

State and anr. Vs. Jagannath Singhal

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Court : Allahabad

Decided On : Apr-25-1961

Reported in : AIR1962All153

Judge : Jagdish Sahai, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 517 - Order 21, Rules 58 and 63; Indian Penal Code (IPC) - Sections 420

Appeal No. : Civil Revn. No. 978 of 1956

Appellant : State and anr.

Respondent : Jagannath Singhal

Advocate for Def. : A.K. Kirty, Adv.

Advocate for Pet/Ap. : Shambhu Prasad, Senior Standing Counsel

Disposition : Revision petition dismissed

Judgement :

ORDER

Jagdish Sahai, J.

1. The opposite party Jagannath Singhal (hereinafter referred to as Singhal) holds a decree for a sum of RS. 17,344/4/- against the Rampur Bankers Ltd., Rampur

(hereinafter called the Bankers). The Bankers had advertised that for every deposit of Rs. 100/- they would pay to the depositor a sum of Rs. 687/7/- after the expiry of six months. Singhal had deposited with the Bankers a sum of Rs. 2,500/- and claimed from them a sum of Rs. 17,344/47/- which they did not pay. Consequently he filed a suit and obtained the decree mentioned above. In the meantime the directors and some of the employees of the Bankers were convicted under Section 420, I. P. C., for having cheated the public by making a false representation that for every sum of Rs. 100/- deposited they would after the expiry of six months pay to the depositor a sum of Rs. 687/7/-. When the criminal case had been started the State seized large sums of money from the custody of the Bankers on the ground that the same had been obtained by the commission of the crime of cheating. Singhal put his decree into execution and got some sums out of the amount seized by the Government attached. The State of U. P. objected to the attachment and the learned Civil Judge, Moradabad, on 8-8-1956 allowed the attachment to the extent of Rs. 2,500/- to stand, releasing the rest of the amount from attachment. It is against that order that the State of U. P. has come up in revision under Section 115, C. P. C.

2. Mr. A. K. Kirty who appears for Singhal has raised a preliminary objection to the effect that under the provisions of Rule 63 of Order XXI, C. P. C., the only remedy which a party against whom an order under Rule 58 of Order XXII C. P. C., has been passed is to institute a regular suit and the order passed under the latter provision, subject to the result of such suit, remains conclusive, In my opinion the preliminary objection is not well founded. When an order under Rule 58 of Order XXII C. P. C., is revised by this Court under Section 115 of that Code the order as modified or set aside by this Court becomes an order under Order XXI, Rule 58 instead of the original order which stands superseded or modified. There is no justification for the submission that an order passed under Order XXI, Rule 58 cannot be revised by this Court. The view that I am taking is in accord with the decision of this Court in the case of *Lila v. Mahange* : AIR1931 All632 as also of *Bachu Lal v. Ram Din* : AIR1939 All117 . The preliminary objection is therefore rejected.

3. Coming to the merits it may be stated at the outset that it is the admitted case of the parties that no order under Section 517, Cri. P. C., was passed by the criminal court which convicted the directors as also some of the employees of the Bankers under Section 420, I. P. C. Consequently there is no direction of the criminal court with regard to the sums of money seized by the police from the Bankers, The question for determination, therefore, is whether in these circumstances the money in the hands of the Government will be deemed to be their money or that of the Bankers or that of the depositors. Mr. Shambhu Prasad on behalf of the State has made what I may call to be a tall claim. His submission is that apart from the provisions of the Cri. P. C, or statutes or Statutory orders dealing with matters relating to forfeiture of property the state has a general power to forfeit to itself all the property which has been obtained by a convicted person by committing a criminal offence. He has, however, not been able to point out the source of the power either by means of showing any statutory provision or a written text or decided case. Even the State can only act in accordance with the law. It is trite saying that law binds both the rulers and the subjects. Therefore there can be no forfeiture of property except under the law. That is so all the more in our country because Article 19 of the Constitution guarantees to every Indian citizen the right to enjoy his property subject only to reasonable restrictions and Article 31 provides that there will be no acquisition of property except as provided by law. There is thus to my mind no scope for the submission that the State has any general or inherent power to forfeit] property acquired by committing a crime or used in the commission of a crime, It is true that the State has the right of eminent domain to acquire for public purposes the property belonging to a subject but in accordance with the law and after paying compensation. Similarly where a person dies leaving property and there is a total failure of heirs the law of escheat intervenes vesting the property in the State on the ground that private ownership does not exist and the State becomes the owner as ultimate Lord (see *Collector of Masuliputam v Cavalry Vencata Narrainapah*, 8 Moo Ind App 500 at p. 525 (PC)). It is also well established that property by which or for which an offence has been committed has ultimately to go to its real Owner and an order passed by a criminal court under Section 517 Cr. P. C., does not settle any rights nor confers any title. It only empowers the criminal court to dispose of the property in a Summary manner

(see Ibrahim Rahamatullah v. Emperor, AIR 1947 Nag 33). The matter can finally be decided only by a civil court. Even in cases where the criminal court does not pass any order with regard to a property with which or in respect of which an offence has been committed, the civil court of competent jurisdiction can pass a decree in respect of that property in favour of its real owner.

4. In the case of Advocate General of Bengal v. Ranee Surnomoyee Dossee, 9 Moo Ind App 397 (PC) the question that the Judicial Committee of the Privy Council had to decide was whether the property of a person who committed suicide escheated to the State. Their Lordships held that it did not and observed as follows:

'The sum of the appellant's argument was this: that the English Criminal law was applicable to Natives as well as Europeans within Calcutta, at the time when the death of the Rajah took place, and the sovereignty of the English Crown was at that time established; that the English settlers when they first went out to the East Indies in the reign of Queen Elizabeth took with them the whole law of England, both Civil and Criminal, unless so far as it was inapplicable to them in their new condition; that the law of *felo de se* was a part of the Criminal law of England which was not inapplicable to them in their new condition, and that it, therefore, became part of the law of the country.

Where Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the Sovereignty of their own State; and those who live amongst them and become members of their community become also partakers of, and subject to the same laws.

But this was not the nature of the first settlement made in India--it was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilized country, under the Government of a powerful Mohamedan ruler, with whose sovereignty the English Crown never attempted nor pretended to interfere for some centuries afterwards.

If the settlement had been made in a Christian country of Europe, the settlers would have become subject to the laws of the country in which they settled. It is

true that in India they retained their own laws for their own government within the Factories, which they are permitted by the ruling powers of India to establish; but this was not on the ground of general international law, or because the Crown, of England or the laws of England had any proper authority in India, but upon the principles explained by Lord Stowell in a very celebrated and beautiful passage of his judgment in the case of 'The Indian Chief 3 Rob Adm Rep 28'.

The laws and usages of Eastern countries where Christianity does not prevail are so at variance with all the principles, feelings and habits of European Christians that they have usually been allowed by the indulgence or weakness of the Potentates of those countries to retain the use of their own laws, and their Factories have for many purposes been treated as part of the territory of the Sovereign from whose dominions they come. But the permission to use their own laws By European settlers does not extend those laws to Natives within the same limits, who remain to all intents and purposes subjects of their Own Sovereign, and to whom European laws and usages are as little suited as the laws of the Mahomedans and Hindoos are suited to Europeans, These principles are too clear to require any authority to support them, but they are recognized in the Judgment to which we have above referred.

But if the English laws were not applicable to Hindoos on the first settlement of the country how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration? It might enable the Crown by express enactment to alter the laws of the country but until so altered the laws remained unchanged. The question, therefore, and the sole question in this case is, whether by express enactment the English law of *felo dese*, including the forfeiture attached to it, had been extended in the year 1844 to Hindoos destroying themselves in CalcuttaWe think, therefore, the law under consideration is applicable to Hindoos, and if it had been introduced by the Charters: in question with, respect to Europeans, we should think that Hindoos would have been excepted from its operation", (under lines (here in ' ') by me.).

5. Thus the claim of the State to forfeit the property of a person who had destroyed himself by committing suicide was rejected on the ground that the law of *felo de se*

was never applied to Hindus. This case is a clear authority for the proposition that the power to escheat or to forfeit the property of a subject cannot be exercised otherwise than in accordance with the law. It also appears to me that in a case like the present one the State cannot forfeit any property unless there is a judicial order in their favour, I have, therefore, no hesitation in rejecting the general claim made by Mr. Shambhu Prasad.

6. The question that remains to consider is as to whom does the amount seized, by the State from the Bankers belong. It is well settled that after a deposit is made in a bank the money ceases to be that of the depositor and becomes that of the bank and the relationship between the depositor and the bank thenceforward is that of a creditor and debtor (see *Kirpa Ram v. Shriyans Prasad*, AIR 1951 Punj 79 and *Santosh Kumar v. The King* : AIR1952 Cal193). That being so it must be held that the money seized from, the Bankers prima facie and subject to some one proving valid title to that money belonged to the Bankers, i.e., to the judgment-debtors. It could, therefore, in my judgment be validly attached. There is nothing on the record to show that anyone except the State has claimed the amount attached by the Court as his. There is thus no dispute that the money does not belong to the Bankers. In that view of the matter it appears to me that the order passed by the learned Civil Judge was a correct order and does not require any revision. In any case there is no manner of doubt that the learned Civil Judge had the jurisdiction to decide the matter and no question of jurisdiction is involved in the present revision application with the result that the revision application is also liable to be dismissed on the ground that it does not fulfil the requirements of Section 115, C. P. C. (see *Keshardeo v. Radhakishen* : [1953]4SCR136)

7. The result is that the revision application is dismissed with costs.

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