

Brij Lal Vs. Emperor

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Court : Allahabad

Decided On : Jan-11-1932

Reported in : AIR1932All367

Appellant : Brij Lal

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is an application in criminal revision by a complainant Brijlal of Cawnpore against an order of the Additional Sessions Judge of Cawnpore confirming the order of the Joint Magistrate of Cawnpore dismissing the complaint of Brijlal on the ground of want of jurisdiction in the Cawnpore Courts. The complaint of Brijlal was made under Section 409, I.P.C. against are accused Hanuman Bakhsh. The complaint sets forth that Hanuman Bakhsh, who is the owner of a firm of Bhairon Bakhsh Mangi Lal, resides in Faridpur District in Bengal, and that the agent of the Cawnpore complainant one Hoti Lal, appointed the accused as commission agent or arahitia for the sale of oil in the District of Faridpur and that a consignment of oil was sent to the accused and that the accused had only accounted for part of the price. The Magistrate summoned the accused and the accused raised the plea that the Cawnpore criminal Courts had no jurisdiction as the offence-alleged would

be an offence triable only by the Courts of Faridpur. The Magistrate set forth certain facts, but he was, not accurate in the facts which he set forth. He states in his judgment:

Further the connexion between the accused and the firm at Cawnpore is not direct.

2. Now two letters (one a copy and the other in original) have been produced by the complainant in this Court; one from the complainant to the accused was sent by post on a date corresponding to 21st June 1930. A copy of this letter states:

No letter from you. Reply by return post. Our agent (gumashta) has appointed you our commission agent (arahatia). We are sending you therefore enclosed with this letter, Railway Receipt No. 001018 for one tank of Sarson oil which please receive and acknowledge. The mustard oil sent is of a fine quality. You should sell it at Rs. 22-8-0 or at the lowest at Rs. 22-4-0. Make best efforts in the work. Remit us Rs. 7,000 on account of the railway receipt.

3. To this the accused is alleged to have sent a letter in reply which is produced in original:

Received your registered letter yesterday with the railway receipt for a tank of oil. We shall write on receipt of the goods. The wagon, i.e., the tank has not arrived yet which please note. We shall send the money on receipt of the consignment.

4. There is therefore a direct connexion between the complainant and the accused as regards this tank of oil. The complainant sent the tank under a railway receipt which the complainant sent to the accused direct by registered post and the accused acknowledged the receipt of the railway receipt and promised to send the money to the complainant. Apparently the promise means that the money should be sent direct to the complainant at Cawnpore. These are the facts alleged by the complainant. I have set them forth, but of course I do not mean to imply that I consider these facts are proved. I only set them forth because they constitute the allegations made on behalf of the complainant in this case. On these allegations it appears to me that the case is similar to several cases which have formed the

subject of rulings of this Court-strange-enough cases which are also connected with Cawnpore. One of these cases is reported in *Queen-Empress v. O'Brien* [1896] 19 All. 111 where the learned Chief Justice of this Court held that as loss occurred to the complainant at Cawnpore by the accused failing to send the price of goods sold on tour in Bengal to the complainant at Cawnpore, therefore the Cawnpore Courts had jurisdiction to try the offence of Section 408 I.P.C. In that particular case there were no doubt other facts which are not existent in the present case, but the learned Chief Justice based his judgment on the point that the loss was caused by the failure to remit money to Cawnpore.

5. A case more similar to the present was reported in *Longridge v. Atkins* [1913] 35 All. 29 and again the criterion taken for jurisdiction for criminal breach of trust is the failure to return profits to a complainant who was residing in Cawnpore. In that particular case there were two men who were residing in Cawnpore who went to Bombay and obtained a machine and apparently had a partnership in regard to this machine and one died in Bombay and the other took the machine on tour to Madras. His failure to return the machine to the widow of his partner in Cawnpore was held to be sufficient to give jurisdiction to the Cawnpore Courts. In *Emperor v. Mahadeo* [1910] 32 All. 397 there was a case similar to the present where a complainant in Mirzapur employed an agent in Bengal and sent goods to the agent who remitted money to Mirzapur. Failure to account for certain items involved a charge of criminal beach of trust and it was held that there was jurisdiction in the Courts at Mirzapur. On the other hand there was a ruling in *Ganeshi Lal v. Nand Kishore* [1912] 34 All. 487 to the contrary in a somewhat similar case. But the weight of authority is that there is jurisdiction in a case of this nature in the Courts of the district to which the accused is alleged to be bound to make, a remittance. Having regard to these various rulings I consider that I should follow the weight of judicial decision' in this Court, and accordingly I hold that on the present allegations jurisdiction lies in the criminal Courts at Cawnpore. Accordingly I set aside the order of the Magistrate and the order of the Additional Sessions Judge and I direct that the Magistrate should dispose of this complaint according to law. The letter and copy produced by the complainant in this Court will be sent to the Court of the Magistrate and also the translations. Notice has been served on the accused, but he did not appear.

