

Godfrey Meeus Vs. Simon Dular

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Court : Mumbai

Decided On : Nov-04-1949

Reported in : AIR1950Bom91; 1950CriLJ751

Judge : Hemeon, J.

Appellant : Godfrey Meeus

Respondent : Simon Dular

Judgement :
ORDER

Hemeon, J.

1. The non-applicant Simon Dular had filed a complaint Under Sections 323 and 506, Penal Code, in the Court of Shri R.-C. Mukherji, Second Class Magistrate, Jashpurnagar, against the applicant the Eev. Father Godfrey Meeus, a missionary, but the District Magistrate, Raigarh, transferred it on 22nd January 1919 to the file of Shri Mahapatrao, also Second Class Magistrate, Jaahpurnagar, as the non. applicant is a member of the Janapada Sabha of which Shri Mukherji is Deputy Chief Executive Officer. Prior to this, on 12th November 1948, the applicant had in the non-applicant's presence presented a compromise petition in Shri Mukherji' a Court,-but Shri Mukherji was absent on that data and the case was adjourned to 29th November 1948 when he noted in the order-sheet that the petition should have come from the non-applicant Dular and not from the accused applicant.

2. Proceedings, were stayed in view of the transfer application and after the District Magistrate had passed the aforesaid order transferring the case to Shri Mahapatrao, there were several hearings before the charge was framed on 6th May 1949. On 23rd of that month, the applicant's counsel filed an application for the giving of effect to the compromise of 12th November 1948, but the non-applicant's counsel retorted by filing a written statement in which it was asserted that the non-applicant's signature to the petition had been obtained by coercion and threats. The trial Court refused, however, to adjudicate on this point as it was raised when the trial was approaching its close and had not been raised when Shri Mukherji was presiding or even before the District Magistrate at the time of the transfer application.

3. In *Murray v. Queen-Empress* 31 Cal. 103, it was pointed out that a compromise of a compoundable case deprived the Magistrate of his jurisdiction to try it, and in *Md. Kanni v. Inayatullah* 39 Mad. 946 : A.I.R. 1916 Mad. 854 : 16 Cri. L.J. 803 *Abdur Rahim J.* held that a composition arrived at between the parties of a compoundable case was complete as soon as it was made and had the effect of an acquittal in spite of the fact that one of the parties subsequently resiled from the compromise. In *Kumaraiivami v. Kupputwami* 41 Mad. 685 : A.I.R. 1919 Mad. 879 : 19 Cri. L.J. 359 the rule in that case was followed by a Division Bench; and in *Emperor v. Jhangtoo Barai* : AIR1930 All409 , *Young J.* as he then was, was of the view that if it had been proved that the parties signed the document and understood its contents it was incompetent for either of them to withdraw from it. *Young J.* in that case relied on the aforesaid Calcutta case and the two Madras ' cases and also observed that while a breach of the agreement or composition might give rise to other remedies, a composition once effected can-not be withdrawn. *Niyogi J.* too followed these 4 cases in *Mt, Bambai v. Mt, Chandra Kumari Devi* .

4. The compromise petition in the present case contains the signatures of the applicant and the non-applicant as well as recitals which indicate that the non-applicant of his own free will had compromised the case in order to maintain good relations with his case-fellows, the priests -and the panchas. There is also the specific state-ment that the non-applicant had not been misled by anybody in the

matter. I am aware that the non-applicant subsequently claimed that his signature had been obtained to the petition by coercion and threats, but it was significant that when the compromise petition was filed in Court the non-applicant did not raise any objection to it on that score. It was also significant that when he was cross-examined on 20th April 1949, he admitted that the petition bore his signature and he did not then aver that it had been obtained by coercion and threats. Moreover, the non-applicant is 50 years of age and a member of the Janapada Sabha. In other words, he is not the type of man who would have, as he subsequently asserted, appended his signature to the petition in question as a result of duress and intimidation-

5. I am aware that the conduct of the applicant after the date of the petition might be said to indicate that he was not prepared to rely on the petition, but this was probably due to the fact that on 29th November 1948 the Magistrate had passed an order that the petition for compromise should have come from the complainant Under Section 315 (1), Criminal P.C. This was an order which was erroneous, but it was one which the applicant might well have construed as amounting to the rejection of the petition. At any rate, the case had been compounded and the immediate effect of the compromise was the acquittal of the applicant. This necessarily deprived the Magistrate of his jurisdiction to try the case and the subsequent withdrawal from the composition by the non. applicant could neither affect the acquittal nor revive the jurisdiction of the Magistrate to proceed with the case.

6. The orders of the Courts below were, therefore, wrong and they are set aside. The applicant is acquitted in respect of the offences in question.