



REPUBLIC OF KENYA

HIGH COURT APPELLATE SIDE NAIROBI

CRIMINAL APPEAL NO 351 OF 1979

SILAS ANDITI KOJEWIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT OF THE COURT

The appellant was convicted on four counts of obtaining credit by false pretences, contrary to section 317 of the Penal Code, on charges alleging that in incurring a debt or liability he obtained credit by falsely pretending that he was in a position to pay for goods which were supplied to him.

In respect of counts 1,3 and 4, the magistrate found that the appellant bought goods by means of cheques which, on presentation to the bank, were not met, and which he knew, when he gave them, could not be met; in one case (that charged under count 3) having previously asked for, and been denied, credit. In respect of count 2, the magistrate held that the appellant was granted credit for thirty days upon certain conditions; one of them being that the ownership in the goods supplied to him would not pass until the whole of the purchase price for them had been paid; and that he not only did not make payment for them within that time (or at all), but sold them. Accordingly, on these findings the appellant committed the offences of obtaining goods by false pretences on the evidence adduced for counts 1,3 and 4, and theft on the evidence adduced for count 2. (Whether he also committed other offences, save those for which he was convicted we do not need to consider). Unfortunately (for the appellant appears to be a thoroughly dishonest man), none of his convictions can be supported. Nor did the Republic seek to support them. We now explain why.

On the authority of *Fisher v Raven* [1964] AC 210, the expression “obtains credit” in section 316 of the Penal Code must mean obtains credit in respect of the payment or repayment of money, and has no wider meaning; whilst, on the authority of *R v Jones*, [1898] 1 QB 119, three elements need to be considered when construing the section: there must be the incurring of a debt or liability, there must be an obtaining of credit, and there must be fraud. It is true that none of the complainants has had a penny back for the goods that they parted with (although some of the goods were recovered) and the appellant almost certainly intended to pay for none of them (and received money for them by resale); but what the prosecution had to prove (but could not) in order to secure convictions on the charges which they saw fit to set against the appellant, was that he got credit by fraud. They could not prove the charges because, in respect of counts 1, 3 and 4, the appellant gave his cheques for goods either without asking for credit or after his request for it was turned down; and, in respect of count 2, credit was offered to him and he accepted it. In other words, in three of the cases he obtained goods and not credit by his false pretences, and in the other case he got credit but did not get it by fraud.

We allow the appeal, quashing the convictions which the magistrate entered and setting aside the sentences which he awarded.

Appeal allowed.

Dated and delivered at Nairobi this 5th November 1979.

E. TREVELYAN

JUDGE

A.R.W HANCOX

JUDGE



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