room where he saw the security guard and the plaintiff. The guard reported the incident to him and Isireli then spoke to the

plaintiff who admitted stealing some fire crackers and pleaded to be released. He decided the police should be informed. He said he asked the plaintiff his name and was told it was Jadish Ram s/o Ram Singh. The plaintiff also said he was married with three children. He said that George Fiu later brought him 3 fire crackers which he had kept locked up since that day and which he identified as the 3 fire crackers the guard had sought to tender in evidence. He made notes of the incident in his note book immediately after the incident.

I find as a fact that the security guard George Fiu employed by the defendant arrested the plaintiff on the 19th October, 1979, outside its premises in Suva allegedly for stealing 3 fire crackers from the company's premises

Section 24(1) of the Criminal Procedure Code provides as follows :

"Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony provided a felony has been committed."

The burden of proof is carried by the defendant company to establish that its servant, the security guard George Fiu, was empowered by section 24(1) of the Criminal Procedure Code to arrest the plaintiff. Larceny is a cognizable offence and a felony and if the defendant establishes that the plaintiff in the view of its guard stole the 3 fire crackers or whom the guard reasonably suspected of having stolen them, his arrest was legal in which event the plaintiff has no claim against the defendant.

George Fiu the security guard who arrested the plaintiff was the only witness to testify to seeing the plaintiff steal 3 fire crackers. It has not been an easy task to discover what did take place that day due to the conflict of evidence.

Having given careful consideration to the evidence I am of the view that George Fiu was legally entitled to

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arrest the plaintiff. I consider he told the truth on the basic facts. He was an impressive witness but there were times when he appeared confused about events that had occurred that day. He did not tell the truth about talking to Isireli outside the Court while under cross-examination but he was obviously taken by surprise and made to feel guilty. He was clearly not a practised liar. I do not consider that he vitiates his testimony which was otherwise straightforward and convincing.

There is no suggestion of any animosity towards the plaintiff whom it is obvious he did not know at the time nor do I consider that George Fiu made a mistake on that occasion.

I believe him when he said he asked the plaintiff his name and that the plaintiff gave him the false name of Jagdish Ram son of Ram Singh. This is the name he recorded in his note book which counsel for the plaintiff asked him to produce and on the contents of which counsel had cross-examined him closely. Counsel for the defendant tendered the book which was admitted into evidence without objection. I place little reliance on what George Fiu has written in his note book except to note that he has not made a full record but his brief report is a condensation of his sworn evidence and contains no material entries which contradicts his evidence. I do however accept that the note book appears to have been regularly kept and that there appears to be no reason why he should record a false name in his note book unless it was the name he was given by the plaintiff. The false name in his book is consistent with his evidence on oath.

Isireli also testified that Jagdish Ram son of Ram Singh was the name the plaintiff gave him. Isireli also kept a note book in which he said he made a note of admissions made by the plaintiff. This witness stated the plaintiff admitted stealing the crackers and asked to be released. He was asked by counsel for the plaintiff to produce his note book which he produced but counsel after perusing the entries did not cross-examine him on any entries in it.

I have, however, not made use of Isireli's evidence. I was not at all impressed by his prefacing his remarks that he was a 'part time minister'. Except for being cross-examined about talking to George Fiu outside the Crown Law Office his evidence in chief was not challenged. In answer to questions by me he at first said George Fiu when he saw him with the plaintiff had nothing in his hand and showed him nothing but when asked about fire crackers said he thought George Fiu had shown him some. He left me with an impression that it would be safer to ignore his evidence although I would not go so far as to say he was untruthful.

I believe George Fiu when he says the check of the plaintiff's parcel at the police station disclosed that the tape receipt disclosed more items had been purchased by the plaintiff than were found in the paper bag or parcel.

This brings me to the important evidence of Vijay Narayan and the check of the plaintiff's purchases at the police station.

Vijay Narayan's evidence was brief but given in a straight forward convincing manner and I believe him. The important part of his evidence is that he saw the plaintiff in the despatch room take out some fire crackers from a bag and drop them by the cartons near him. He was not shaken in cross-examination.

The plaintiff relies on the tape cash receipt Exhibit 'A'. He said the police checked his purchases and they were checked against the receipt which he produced. I accept it as a record of his purchases that day but in my view it is of more assistance to the defendant than the plaintiff.

Against each item except one is an inked check mark. The person who made the check mark was not called but it is the plaintiff's case that items were checked and receipt was produced to verify the check. His counsel referred specifically to the check mark opposite the record of purchase of 3 items for 45 cents. This is a confusing aspect. If this item was the 3 crackers at 15 cents each there were

3 crackers in the bag although George Fiu says there were none when the police checked. An entry of two items, however, of total cost of 20 cents is not so marked indicating on the face of it that the tape indicated that more articles had been purchased than were found in the bag. This evidence supports George Fiu's evidence that the receipt showed more purchases than were in the bag and contradicts the plaintiff's evidence that "everything was all right".

If the purchases in the bag when checked had corresponded with the record of such purchases on the receipt this would not have helped the plaintiff at all. George Fiu saw him pay for those purchases with a \$20 note and was quite naturally not interested in the parcel. I accept that George Fiu had 3 fire crackers with him at the police station. If the check did not tally a doubt could be created.

In his evidence the plaintiff disclosed that on at least 3 occasions he had wanted the items in his bag checked. He said he "pleaded" with George Fiu to check the items. His first complaint to the police when they arrived at the company's store was that "these people have arrested me and will not check the things". At the police station he told the police "before you charge me search my things".

The police did check and contrary to what the plaintiff now says in Court 'everything' was not all right. The check disclosed he had paid for more goods than were in his bag. That is what the tape ticket indicates. A puzzling feature is that the entry showing 3 items purchased for 45 cents has a check mark opposite. George Fiu says there were no crackers in the bag. The plaintiff said nothing at all about crackers in his evidence in chief. Had the policeman who is believed to have made the check marks been called that mystery may have been solved.

I am not surprised that the police decided to release the plaintiff. I accept George Fiu's story of the policeman's reaction when they found the plaintiff appeared to have paid for more goods than he was carrying in the bag.

I do not accept the plaintiff's story that the police castigated George Fiu for not checking everything and that George Fiu admitted he had made a mistake and asked him to initial or sign his note book.

George Fiu appeared to me to be an intelligent man. He may have been perplexed at the police station not then being aware of the plaintiff's actions which Vijay Narayan related.

I am satisfied that the defendant has discharged its burden of establishing that its security guard was legally entitled to arrest the plaintiff. I am satisfied he saw the plaintiff put some fire crackers in his pocket and walk out of the shop without paying for them. While I have in the main considered George Fiu's evidence and the evidence of Vijay Narayan, I would add that I was not impressed with the plaintiff. He carried no burden of proof. I am quite satisfied that he deliberately exaggerated the situation and was untruthful in his patent attempt to maximise his claim for damages. I believe he did give the guard a false name. I found him quite intelligent and his action in getting rid of the crackers in the manner described by Mr. Narayan shows quick thinking and raised doubts which led to his release. He should have been satisfied with that.

The plaintiff's claim is dismissed with costs to the defendant.

R.G. Kermode
(R.G. KERMODE)
ACTING CHIEF JUSTICE

SUVA,

22 May, 1981.