

**Emperor Vs. Hargayan**

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**Court :** Allahabad

**Decided On :** Oct-27-1922

**Reported in :** (1923)ILR45All159

**Judge :** Rafiq and ;Stuart, JJ.

**Appellant :** Emperor

**Respondent :** Hargayan

**Judgement :**

**Rafiq, J.**

1. This is a revision by one Hargayan who has been convicted under Section 215 of the Indian Penal Code. It appears that one Sri Gopal owned some buffaloes, five of which were stolen on the 27th of November, 1921. He made a search for the missing buffaloes in the vicinity of his village, and, while so engaged in the search, about five days after the theft, he met Hargayan and some others at a village called Rampur. Hargayan and two others are said to have made a proposal to Sri Gopal to the effect that if the latter paid Rs. 200 to them and promised to say nothing about the payment of the money and took no steps to trace the thieves, they would get him back his stolen buffaloes. Sri Gopal did not accept the proposal, and brought the matter to the notice of the police, which led to the prosecution of Hargayan and two others. Hargayan alone was convicted. On appeal, the learned Sessions Judge affirmed the conviction and the sentence,

differing from the ruling of this Court reported in *Queen-Empress v. Chittar* (1898) I.L.R. 20 All. 389. Hargayan, in revision to this Court, contends that the learned Judge of the lower court was in error in not following that ruling, and that no offence was committed by Hargayan in making the proposal mentioned above. We have been told that the language of Section 215 does not warrant the conviction of the appellant. The section is as follows:

Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

2. The argument is that the facts, as found by the courts below, do not show that Hargayan took any money or agreed or consented to take any gratification for recovering the stolen buffaloes. It is not denied that no money, as a matter of fact, passed hands, that the words 'agree' and 'consent' require two parties at least, and, therefore, no offence under Section 215 was committed by the applicants. I think that it may be conceded to the learned Counsel for the applicant that the substantive offence described in Section 215 of the Indian Penal Code has not been brought home to his client on the facts found by the courts below, but the finding of the courts below goes to show clearly that the applicant has been guilty of an attempt to commit the offence specified in Section 215 of the Indian Penal Code. He could not have done anything more in order to be guilty of an attempt of the commission of the said offence than proposing to the owner of the lost property to recover it on the receipt of a certain amount on the condition that the thieves should not be prosecuted. With due deference to the learned Judge responsible for the decision of the case of *Queen-Empress v. Chittar* (1898) I.L.R. 20 All. 389 I am unable to agree with him with regard to his remarks to be found at page 391 of I.L.R. 20 Allahabad. The remarks are as follows:

It remains to consider whether they are guilty of an attempt to commit the offence mentioned in Section 215 of the Indian Penal Code. In my opinion an attempt to

take a gratification within the meaning of Section 215 of the Indian Penal Code necessarily includes the idea of a concurrence of wills between the giver and taker, with this much superadded thereto that some act has been done preliminary to the act of taking. In other words, an attempt is a stage in the commission of the offence which is intermediate between the agreement or consent and the actual taking.

3. I think that if an attempt to take a gratification within the meaning of Section 215 of the Indian Penal Code necessarily includes the idea of a giver and taker, it is no more an attempt to commit an offence but a substantive offence, on the language of the section. In an offence like the one specified in Section 215 of the Indian Penal Code, an attempt to commit it could only be under circumstances similar to those of the present case. I am, therefore, of opinion that the applicant is guilty of an attempt to commit an offence under Section 215 of the Indian Penal Code. I would, therefore, allow his application so far as to set aside his conviction and sentence under the substantive offence described in Section 215 and to convict him of an attempt to commit the said offence under Section 215/511. I would alter his sentence to one year's rigorous imprisonment and Rs. 50 fine and, in default, to three months' rigorous imprisonment.

**Stuart, J.**

4. I concur.

5. The conviction is altered to one under Section 215/511 and the sentence is to be one of rigorous imprisonment for one year and a fine of Rs. 50, and, in default, three months' rigorous imprisonment.

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