

Rampat Roy Vs. State

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Court : Allahabad

Decided On : Nov-24-1959

Reported in : AIR1960All380; 1960CriLJ780

Judge : D.N. Roy and ;D.P. Uniyal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 403 and 406; Code of Criminal Procedure (CrPC) - Sections 145

Appeal No. : Criminal Revn. No. 1318 of 1958

Appellant : Rampat Roy

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Suraj Nath Singh, Adv.

Disposition : Revision allowed

Judgement :

Roy, J.

1. This is a revision by Rampati Rai, who has been convicted by the learned Assistant Sessions Judge of Gorakhpur under Section 406 I. P. C. and sentenced to two years simple imprisonment. He preferred an appeal against his conviction

and sentence but it was dismissed by the learned Sessions Judge of Gorakhpur. He has now come up before this Court in revision. When the revision was admitted, notice was issued to the applicant by a learned Judge of this Court to show cause why his sentence should not be enhanced. The revision and the notice have been heard by us.

2. In order to appreciate the matter certain facts may be stated. In the year 1947 a case under Section 145 Cr. P. C. was started in the court of the Sub-divisional Magistrate of Bansaon in Gorakhpur district between Narsingh Pande and Ram Narain on the report of the Police, Barhalganj. In that case certain plots of land had been attached by the court together with standing crops and were delivered to the supardagi of one Ambika Singh. The appointment of Ambika Singh as sapurdar was subsequently cancelled by the said court and one Sheo Pujan Misra was appointed as Sapurdar in his place by an order dated 3-11-1947. Sheo Pujan Misra, as appears from the copy of the order Ex. P-5 dated the 23rd of November 1954 passed by the then Sub-Divisional Magistrate, was directed to cultivate the land and not to dispose of the crops in anyway without the court's order. Sheo Pujan Misra died after about a year of his appointment and he left a son Ramji and a brother Goverdhan. After the death of Sheo Pujari Misra, the applicant Rampati Rai was appointed a Shahna or Sapurdar of the crops alone which then existed over these plots. Rampati executed a Sapurdnama on the 1st of March 1949 and it was in the following terms:

'I Rampati Rai, son of Dukhi Rai, resident of agree as follows. I have been appointed Shahna by the police of the crops standing this day on the plots of land as detailed below. I agree to take the same under my sapurdgi and also agree to produce the same whenever required by the court or by the police. I will not cause any damage to the said crops nor will I permit any damage to be done to the same.'

3. At the foot of the conditions aforesaid the Sapurdnama specified the khasra numbers of the different plots, their areas and the crops which stood over the same. The document did not give either an estimate of the quantity of the crop or of the price thereof.

4. In the proceedings under Section 145, Cr. P. C. an order was passed by the Sub-Divisional Magistrate on the 5th of November 1952 to the effect that the land and the crops attached should be released in favour of Narsingh Pande. Narsingh Pande got back the plots of land, but he failed to get the crop. Upon a motion made by him to the Sub-Divisional Magistrate, the matter was again taken up. The Magistrate by an order dated the 23rd of November 1954 observed as follows:

'Under Court's order dated 3-11-47 the Secretary, Mandal Congress Committee, Balhalganj, Pt. Sheo Pujan was appointed receiver. He was directed to cultivate the land and not to dispose of the crop in anyway without Court's order. On his death Sri Rampati Rai Sabhapati Mandal Barhalganj was given charge of the attached property in March 49. The heirs of Sri Sheo Pujan Misra are his son and brother Ramji and Gobardhan. On 19-4-1954, Rampati was ordered to file an account of crops etc. from 1949 and the applicant was directed to to seek remedy against other sapurdgars or their heirs through proper court. The counsel of the Sapurdar Sri Rampati did not file any account and a notice was issued to him (Sri Rampati) to appear and show cause why he should not be prosecuted against under Section 406 I. P. C. I have gong through the explanation given by him and have heard arguments of counsel of both the parties. The receivership was transferred to Sri Rampati under court's order. It was his duty to have maintained a proper account of the expenditure and yield etc. which he has failed to produce. The S.O. concerned should register a case under Section 408 I. P. C. and proceed accordingly after a proper investigation.'

5. The order quoted above was passed on 23-11-1954. It seems, however, that no action was taken upon it until the 15th of May 1956 when the succeeding Sub-divisional Magistrate passed another order enclosing a copy of the earlier order of 23-11-1954 and calling upon the station officer of police station Barhalganj to look into the matter and to state why the order of 23-1.1-1954 had not been complied with, directing him further that if it had not been complied with, a case of criminal breach of trust against Rampati Rai should be registered forthwith and proper action taken. It was upon this order that the prosecution of Rampati Rai for an offence punishable under Section 406 of the Indian Penal Code had been started.

6. Rampati Rai in his defence took an inconsistent position. In the court of the committing magistrate he denied due execution of the sapurdginama and contended that his signature was taken on a blank piece of paper by the police and it has been converted into a sapurdginama.

In that court he further contended that on the 1st of March 1949 no crops stood over these plots. In the court of sessions, however, he contended that on the 1st of March 1949 only the crops standing on those plots were given to him in sapurdgi and not the plots themselves. We have quoted the relevant portion of the sapurdginama and it seems to us that the subsequent statement made by Rampati Rai in the court of sessions, namely, to the effect that only the crops standing on those plots were given under his sapurdgi on the 1st of March 1949 had been consistent with truth and consistent also with the terms of the sapurdginama.

7. The question arises whether failure on the part of Rampati Rai to file an account of the crops etc. from the 1st of March 1949 upon a demand made by the magistrate to that effect gave rise to a criminal liability under Section 406. It seems to us that in matters of this nature the magistrates fail to comply with the exact provisions of law giving rise to subsequent complications; and such an error was committed in the present case as well, Sub-clause (8) of Section 145 Cr. P. C. provides that if the magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under Section 145 pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such produce and upon the completion of the enquiry shall make such order for the disposal of such property or the sale proceeds thereof as he thinks fit.

In the present case Rampati Rai was appointed Sapurdar of the crops on the 1st of March 1949 and it was not until six years later that he was called upon to file an account of the crops from 1949. It was not contended on behalf of the prosecution that the crops were not subject to natural decay and should have been retained in proper condition by the custodian for a length of six years so as to make it deliverable to the person entitled thereto after the lapse of that period. In a situation such as that it was the bounden duty of the magistrate under the

provisions of Clause (8) of Section 145 to make an order to the effect that the property should be sold and the sale proceeds of such property should be kept in the custody of the Sapurdar' which, upon the completion of the inquiry, could be made over to the person entitled to it. On 19-4-1954 when the magistrate directed Rampati to file an account of the crops, the magistrate took it for granted that the crops had been sold away by Rampati and that he should have produced the sale proceeds. Rampati could not have sold away the crops without an order of the magistrate. That, however, is a point which would not be strictly relevant for the disposal of the present application.

In the present case we have got to see whether the accused was entrusted with property or with dominion over it and that he misappropriated it, or converted it to his own use, or disposed it of, and that he did so in violation of any direction of law prescribing the mode in which such trust was to be discharged or of any legal contract, express or implied, which he made touching the discharge of such trust. The only evidence that was produced in the case was that Rampati executed the Sapurdnama on the 1st of March 1949 and that when he was called upon to file an account of the crops he failed to do so.

8. As we have already said, the undertaking that had been given by the applicant under the sapurdginama was to produce the crops; whenever required by the court or by the police. The notice that was given to him was not in strict terms of that contract.

The contract was that he would produce these crops when required. He was not called upon by the notice to produce the crops. He was called upon to furnish accounts. The notice was therefore not touching the discharge of the trust which he had undertaken upon himself. Moreover, no evidence was given in the case to prove that he misappropriated the property entrusted to him or converted it to his own use, and that he did so in violation of the conditions of the trust. In this view of the matter we are of opinion that the conviction of the applicant was bad in law and cannot for a moment be supported. We allow this revision, set aside the conviction and sentence of the applicant and discharge the notice of enhancement of sentence given to him.

