

In Re: Narsappa Naik Narappa Naik

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SooperKanoon Citation : sooperkanoon.com/339279

Court : Mumbai

Decided On : Nov-13-1934

Reported in : AIR1935Bom158; (1935)37BOMLR93

Judge : John Beaumont, Kt., C.J. and ;N.J. Wadia, J.

Appeal No. : Criminal Application for Revision No. 349 of 1934

Appellant : In Re: Narsappa Naik Narappa Naik

Disposition : Application allowed

Judgement :

John Beaumont, Kt., C.J.

1. This is an application in revision in which we are asked to quash the complaint filed against the applicants for an offence under s: 467 of the Indian Penal Code, and as against applicant No. 2, an offence also under Section 471 The material facts are that a money decree was obtained in the Court of the Second Class Subordinate Judge at Haveri, and that decree' was sent to the Collector for execution. The sale in execution was fixed for February 6, 1932, and a day or two before that petitioner No. 1 applied to the Mamlatdar to postpone the sale on the ground that the decree had been settled, and he produced a receipt for Rs. 1,000 purporting to have been paid by him to the decree-holder in full satisfaction of the decree. The Mamlatdar thereupon held an inquiry as to the genuineness of this receipt, and he came-to the conclusion that the receipt was a forgery, and the

decree had not therefore been adjusted. Subsequently, in April, 1932, an application was made to the Subordinate Judge at Haveri in relation to this report. I am not clear exactly what the form of the application was, but substantially it involved the question whether the receipt was valid or not, and the Subordinate Judge came to the conclusion that the receipt was valid, but his decision was reversed by the District Judge on appeal. The present prosecution has been launched by the Mamlatdar, and the question is whether the Mamlatdar is the proper person to file the complaint under Section 476 of the Criminal Procedure Code. That section, so far as material, provides that when any civil, revenue or criminal Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195 (J), Clause (b) of Clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may record a finding to that effect and make a complaint. Now the question is whether the offence of forging this receipt, and for the purposes of my judgment I must assume that it has been forged, was committed in or in relation to a proceeding in the Court of the Mamlatdar who has filed the complaint. The contention of the petitioners is that the Mamlatdar was not a Court, and that the Court referred to in Section 476 in or in relation to proceedings in which the forgery was committed is the Court of the Subordinate Judge at Haveri.

2. The decree was sent to the Collector for execution under the provisions of Section 68 of the Civil Procedure Code and the third schedule to the Code. Section 68 provides that the Local Government may declare that in any local area the' execution of decrees in cases in which a Court has ordered any immoveable property to be sold shall be transferred to the Collector, and then it is provided in Section 69 that the provisions in the third schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section; Section 70 enables the Local Government to make rules for the transmission of the decree to the Collector, and for regulating the procedure of the Collector and his subordinates. Section 71 provides that in executing a decree transferred to the Collector under Section 68 the Collector and his subordinates shall be deemed to be acting judicially. That section was no doubt incorporated in order to confer upon the Collector and his subordinates the benefit of the provisions of the Judicial

Officers' Protection Act (XVIII of 1850), and the section does not, I think, mean that the Collector and his subordinates, whenever acting in the execution of the decree, must be taken to be acting as a Court independent of the Court which passed the decree. Rules have been made by Government under Section 70, and no doubt, in some of those rules the Collector has powers of a judicial nature. But we have to consider what were the powers which the Collector through his subordinate, the Mamlatdar, was exercising in relation to which this forged receipt was used. Now when a decree is adjusted by payment, the adjustment has to be recorded under Order XXI, Rule 2. It is the duty of the decree-holder to certify the adjustment to the Court, and the Court has to record the same, and if the decree-holder does not take action, then the judgment-debtor may approach the Court and get the adjustment recorded. It seems to me that it was clearly the duty of the petitioners, if they were relying upon this payment and receipt as adjusting the decree, to apply to the Court, that is to say, the Court of the Subordinate Judge at Haveri, which passed the decree, to record an adjustment, and when the receipt was produced before the Mamlatdar, I think his proper course would have been to say, 'This matter must be inquired into by the Subordinate Judge and not by me.' No doubt he could consider the receipt for the purpose of determining whether he would adjourn the sale which had been fixed for a few days after the receipt was produced. But in so far as he was merely considering whether he would adjourn the date of sale or not, it seems to me impossible to say that he was acting as a Court independent of the Court of the Subordinate Judge. He was, in that capacity, acting merely as an agent for executing the decree of the Court of the Subordinate Judge. He was not exercising the functions of the Court under Order XXI, Rule 2, which could not be delegated to the Collector or his subordinates. In my opinion, therefore, the offence of forging this document was committed in or in relation to proceedings in the Court of the Subordinate Judge, and not in or in relation to any proceedings before the Mamlatdar constituting a Court. Consequently, I think the view taken by the learned Sub-Divisional Magistrate that the Mamlatdar was the proper authority to file a complaint was wrong, and that this application must be allowed, and the proceedings quashed,

N.J. Wadia, J.

3. I agree. The question raised by the petitioners' application to the Mamlatdar was really one relating to the adjustment of the decree, and it was for the Subordinate Judge to decide under Order 'XXI, Rule 2, Civil Procedure Code, whether the adjustment should be recorded or not. It is contended that the Collector and the Mamlatdar to whom the Collector forwarded the decree have certain powers of the Court conferred on them by Section 70 of the Civil Procedure Code and by the rules framed by Government under that section, and that the Mamlatdar, therefore, in the execution proceedings, was exercising judicial powers, and if he found that in the course of the proceedings before him an offence referred to in Section 195 of the Criminal Procedure Code had been committed, he was entitled to take action under Section 476. But the rules which have been framed by Government under Section 70 do not give the Collector or his subordinates any power to settle disputes which may arise between the judgment-creditor and the judgment-debtor with regard to the adjustment of the decree. The learned Government Pleader admits that the Collector has no power to record an adjustment under Order XXI, Rule 2. He contends, however, that it was necessary for the Mamlatdar to decide whether the receipt was a genuine one or not before he could grant or reject the application for putting off the sale. I am unable to accept that contention. All that it was necessary for the Mamlatdar to do was either to grant the application for adjournment, or to refuse it. It was not necessary for him, and he had no power, to decide whether the receipt was a genuine one or not, for in deciding that question he would, in effect, decide, as he did decide, that the adjustment itself was not a proper one. In my opinion, therefore, there were no proceedings before the Mamlatdar in the course of which an offence referred to in Section 195 of the Criminal Procedure Code was committed. I, therefore, agree with the order passed.