

Narain Singh Vs. Emperor

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Court : Allahabad

Decided On : Oct-30-1947

Reported in : AIR1948All287

Appellant : Narain Singh

Respondent : Emperor

Judgement :

Sinha, J.

1. This is an appeal under Section 476-B, Criminal P.C., against an order of the learned District Judge of Moradabad, directing that 'a complaint be drafted under Sections 193, 196, 465, 467 and 471, Penal Code, against the appellant and forwarded to the Sub-Divisional Magistrate, Moradabad, for disposal.' The facts which have led to this order are briefly these:

2. One Suraj Singh, son of Narain Singh, was fined Rs. 11,260, although the maximum; amount of fine, which could be imposed under Section 45, Guardians and Wards Act, 1890, was Rs. 500. Certain property, alleged to belong to Suraj Singh, was attached in execution of an order for the realisation of the fine. Narain Singh took exception to the attachment on the ground that the property had passed to him. In support of his objection, Narain Singh produced, in the Court, a receipt. One Abdul Ghani made a statement on 3rd February 1945 in support of Narain Singh's version. The receipt was sent to the Master Security Printing Press,

Nasik, for inspection. His report was that the date of the stamp was later than the date of the receipt. In other words, it was not a genuine document. This report was received on 6th March 1945 and on 4th June 1945, the learned District Judge sent a notice to Narain Singh to show cause why his prosecution should not be ordered. A similar notice, on 3rd September 1945, was issued against Abdul Ghani. The learned Judge finally, by his order of 1st September 1945, directed the prosecution of Narain Singh and by a similar order of 16th March 1946, he directed the prosecution of Abdul Ghani.

3. Both Narain Singh and Abdul Ghani are before us in appeal. F.A.F.O. No. 298 of 1945 is the appeal preferred by Narain Singh, whereas F.A.F.O. No. 1 of 1947 is the appeal of Abdul Ghani.

4. We propose to dispose of both the cases by one single judgment.

5. To take up the case of Narain Singh first the first contention raised by the learned Counsel for the appellant is that no offence within the meaning of Section 476 was ever committed and the order is wrong. In support of his argument, he relies upon the language of the section which says:

When any Civil, Revenue or Criminal Court...which appears to have been committed in or in relation to a proceeding in that Court, such Court may after such preliminary inquiry...make a complaint....

6. It is contended that if the order imposing a fine exceeding a sum of Rs. 500, which was the maximum provided by Section 45, Guardians and Wards Act, was passed by the learned District Judge in the guardianship proceedings, it was not a judicial order and any step taken in pursuance of such an order, does not fall within the mischief of this section. Reliance is placed, in support of this contention, on *Babu Ram v. Emperor* (11) 8 A.L.J. 674 and *Sumat Prasad v. Emperor* 29 A.I.R. 1942 All. 11.

7. Those were cases where the Court, which passed the order, had no jurisdiction. In the case before us, it was passed by a competent Court, although the order itself was illegal.

8. On the merits, however, the appellant is on surer ground. The receipt was filed so far back as 26-10-1944. The report of the Master, Security Printing Press, Nasik, was of 6-3-1945 and, although we cannot say that laches can be attributed to the learned District Judge, nevertheless the order was not passed by him upto 1-9-1945. It may also be mentioned that the matter is being considered after the lapse of more than three years. In Mahomed m. Kaka v. Distric Judge, Bassein ('37) 24 A.I.R. 1937 Rang. 62 delay was treated as one of the factors fatal to an order of this character. This case was followed by a Bench of this Court in Liaqat Husain v. Vinay Prakash : AIR1946 All156 .

9. The case might be considered from yet another point of view. Although, in our opinion, the contention of the learned Counsel for the appellant based upon the interpretation of the expression 'in relation to a proceeding' is not correct, we do not know what view the criminal Court may finally take of it. It may be that it may hold that as the order passed by the District Judge in the guardianship proceedings, was a wholly improper order, the subsequent proceeding does not fall within the mischief of the section, or it may hold otherwise. The appellant is entitled, after all, to argue that the matter is not free from an element of doubt. A very distinguished Judge, Sir Ausotosh Mookerjee, has, sitting with Chatterjee J. in Jadunandan Singh v. Emperor ('10) 37 Cal. 250, made some very wholesome observations for the guidance of the Courts in such classes of cases Says he:

No sanction should be granted, or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under Section 195, or taking action under Section 476, should not decide the question of guilt or innocence. Great care and caution are required before the criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed.

In Liaqat Husain v. Vinay Prakash : AIR1946 All156 this dictum was followed.

10. There is yet another aspect of this case which has also largely influenced our consideration. It is true that a person guilty of forgery is not entitled to any consideration. For his wrong, he must be punished. But we cannot be oblivious to the fact that it is, after all the wrong order of the Court which has resulted in the

present situation. We have, therefore, come to the conclusion that it is neither expedient, nor is it in the interest of justice that the order of the learned Judge should, in these circumstances, stand.

11. We, therefore, allow this appeal, set aside the order of the learned District Judge, dated 16-8-1946 and direct the withdrawal of the complaint.

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