

Kamta Prashad Vs. Emperor

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Court : Allahabad

Decided On : Jan-26-1911

Reported in : 9Ind.Cas.497

Judge : George Knox and ;Karamat Husain, JJ.

Appellant : Kamta Prashad

Respondent : Emperor

Judgement :

1. On the 11th of February 1910, the Munsif of Phaphund acting under Section 476 of the Code of Criminal. Procedure issued an order directing that one Kamta Prasad be tried by a Criminal Court on a charge following under Section 210 of the Indian Penal Code. We are asked to revise this order on two grounds; first that the Munsif had no jurisdiction to pass the order and secondly that, if he had jurisdiction, the Munsif had improperly exercised this jurisdiction.

2. The decree out of which all these proceedings have arisen was a decree passed by a Court in Calcutta. Execution proceedings were taken out and the decree was transferred to the Court of the Munsif of Phaphund.

3. Upon the Munsif of Phaphund taking action the judgment-debtors appeared before him and stated that the decree had been obtained by fraud. The learned Munsif held the view that, as a Court executing a decree, he had no alternative but to proceed with the decree as it stood. He overruled the objection of the judgment-

debtor. The judgment-debtor then instituted a suit in the Court of the Munsif of Phaphund praying that the decree in question might be declared null and void and that an injunction might be issued staying further proceedings in execution. It appears that this suit was referred to arbitration. When the arbitrator returned the case judgment was passed by the Munsif in accordance with the award on the 9th of September 1909. This was followed by proceedings under Section 476 of the Code of Criminal Procedure. Kamta Prasad was called on to show cause why he should not be prosecuted and on the 15th of March 1910, the order, now under revision, was passed.

4. It will be seen from the above statement of facts that the first plea taken in revision is hardly correct. The Munsif took action upon what had been brought under his notice in his own Court, viz., the suit filed by the judgment-debtor ending in the decree of the 9th of September 1909. An attempt has been made to contend that in passing judgment in accordance with the award the Munsif had not before him a judicial proceeding. He had merely to give judgment in accordance with the award and had nothing before him on which to exercise his judicial mind. We do not think that this is so. The proceedings before the Munsif were judicial proceedings and the alleged offence was brought to the notice of the Munsif in the course of judicial proceedings. This Court has already held in *Girwar Prashad v. Emperor* 6 A.L.J. 392 : 1 Ind. Cas. 306 : 9 Cr. L.J. 219 that the words contained in Section 476 brought under its notice' are wide enough to cover an offence which may have been committed in another forum and on some previous occasion. We do not find that in the exercise of his jurisdiction the learned Munsif has acted either illegally or with material irregularity. The contention relating to this plea was based on what this Court held in *Umrao Singh v. Hardeo* 4 A.L.J. 392: A.W.N. (1907) : 112 : 29 A. 418 but as pointed out in *Banke Behari Lal v. Pokhe Ram* 25 A. 48 : A.W.N. (1902) 179 where a plaintiff asks that a compromise be declared null and void and an injunction issues restraining execution of a decree the Court has jurisdiction to try the suit. The learned Judges in that case drew a distinction between the case before them and the case of *Banke Behari Lal v. Pokhe Ram* 25 A. 48 : A.W.N. (1902) 179 where the plaintiff asks only a declaration that the decree has been obtained by fraud and not for any further relief.

5. We find no reason to interfere and dismiss the application with costs.

6. The stay order is discharged.

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