

LL.B. 3 YRS COURSE

MOOT PROBLEM

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Mr. Damle a resident of Navi Peth Pune, was a rich man and fond of buying vintage cars. On 20th November 2012, his car broke down and he needed to it repair immediately. On that day the regular garage where Mr. Damle used to visit for repairing his car was closed. Someone suggested him the garage of Mr. Hamid.

Mr. Hamid was the owner of the garage named 'Auto fix'. It was a big garage with employees working. On that day Mr. Hamid did not have many customers. As the car of Mr. Damle was being fixed Mr Hamid and Mr. Damle were having conversation. In course of interaction Mr. Damle spoke to Mr. Hamid regarding his passion for vintage cars and his desire of owning a vintage car 'Austin 7' and won't mind to own even a second hand car. Mr. Hamid stated that he can arrange second hand 'Austin 7' for Rs Ten lakhs. Mr Hamid also stated that he generally deals with Mr. Raaj who is in Bombay. According to Mr Hamid, Mr. Raaj is a person, who usually is on the lookout of the vintage cars and arranges the vehicle, while Hamid himself is associated with Mr. Raaj for small commission.

On 25th November 2012 Mr. Damle met Mr. Hamid at his residence which was at Hadapsar Pune. Mr. Damle made it clear that he was paying visit for a talk regarding the availability of second hand 'Austin 7', which Mr. Hamid could arrange. Mr. Hamid assured Mr. Damle that he would make available 'Austin 7' vintage car for Rs ten lakhs, within one month of placing order, through his source Raaj.

On 1st December 2012, Mr. Damle handed over the cheque no '26A4', of Rs ten lakhs with an oral assurance that the said vehicle will be delivered within a month. The said cheque was encashed on 3rd December 2012.

With no communication received for more than three months, Mr Damle Visited Mr. Hamid on 4th of March 2013 for the enquiry of the car. Mr. Hamid said that Mr. Raaj has started to search the said vehicle and he will update at earliest.

On 2nd of April 2013, once again Mr. Damle again contacted Mr. Hamid and enquired about the vehicle, whereby Mr. Hamid stated that he is in touch of Mr. Raaj and would get back to Mr. Damle at earliest, once he has any information from Mr. Raaj.

Somewhere in May 2013, Mr. Damle learnt from some person called Siraaj that Mr. Hamid apart from owning the garage 'Auto fix', was also involved in the business of money lending and charges heavy interest. Mr. Siraaj also stated that that he was aware that that recently Mr. Hamid has given huge sum of Rs ten lakhs to someone named Mr. Kartik residing in same city.

Totally astonished and angry Mr. Damle decided to go to the root of the matter. He then through his sources did find out that Mr. Kartik did exist and that Kartik had indeed taken the loan of Rs ten lakhs from Mr. Hamid.

Mr. Damle then on 2nd June 2013 confronted Mr. Hamid. During confrontation, Mr. Hamid put across his story which goes like this, that after Mr. Damle gave him the cheque, Hamid transferred the said amount to his bank, and issued a cheque number '34B5' to Mr. Raaj of the same amount from his account. Mr. Hamid admitted the transaction with Mr. Kartik, but stated that it was a completely different transaction altogether. In support of his contention, he showed the said cheque number which was indeed issued in favor of Mr. Raaj. Apart from that cheque, Hamid has no documentary records, as the transaction between Hamid and Raaj is oral of nature, just like the transaction between Hamid and Damle was also oral in nature.

Mr. Hamid also stated that that he had already made it clear, prior to transaction itself, that he himself is not in the business of buying cars, but has a contact named Raaj. Now Hamid needs either car or money from Mr. Raaj, then only he can repay. Hamid also showed number of text messages made by him to Raaj regarding the refund of the Ten Lakhs rupees on ensure the delivery of the car, however there was no reply from Mr. Raaj.

Not happy with the reply Mr. Damle filed the FIR with appropriate police station accusing Mr. Hamid for criminal misappropriation of money and criminal breach of trust regarding the sum of ten lakhs which were paid by Mr. Damle for purchasing the car.

The case was tried in appropriate Magistrate court.

During the course of trial one relevant fact came to light, which was that, Siraaj and Hamid were not on good terms, as Siraaj was also involved in money lending and believed that Hamid has trying to induce Siraaj's clients towards himself.

The appropriate magistrate court held that Mr. Hamid is liable for return the amount with interest of 12% within a period of six months; however, the court acquitted Mr. Hamid of Criminal breach of trust and criminal misappropriation of money. The court gave the following reasons for its order:

Hamid had already clarified that Mr. Raaj deals with cars, thus Mr. Damle had the knowledge that, Mr. Hamid is not looking for the same. Hamid has also transferred the same amount to Mr. Raaj, hence it is clear that Hamid has no intention to deceive Mr. Damle. For this case it is irrelevant as what other transaction Mr. Hamid does with any other person which is not associated with the instant case. It is true that Mr. Raaj has never had a word with Mr. Damle, but only this fact is not sufficient to constitute the intention of Mr. Hamid to commit any criminal breach of trust or criminal misappropriation. However it is also true that the money was taken by Mr. Hamid himself on his oral assurance, hence Mr. Hamid is liable to pay the said amount to Mr. Damle with the above mentioned interest.

Not satisfied with mere order of repayment, the prosecution filed the appeal to appropriate Session Court, demanding the conviction of Hamid for criminal misappropriation, and criminal breach of trust.

The appropriate Sessions Court reversed the finding of the Magistrate court, and convicted Mr. Hamid for Criminal Breach of trust and Criminal misappropriation.

While convicting him the Sessions court held that, Mr. Hamid has never introduced Mr. Raaj to Mr Damle. Mr. Hamid also has deposited the money in his own account. Mr Hamid was also having various other transactions with Raaj apart from that of Mr. Damle, so it is not clear that the said cheque which was deposited by Cheque number '34B5' in the account of Mr. Raaj was regarding the same transaction. There is nothing on record to show that Mr.Raaj has taken any steps to communicate in any manner to anyone, that he has received the amount for the work of 'Austin 7' car. Hence Mr. Hamid cannot escape the liability by pointing finger towards Mr. Raaj.

Mr. Hamid has preferred an appeal to High Court, and the matter is now for final hearing.