

Ramcharan Das Vs. Emperor

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Court : Allahabad

Decided On : May-04-1925

Reported in : AIR1925All544

Appellant : Ramcharan Das

Respondent : Emperor

Judgement :

Banerji, J.

1. This is an appeal under Section 476-B of the Code of Criminal Procedure against an order of the District Judge of Mainpuri directing the appellant to be prosecuted under Section 193 of the Indian Penal Code in respect of certain false statements. The first point to consider in this case is what are the duties of an appellate Court in cases in which an order is made by the lower Court directing the prosecution of any one. Section 476-B has been enacted by Act 18 of 1923, and the same Act has omitted original Sub-section 6 of Section 195, which gave the appellate Court power of reviewing an order granting sanction, or an order by a Court instituting a complaint. Chapter 31 of the Code of Criminal Procedure lays down the ordinary procedure and powers relating to appeals against convictions or acquittals. Section 476-B empowers the appellate Court in appeal to direct the withdrawal of the complaint, or in cases where the first Court has refused to complain, may itself make a complaint. I am of opinion that the legislature intended

that the appellate Court, in cases of appeals under Section 476-B of the Code of Criminal Procedure, should reconsider the entire matter on the merits, and while allowing reasonable weight to the opinion of the Court below, should nevertheless reconsider the question of the propriety of the order appealed against) upon a complete review of the entire facts. If the appellate Court is not satisfied that a prima facie case has been made out, the order appealed against must be set aside. The words 'offence which appears to have been committed' seem to me to have been used by the legislature to mean that the facts before the Court unless rebutted, show that an offence has been committed.

2. Now coming to the facts of the case, on the 18th of October, 1924, one Shiam Lal brought a suit for recovery of Rs. 134 on a bond dated the 18th of April, 1920 in the Court of the Munsif of Shikohabad. The Munsarim of the Munsif's Court, in the ordinary course of business, reported that the bond on which the suit was based had the words 'chhah mah.' after the words 'ek sal,' and that the former words appeared to be written in a different ink. He further reported if one year was the stipulated period the suit was not within time. On the office report being brought to the notice of the learned pleader for the plaintiff, he made a statement which appears to me not to contest the Munsarim's report. The Munsif directed the plaintiff to appear before him personally on the 25th of October. On the 24th of October a compromise was filed in Court in which it was stated that the defendant had paid the entire money sued upon, and the plaintiff admitted having received the money from the defendant, and the plaintiff did not claim his costs. On the 25th of October this application was verified by both parties.

3. It appears that the Munsif was very surprised that the defendant who had contracted the original loan on the 18th of April, 1920, should have at once satisfied the plaintiff's claim after the plaint had been filed.

4. The Munsif held an enquiry into the question of whether the bond in suit was for one year, or whether the words 'chhah mah' had been interpolated. After taking down the statement of the present appellant, Ram Charan Das, on the 31st of October, 1924, he recorded the statements of Shiam Lal, Kharagjit, marginal witness, and the defendant Randhira Chamar, and passed an order under Section

476 of the Code of Criminal Procedure, and made a complaint against Shiam Lal to the District Magistrate of Mainpuri. An appeal was filed by Shiam Lal before the District Judge under Section 476-B of the Code of Criminal Procedure. The learned Judge allowed the appeal of Shiam Lal and directed notice to issue to the petitioner, Ram Charan Das, to show cause why he should not be prosecuted under Section 193 of the Indian Penal Code for having falsely stated, on the 31st of October, 1924, that the words 'Chhah mah' were not written by him, and that the time for repayment in the bond was only one year and not one year 6 months. On the 27th of February, 1925, the learned Judge passed an order in the following terms:

In pursuance of the notice issued by the Court against Ram Charan Das he put in appearance through a counsel. I have heard the learned Advocate for Ram Charan Das but I see no good grounds why the prosecution of Ram Charan Das under Section 193 of the Indian Penal Code should not be ordered. There is a strong prima facie case to prove that he made the following false statement before the Munsif of Shikohabad on 31st October, 1924 knowing that the statement made by him was false and not true.

5. He then set out the false averments and directed that the appellant be prosecuted under Section 193 of the Indian Penal Code, and he further directed that the case be sent to the District Magistrate of Mainpuri for trial. It is against this order that an appeal has been filed. As no reasons are given to enable me on appeal to decide whether a prima facie case has been made out, I have examined the record of the case against Shiam Lal.

6. The learned Judge, in his order of the 3rd of February, 1925, in the appeal of Shiam Lal said:

I think the view taken by the Munsarim of the Munsif's Court and the learned Munsif himself is erroneous. I see absolutely no difference in the ink of the words 'ek sal' and the words 'chhah mah', and I wonder how it was that the Munsarim came to report that the words 'chhah mah' were in different ink.

7. I have examined the document in question and I am unable to agree with the view taken by the learned Judge. The words 'chhah mah' are not only written in a different ink, but the angle at which the lines forming the words 'chhah mah' are written, is different from that of the whole of the rest of the document. The learned Assistant Government Advocate, who also examined the document, was unable to say that the ink with which the words 'chhah mah' were written was the same as the rest of the document. An examination of the document was made with the help of a powerful magnifying glass. I am of opinion that the view taken by the learned Munsif about the document was correct. I have also examined the other evidence in the case, and cannot understand how Kharagjit, an illiterate person, could have identified the bond, and could have remembered the exact period for which the loan was given. I am not impressed by the evidence of Randhira Chamar as it seems to me surprising that he waited for such a length of time to repay the bond, and a few days after the suit was instituted, he satisfied it out of Court.

8. The result is that no case has been made out for the prosecution of Ram Charan Das, the appellant. I allow his appeal and set aside the order of the District Judge dated the 27th of February, 1925 directing the prosecution of the appellant under Section 193 of the Indian Penal Code and direct him to withdraw the complaint.