

In Re: Basappa Shivappa

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Court : Mumbai

Decided On : Apr-10-1917

Reported in : (1917)19BOMLR535; 41Ind.Cas.100

Judge : Batchelor and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 51 of 1917

Appellant : In Re: Basappa Shivappa

Judgement :

Batchelor, J.

1. It appears to me that the rule here must be made absolute and that the learned Judge's order directing the prosecution of this applicant for an offence under Section 206 of the Indian Penal Code must be set aside.

2. The matter arises in this way: In Suit No. 51 of 1915 a certain money-lender made a claim for money against three brothers on the footing that the money had been lent for the benefit of the family and that the brothers were joint. The present applicant was one of these three brothers and he was defendant No. 2 in the suit. He pleaded that he was not liable inasmuch as he was separate in estate from the other defendants and that plea was upheld by the Court, which dismissed the suit against the present applicant, though it decreed the claim against the other defendants. Then Suit No. 11 of 1916 was brought against the present applicant

for the price of certain cotton sold, the plaintiff's averring that the present applicant was their Agent for sale. The present applicant retorted with a claim in the nature of a set-off and his own description of the claim is the material upon which the learned Judge has made this order. The words upon which the Judge below has relied are these: 'Shivappa', says the applicant, ' brought a suit against me and secured a decree for Rs. 3700. He put in an application for execution and sought to attach my moveable property. With the intention of defeating that attachment I sent Rs. 3700 cash and some gold jewels to Shankargavda and Nilkanthgavda'. Without going further into the matter the Assistant Judge ordered the prosecution of the applicant on the strength of this, the applicant's own admission. It appears, however, on inquiry and on reference to the relevant judgments that the applicant's admission was made under a misapprehension and that the facts are otherwise than the applicant supposed them to be. It is clear from the judgments-and is not now contested-that the decree in Suit No. 51 of 1905 was not obtained against the applicant, but against his brothers only and the judgment-creditor's application for execution sought to attach only the brother's moveable property and not the applicant's property.

3. On these facts, therefore, the case against the applicant is merely this, that in order to protect his own property not legally liable for the decree from confusion with property which was so liable he made it over to another person; and such a transfer would not in our opinion constitute the offence described in Section 206. It was nobody's case in the Court below that the applicant transferred this property as being, not his own, but his brother's property and so liable to forfeiture. Indeed the order of the Assistant Judge proceeds, I think, on the footing that the property was the separate property of the applicant. On that footing the Assistant Judge's order is in my view unsustainable for the reasons which I have given and must therefore be discharged.

Shah, J.

4. I am of the same opinion.