

**Nirpat Singh Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Sep-26-1947

**Reported in :** AIR1948All167

**Appellant :** Nirpat Singh

**Respondent :** Emperor

**Judgement :**

ORDER

**Harish Chandra, J.**

1. The applicant Nirpat Singh was the supardar with respect to some sugarcane crop belonging to a judgment - debtor which had been attached by the Amin on an application made by the decree-holder for the execution of his decree. The supratdar was subsequently unable to produce the crop and it is said that it had been cut, pressed and turned into gur and had been made over to the decree-holder himself. This suggestion was found to be false by the Courts below and the applicant was convicted accordingly under Section 424, Penal Code, and sentenced to three months' rigorous imprisonment and a fine of Rs. 100.

2. It is, however, argued on behalf of the applicant that the attachment itself was illegal inasmuch as the warrant of attachment was not prepared in accordance with the provisions of Order 21, Rule 24, Civil P.C., which require, among other things, that every such process shall be sealed with the seal of the Court. It

appears that the warrant of attachment in the present case does not bear the seal, although it bears the date on which it was issued and has also been signed by the Judge. It is contended on behalf of the applicant that the mere fact that the warrant does not bear the seal of the Court makes the attachment illegal and that the property in the crop did not pass from the judgment-debtor to the Court and that therefore no offence can be said to have been committed with respect to it under Section 424, Penal Code. My attention has been drawn to two rulings. One is the case in Beni Prasad v. Emperor : AIR1935 All214 . In that case the applicant had been convicted under Section 379, Penal Code, for removing certain crops said to have been attached and entrusted to a custodian. It was found that the attachment of the crop had been made by affixing copies of the warrant of attachment which were signed by the Amin and did not bear the seal of the Court. It was held that the attachment was illegal and that the produce could not be deemed to have passed from the possession of the judgment - debtor into the possession of the Court. I have doubts as to the correctness of the view taken in this case. According to Rule 44 of Order 21, Civil P.C., a copy of the warrant of attachment shall be affixed on the land on which the crop was growing and another copy on the outer door or on some other conspicuous part of the house of the judgment - debtor. It is not laid down that these copies shall also bear the signature or the seal of the Court. In Beni Prasad v. Emperor : AIR1935 All214 copies had been prepared by the Amin and they were affixed by him iii accordance with the provisions of the said rule. I am doubtful as to whether the attachment in that case was in fact illegal.

3. In the other case in Sarsar Singh v. Emperor 21 : AIR1934 All711 , the Amin had not executed the warrant of attachment in the manner required by law. He did not affix any copy of the warrant of attachment at the threshing floor where the crop had been stored nor was any copy affixed to the house hi the judgment - debtor. It was accordingly held that the attachment was illegal and that therefore the accused could not be convicted under Section 424, Penal Code. There is, however, no authority for the view that the mere fact that the warrant of attachment does not bear the seal of the Court makes the subsequent proceedings illegal when all the other requirements of law have been fulfilled. It is, however, pointed out that the learned Special Magistrate, who tried the case, has in his judgment

said that a copy of the warrant should have been affixed at the field. But I have gone through the entire statement of the Amin and find no justification for this suggestion. In cross-examination no question was put to him suggesting that the attachment had not been made by him in accordance with the procedure prescribed in the Code. I am accordingly not prepared to hold that the attachment in the present case was in fact illegal and see no reason to interfere.

4. The application is accordingly rejected. The applicant will surrender to his bail and undergo the remaining portion of his sentence. He must also pay the fine.

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