

**Ganesh Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Nov-28-1938

**Reported in :** AIR1939All166

**Appellant :** Ganesh

**Respondent :** Emperor

**Judgement :**

ORDER

**Allsop, J.**

1. This is an application in revision against an order passed in appeal by the learned Sessions Judge of Benares. The applicant Ganesh was adjudicated insolvent on 25th May 1935. Part of his property was a flour mill. It has been found that the applicant removed essential parts of the machine on 18th October 1935. The Courts have found that he did this fraudulently with intent to diminish the sum to be divided among his creditors. He has consequently been convicted of an offence punishable under Section 69(c)(ii), Provincial Insolvency Act, and has been sentenced to rigorous imprisonment for a period of six months.

2. It may be mentioned that Ganesh was the defendant in a suit instituted on 7th December 1933 by Ram Nandan on the basis of a promissory note. In the course of this suit, the flour mill was attached before judgment on 11th February 1934. A decree was obtained by Ram Nandan against Ganesh in August 1934 but in the

meanwhile on 8th August Ganesh had put in his petition to be adjudged insolvent. The Insolvency Court which was conducting a summary administration of the insolvent's estate put the flour mill up to auction and obtained a bid of Rs. 125 from one Mohammad Umar. The Court accepted Mohammad Umar's bid on 25th September 1935 and the buyer deposited the sum of Rs. 125 on 30th September. The property however was never delivered to Mohammad Umar. On 18th October, as I have already said, essential parts of the machinery were removed by Ganesh. It has been urged here that Ganesh could not be convicted with fraudulently concealing or making away with any part of his property because the machinery had already been sold to Mohammad Umar who had paid the sum of Rs. 125 which was available to the creditors. The learned Sessions Judge has pointed out that the Insolvency Court which sold the machinery was bound, when unable to deliver it in a proper condition, to return the sum of Rs. 125 to Mohammad Umar. Learned Counsel for the applicant suggests that the sale was complete and the Court was not bound to return this sum of Rs. 125.

3. It seems to me that this argument cannot possibly be upheld. The Court could not commit a fraud upon Mohammad Umar by selling him a working machine for Rs. 125 and failing to deliver the property in good condition. It must be remembered that this was not a sale in execution of a decree under which it might have been held that Mohammad Umar was buying a property such as it was at his own risk. This was a private contract between the Court in which the property of the insolvent vested and Mohammad Umar. If the Court was unable to deliver the goods which it had sold, Mohammad Umar would have been entitled to recover the money which he had paid. Another argument is that the creditors could not suffer because the property when attached before judgment in the course of Ram Nandan's suit had been delivered into the possession of Misri Lal as sapurdar, who had agreed if he could not return the property to pay the Court a sum of Rs. 340. It is suggested that Misri Lal was still responsible for the property and that the Insolvency Court could have got the sum of Rs. 340 from him, in which case the creditors would not have suffered from the fact that Ganesh had removed part of the machinery. This argument seems to me to overlook the essential point that Misri Lal was responsible not to the Insolvency Court but to the Court executing the decree against Ganesh Prasad in the course of the suit instituted by Ram

Nandan.

4. In the second place, even if the Insolvency Court was able to recover the price of the machinery from Misri Lal upon the ground that he was a bailee or something of that sort, it would still incur expenditure in doing so and this expenditure would have to be charged to the estate. It is further by no means certain that Misri Lal is in a position to pay even if the Court is entitled to proceed against him. The Courts below were not concerned however with the ultimate effect of Ganesh's action. They were concerned with the intention underlying his acts. There can be no doubt from their findings that Ganesh did remove parts of this machinery which he was not entitled to remove and that his conduct was such that the only inference can be that he was intending to cause wrongful loss to the creditors.

5. In these circumstances there is no justification for my interference in revision against the conviction of the applicant under Section 69, Insolvency Act. The applicant has also been convicted by the learned Magistrate of an offence under Section 206, Penal Code. That conviction has been converted by the learned Sessions Judge into one under Section 424, Penal Code, Legal questions may arise, but the learned Sessions Judge has directed that the sentence passed under Section. 424, Penal Code, shall be concurrent with that under Section 69, Insolvency Act, That being no it makes no substantial difference to the applicant whether the conviction under Section 424, Penal Code, is largely sustainable or not. This Court will interfere in revision only when substantial questions arise. It has been suggested that the sentence is too severe, but in my judgment there is no sufficient ground for interference with it. The application is rejected. The applicant will surrender to his bail and serve out his sentence.

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