

Ghasi and ors. Vs. Emperor

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Court : Allahabad

Decided On : Sep-07-1929

Reported in : AIR1930All329

Appellant : Ghasi and ors.

Respondent : Emperor

Judgement :

Sen, J.

1. This is a reference by Mr. P.C. Agarwal, the learned Additional Sessions Judge of Moradabad, recommending that the conviction and sentence passed upon Ghasi, Dari and Gokul under Section 424, I.P. C, be set aside.

2. One Umar Daraz had a, decree against Ganpat, Gangu and Dilsukh. In execution of the said decree, certain crops were attached and one Saadat was appointed shehna or bailiff to guard the crops. Ghasi, Dari and Gokul, in spite of resistance on the part of the shehna, cut and took away half the crops. The shehna lodged a complaint and the result was that Ghasi, Dari and Gokul were convicted under Section 424, I.P. C, and sentenced to a fine of Rs. 20 each. The plea put forward by the accused persons was that they had cultivated the crop and that there was nothing wrong, if they cut the crop and took the same away. The trial Court did not enter into the question whether the plea put forward by the accused was correct.

2. The learned Magistrate in answer to the referring order observes as follows:

It is a general principle that a criminal Court cannot determine the title of a person to any property. Moreover the complainant had no opportunity to adduce any rebutting evidence as to the title, because he came to know of the defence only after he had completed his prosecution. In the prosecution, what he had to prove was only this that there was an attachment subsisting on the crops in question and that the accused removed it during the attachment.

3. Any determination of title by a criminal Court cannot have the force of a decree of a competent Court of civil jurisdiction. It may be necessary in certain cases to adjudicate upon an issue of title with a view to determine whether the offence charged had been brought home to the accused. Section 424, I.P.C., provides that whoever dishonestly or fraudulently... removes any property of himself or any other person... shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. Ex hypothesi, the decree of Umar Daraz was not against Ghasi, Dari and Gokul. The latter admittedly removed some property alleging that the said property belonged to them. The crucial question for determination therefore was whether the removal of the crops by these three persons was dishonest or fraudulent. If they were the owners of the crop and removed the same, their conduct was neither dishonest nor fraudulent. The matter ought to have been determined by the criminal Court whether the property belonged to the accused, but this matter was not enquired into by the criminal Court.

4. The learned Sessions Judge upon an examination of the record came to the conclusion that the prosecution had utterly failed to establish that the crops belonged to the judgment-debtors of Umar Daraz. He further found upon the evidence that Ghasi was the owner of the crop. The conviction of Ghasi, Dari and Gokul under Section 424, I.P. C, could not therefore be maintained.

5. My attention has been drawn to a decision of the Madras High Court in *Queen Empress v. Obayya* [1899] 22 Mad. 151. The facts of this case are toto coele different from the case now before me and the decision is not helpful to the prosecution.

6. I accept the reference and set aside the conviction and the sentence. The fine if paid must be refunded.

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