IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO(D) No. 8/2024

Reserved on: 15.12.2025
Pronounced on: 24.12.2025
Uploaded on: 24.12.2025
Whether the operative part or full judgment is pronounced: *FULL*

Bajaj Allianz General Insurance Company Through its senior Legal Executive, Mr. Muneeb Ahmad Khan, B/o City Mall Polo View, M. A. Road, Sgr. …Petitioner(s)/Appellant(s)

Through: Mr. Imtiyaz Ahmad, Adv.

Vs.

1. **M/s Hollywood ornaments at Hari Singh High Street, Sgr.**
2. **Branch Manager, J&K Bank Ltd, Hari Singh, High Street, Srinagar.** ...Respondent(s)

Through: Mr. Hakim Sami Yaqoob, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per Sanjeev Kumar, J

1. The respondent No. 1 is a jeweller carrying on a business of sale of gold and other jewellery in the name of M/s Hollywood Ornaments, Hari Singh High Street Srinagar. The respondent obtained a Jewellers Comprehensive Protection Policy (UIN: BAL-OT-P15-56-V01-14-15) issued by the appellant-Insurance Company vide policy No. OG-18-1205-4097-00000280. The policy was valid for a period w.e.f. 16.02.2018 to 15.02.2019. The policy covered stock in trade at the shop premises subject to terms and conditions and exclusions contained in the policy. As per the complaint lodged by respondent, it was on 6th September 2018, two foreign

nationals entered into his business premises and duped him by replacing two gold chains with equal number of artificial ones.

2. It was alleged by the complainant that these two foreigners had approached his shop as customers. With regard to the incident in which respondent suffered an aggregate loss of Rs. 51.66 lacs including labour and profit, an FIR i.e., FIR 115/2018 was lodged in the concerned police station. The loss was also reported to the appellant-Insurance Company who deputed one Mr. Mehraj-ud-din Surveyor to assess the loss. The surveyor visited and inspected the spot on 7th September 2018. The claim lodged by the respondent with the appellant-Insurance Company was, however, repudiated by the latter on the ground that the same was not covered under the policy. There is reference to a letter dated 12th October 2018 written by the appellant-Insurance Company to the respondent informing him that his claim had been closed on the ground that there was no forcible entry reported at the insured location; the loss was caused due to cheating; and that burglary and not theft was covered under the policy.

3. It was a specific case set up by respondent in his complaint that the two foreigners who ultimately took away two gold chains from the shop premises of respondent had earlier placed an order for making of such chains. Having faced the repudiation at the hands of appellant-Insurance Company, the respondent filed a complaint before the J&K State Consumer Disputes Redressal Commission ["the Commission"] alleging deficiency of service and wrongful denial of the insurance claim. The complaint of respondent was contested by the appellant-Insurance Company. In the written statement filed by the appellant-Insurance Company, it was

submitted that the respondent insured had suffered loss due to cheating allegedly committed by two foreign nationals, who had entered into the shop without making any forcible entry. It was thus submitted that since there was no theft or burglary committed by the alleged foreign nationals, as such, the appellant-Insurance Company declared the claim of respondent as "no claim" in terms of its communication dated 12th October 2018. Before the Commission, the respondent led his evidence in the shape of affidavit and was cross examined by the appellant-Insurance Company on 18th August 2023. The appellant company also got the statement of Shri Mehraj-ud-din, Surveyor, recorded on affidavit. He was also subjected to cross examination by respondent on 4th July 2023.

4. After recording the evidence of both sides, the Commission heard the arguments of both the sides. While addressing its arguments, the appellant company, as it is apparent from reading of the impugned order, took a further stand that in terms of Clause 11 (c) which deals with the General Exclusions of the Policy, the claim put forth by respondent was not admissible. It was contended that as per the story projected by respondent, two gold chains were made by respondent on the order of the customers i.e., alleged two foreign nationals and that it is only when those gold chains were entrusted to the customers, they allegedly exchanged them by artificial chains during the course of inspection and, therefore, committed theft.

5. Be that as it may, the Commission, after considering the rival contentions and having regard to the pleadings and evidence on record, came to the conclusion that theft of jewellery by a customer entrusted with such jewellery alone was excluded in terms of Clause 11 (c) of the General

Exclusions of the Policy and that in the instant case there was no such entrustment of the two gold chains to the customers and, therefore, the repudiation of claim by the appellant-Insurance Company was tantamount to deficiency in service. The Commission proceeded to allow the complaint of respondent and awarded a sum of Rs. 65,42,703/- in favour of the complainant in terms of an order and judgment dated 24th November 2023. It is this judgment of the Commission which is called in question before us in this appeal.

6. Having heard the learned counsel for the parties and perused the material on record, the principal issue that arises for determination is as under:-

> 1. *Whether loss of jewellery (two gold chains) voluntarily handed over to the customer who later removed them by replacing with artificial chains amounts to theft within the meaning of insurance policy or it is a loss arising out of entrustment and consequently excluded from coverage in terms of Clause 11(c) of the General Exclusions of the Policy of insurance.*

7. The policy of insurance in question is a Jewellers Comprehensive Protection Policy. Under the policy, the appellant- Insurance Company has undertaken to indemnify the insured against loss of or damage to the insured property or part thereof specified in the schedule occurring during the policy period. This is however subject to terms, exceptions, limitations and conditions contained and endorsed in the policy. It is not in dispute that the alleged theft has taken place during the policy period.

8. At this point, we deem it appropriate to set out the scope of the cover as prescribed under the insurance policy:-

> **SCOPE OF COVER.** This section insures against all risks of direct physical loss of or damage arising from any cause whatsoever caused to the property insured herein upto the limits as mentioned under Section 1 of the Schedule and as described below whilst contained in the premises where the

insured's business is carried on or at other premises where the insured property is deposited as specified in the Schedule or endorsed thereto, subject to the definitions, limitations, exclusions, terms, conditions and warranties of this policy and subject to the limits as stated in the Schedule.

A. Stock and Stock in Trade on Premises.
B. Stock and Stock in Trade kept Outside Locked Safe/ Strong Room anywhere in the Insured Premises after business hours subject to Special Condition 1.
C. Cash and Currency Notes on Premises.
D. Stock and Stock in Trade in Vaults, Safes and Bank Lockers outside Premises.

9. This is the scope of cover in respect of Stock in trade on Premises and is relevant for us.

10. It is now time to turn to specific exclusions applicable to Stock in trade on Premises i.e., Section 1 of the Insurance Policy. Clause 11 is relevant for our purpose and is, therefore, set out below:-

<u>GENERAL EXCLUSIONS APPLICABLE TO SECTION 1, 2 and 3</u>

Loss or damage occasioned by theft or dishonesty or any attempt there at committed by or where such loss or damage has been expedited by or in any way sustained or brought about by

a. Any of the insured's Family Members or Directors or Partner or Principal.

b. Any Servant or Traveller or Messenger in the exclusive Employment of the Insured.

c. **Any Customer or Broker or Broker's Customer, Angadia or, Cutter or goldsmith in respect of the property hereby Insured entrusted to them by the Insured, his or their representatives or agents.**

d. Employees of the Insured.

11. It is this exclusionary Clause which has been set up as a defense by the appellant-Insurance Company to justify repudiation of claim lodged by the respondent.

12. From the scope of cover of the policy in respect of stock in trade on premises, (Section 1), it is evident that the stock lying in the premises is insured against all risks of direct physical loss or damage arising from any cause whatsoever caused to the property insured. Obviously, the loss to the Stock in trade on Premises by theft is covered by the Comprehensive Policy Cover taken by the respondent insured.

13. From the averments made by the respondent in his complaint and the facts projected in the FIR, there is no dispute with regard to the fact that two gold chains were taken out of possession of the respondent by the two foreign nationals dishonestly but with the consent of the respondent. The act of the two foreign nationals who took away two gold chains from the possession of respondent by cleverly and dishonestly replacing them with artificial ones is an act which falls within the definition of "theft" as given in Section 378 of the Indian Penal Code as also the definition of the "theft" given in the policy under discussion. For facility of reference, the definition of "theft" as given in the policy is reproduced hereunder:-

> 33. Theft as defined in Section 378 of the Indian Penal Code shall mean whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

14. Once it is conceded that the loss occasioned to the respondent insured was because of theft committed by the two foreign nationals, it remains to be seen whether such theft committed by the customer falls in Clause 11 (c) of the General Exclusions and therefore absolves the Insurance Company of its liability to indemnify the insured.

15. From reading of Clause 11 (c) reproduced hereinabove, it is crystal clear that if a loss or damage is occasioned in respect of the property insured by theft committed by a customer who was entrusted the insured property, it shall be excluded from the coverage of risk of insurance policy.

16. In the instant case,

(1) There is a theft of the gold ornaments allegedly committed by two foreign nationals.

(2) The two foreign nationals were admittedly the customers who had earlier placed orders for making of two gold chains.

(3) That they had approached respondent in his shop for buying those two gold chains prepared on their orders.

(4) The two gold chains prepared /made as per the orders of of the customers were handed over to them for inspection and satisfaction.

(5) The handing over of the chains to the customers who were already known to them was act done in good faith and having trust in the customers.

(6) The change of possession of the gold chains from respondent to the customers was voluntary and with the consent of respondent.

(7) The customers instead of retaining the gold chains and paying the price played a fraud and allegedly exchanged the same with two similar artificial chains and delivered them back to respondent. They left the shop on the pretext that they will come later with money and buy the chains.

17. Viewed thus, it can be safely said that though the two gold chains were moved by the customers from the respondent initially on the basis of trust which existed between respondent-vendor and the customers and the later were removed by dishonestly exchanging the same with artificial chains, an act done without the knowledge and consent of the respondent. There was thus an entrustment in the beginning when the respondent handed

over the two gold chains made on order of the customers, however, they later dishonestly and acting in breach of trust misappropriated them by exchanging with artificial ones.

18. Section 405 of the Indian Penal Code defines "Criminal Breach of Trust" and it reads as under:-

> "405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"

19. The term "entrustment" has been explained by the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. M/s Ishar Das Madan Lal,** Civil Appeal No. 6113 of 2000 decided on 20th February 2007.

20. After referring to the definition of "criminal breach of trust" as given in Section 405 of IPC, the Supreme Court held thus:

> "The word 'entrust' would imply giving responsibility to a person upon whom the owner has confidence. It envisages establishment of a relationship. When a customer enters into a jewellery shop, as of necessity, the owner or his agent must allow him to inspect the merchandise, the customer intends to purchase. For the said purpose possession in the legal sense is not handed over. The owner or his agent does not loose complete control thereover.
>
> For the purpose of arriving at a conclusion as to whether the exclusion clause is attracted or not, loss or damage must be occasioned, inter alia, by a customer in respect of the property entrusted to him. The word 'customer' contained in clause 8 (c) of the Insurance Policy must be read ejusdem generis. A customer contemplated

thereunder must have to be one who would be a man of trust. If a customer is not a man of trust or the property had not been entrusted to him, the exclusion clause would not apply. The customer who committed theft of jewellery was an unknown person. It was so categorically stated in the First Information Report. There was, thus, no occasion for the respondent to entrust the jewellery to him.

Mr. Vishnu Mehra, the learned counsel appearing for the appellant has relied upon the meaning of the word 'entrust' as contained in Black's Law Dictionary, 8th Edn. and Webster's Universal Dictionary.

In Black's Law Dictionary, the word 'entrust' has been defined as under:

"To give (a person) the responsibility for something after establishing a confidential relationship."

In Webster's Universal Dictionary meaning of the word 'entrust' reads as under :

"To confer as a responsibility, duty etc. to place, something in another's care."

Apart from the fact that the said meaning of the term 'entrustment' goes against the submission Mr. Mehra, we may notice that in Black's Law Dictionary the word 'entrusting' in commercial law has been described as "The transfer of possession of goods to a merchant who deals in goods of that type and who may in turn transfer the goods and all rights to them to a purchaser in the ordinary course of business." Transfer of possession of goods, therefore, is a sine qua non for entrustment. The person must be handed over the possession of the property. Illustration (d) appended to Section 378 IPC envisages a situation of this nature. It by no stretch of imagination would have contemplated a situation where an unknown customer would have committed theft.

The word 'entrustment', moreover, must be read in the context in which it has been used.

In Colinvaux's Law of Insurance, 7th Edn., by Robert Merkin at page 50, it is stated :

"Words in context The above generality is not applicable when it is clear from the context that the words are not used in a colloquial popular sense. Thus the word "flood" in the phrase "storm, tempest or floor" does not cover a case where a house-holder's bathroom is affected by upward seepage of water to a depth of three inches, as the context of the word requires an event violent, sudden or abnormal. Similarly, heavy rain is not in itself likely to constitute a storm. It has also been held that the phrase "sum actually paid" in a reinsurance agreement referred to a sum which the reinsured is merely liable to pay, as the agreement read as a whole was against liability rather than actual payment."

21. Viewed the controversy in the light of the discussion made hereinabove, we are of the considered opinion that in the instant case, there was definitely an entrustment of the property by the respondent claimant to the customers who were not strangers but were known to the respondent. They had placed the order for making two gold chains earlier and had visited the shop on the day of incident to collect the said chains. There was trust of a vendor and customer between them. It was in pursuance of that trust, the respondent without asking any questions and without even receiving the sale consideration handed over the two gold chains to the customers for inspection and retaining after payment of the amount. This change of hands of the property from respondent to the customers was not forcible or by way of any deceptive means. The property i.e., two gold chains moved from respondent to the customers by an act of respondent which was voluntary and with his consent. It is different matter that the customers who were entrusted with the gold chains misappropriates them to their own use by dishonestly replacing them with artificial chains of similar nature. It is thus a pure and simple case of theft of the insured property by the customer who had been entrusted therewith and, therefore, falls in Exclusionary Clause 11 (c).

22. The appellant-Insurance Company was thus correct in repudiating the claim. The reliance placed by the learned counsel for the respondent on the judgment of Supreme Court in **National Insurance Company Ltd. Vs. M/s Ishar Das Madan Lal** is misconceived. In the case of M/s Ishar Das Madan Lal, a stranger had entered into the shop of the jeweller and on the pretext of inspecting the displayed stock committed theft. It is in that context, it was

held by the Hon'ble Supreme Court that it was a case of a theft simplicitor covered by the Insurance Company and not a case of theft by a customer entrusted with the stolen goods and excluded by the policy. The facts of the instant case, as explained above, are entirely different. The customers were not the strangers but were known to the respondent. As per own showing of the respondent, they had ordered the making of the two gold chains earlier and had on the occurrence day approached respondent for collecting the said ordered chains. There was thus an element of trust between respondent and the customers. They were voluntarily handed over the two gold chains by the respondent and while the customers were having dominion over the ornaments, they cleverly and dishonestly replaced them by artificial chains of similar nature. It is at this stage, they committed the theft in respect of the insured property entrusted to them.

23. The instant case clearly falls within the scope of Clause 11 (c) and absolves the appellant-Insurance Company of its liability to indemnify the respondent of the loss occasioned to him.

24. In view of the aforesaid, we find merit in the appeal and the same is, accordingly, allowed. The impugned order dated 24th November 2023 passed by the Commission is set aside.

25. The amount, if any, deposited by the appellant before this court be refunded to them after proper verification.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
24.12.2025
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Whether approved for reporting? Yes