

JOHN CRAWFORD MASHILIPA v THE PEOPLE (1988 - 1989) Z.R. 113 (H.C.)

HIGH COURT
BWALYA, COMMISSIONER
5TH JANUARY, 1989
(H.C. JUDGMENT NO. HPA/154/1988)

Flynote

Criminal law and procedure - False pretences - Statement of intention about future conduct - Contract to supply grain bags in the future.

Headnote

The accused pleaded guilty before the magistrate to obtaining money by false pretences. The facts as disclosed to the court were that the complainant agreed to buy grain bags from the accused who promised to deliver the bags two days after K3,000.00 was paid to him by the complainant. Thereafter, the accused was unable to supply the bags or return the K3,000.00.

The accused argued on appeal that the facts did not disclose the offence charged.

Held:

A promise to do some act in the future does not constitute a false pretence.

For the appellant: In person.
For the respondent : M. Wanki, State Advocate,.

Judgment

BWALYA, COMMISSIONER : The appellant was convicted by the subordinate court of the second class for the Lusaka District of obtaining money by false pretences contrary to section 309 (a) of the Penal Code Cap. 146 and was sentenced to twelve months imprisonment with hard labour.

The allegation was that the appellant on the 16th of June, 1988, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, with intent to defraud did obtain K3,000.00 cash from Silver Mutunda by falsely pretending that he was selling empty grain bags when in fact he did not.

The appellant was convicted on his own plea of guilty. He now appeals against both conviction and sentence. The statement of facts in the court below were that:

"On 16th June, 1988, the complainant, in this case Mr Silver Mutunda, gave the accused the sum of K3,000 in cash for some empty grain bags which the accused said he was selling. The accused promised to deliver the bags on 18th June, 1988. However, on 18th June, 1988, the accused did not deliver the said bags. Thereafter the complainant checked on the accused for the bags on two more occasions without success. When asked by the complainant, the accused could neither deliver the bags nor pay back the money. The matter was then

reported to the police who arrested the accused and charged him with obtaining money by false pretences contrary to section 309 (a) of the Penal Code. Under warn and caution the accused gave a free and voluntary statement in English admitting the charge. The money has not been recovered."

p114

The foregoing facts do not in any way disclose the offence charged. No false pretence is disclosed by the facts. What the facts disclose was an ordinary contract between the appellant and the complainant. The appellant has not been able to fulfil his contractual promise. No fraudulent intent can be inferred from the facts of this case. It will be observed from the facts that the appellant and the complainant entered into a deal, ie.a contract on 16th June, 1988, whose performance according to the appellant was to be on 18th June,1988, but that never materialised. This was a promise by the appellant to do some act in the future. Such a promise in the future may not constitute a false pretence.

The court below misdirected itself both in fact and law by not considering the facts before it and in seeing whether they constituted the offence charged or not.

If the court below had addressed the law on the matter it should not have taken the plea and convicted the appellant as it did because as I have already stated the facts disclose no offence of obtaining money by false pretences but an ordinary contractual transaction on which the complainant can sue the appellant for breach of contract.

The conviction is quashed and sentence is set aside. The appellant is acquitted accordingly.

Appeal allowed.
