

Ram Prasad Vs. Emperor

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Court : Allahabad

Decided On : Sep-23-1918

Reported in : AIR1918All68; 48Ind.Cas.499

Judge : Tudball, J.

Appellant : Ram Prasad

Respondent : Emperor

Judgement :

Tudball, J.

1. The facts out of which this revision on the criminal side has arisen are as follows : Pending in the Court of the Cantonment Magistrate of Meerut in his capacity as a Small Cause Court was an execution case. The decree-holder was directed to deposit the diet money of his judgment-debtor who was about to be arrested. He was ordered to do so within three days and the order was passed on the 9th of July 1918. The 10th, 11th and 12th of July were holidays, so that the only two days on which he could possibly deposit the money were the 9th and the 13th of the month. On the 15th of the month he made a complaint to the Cantonment Magistrate that although he had tendered the money to the Civil Ahmad Mul Chand, the latter had refused to take it and had ' made it impossible for him, the decree-holder, to comply with the order, On the 15th of July the Cantonment Magistrate made the following report to the Collector for orders: 'The Civil Ahlmad

Mul Chand admits that the decree-holder tendered the fees but that he, Mul Chand, did not accept them at the instigation of the Chaprasi Sharfu who, it appears, is related to the defendant.' Assuming that this report is correct, and there is absolutely no reason to doubt it, on the 15th of July the Civil Ahlmad Mul Chand did admit to the Cantonment Magistrate that the money had been offered to him and that he had refused to take it. I gather that it was the Cantonment Magistrate's object in making this report to get the Ahlmad punished. On the 30th of July the Collector wrote an Order which goes to show that Mul Chand at his departmental enquiry had not admitted that the money had been tendered to him. Though this is not really stated in the order, it is a natural inference from the language of that order, for the Collector came to the conclusion that the charge made against Mul Chand was untrue and he sent the papers back to the Cantonment Magistrate with the following remarks: 'If you agree with me, I think that you should recommend the prosecution of the decree-holder under Section 182 of the Indian Penal Code as reckless complaints of this kind are far too common, and I think that it is our duty to protect our subordinate officials from them.' On receipt of this the Cantonment Magistrate passed his order of the 31st of July 1918, which the applicant Ram Prasad now seeks to have revised in this Court. In that order the Cantonment Magistrate remarked as follows: 'In consequence I reported Mul Chand to the Collector, who has enquired into the case and finds that the complaint is a false one. I concur in the Collector's finding and I, therefore, sanction the prosecution of Ram Prasad under Section 182 of the Indian Penal Code under the provisions of Section 195 of the Code of Criminal Procedure.' These are the facts as they stand before me, I have not the slightest hesitation in saying that if sitting as a Criminal Court I had power to revise this order, I should at once set it aside in view of the Cantonment Magistrate's order of the 15th of July 1918, mentioned above, but it seems to me that I have no authority or jurisdiction whatsoever sitting on the criminal side to interfere with this order. It amounts to a complaint made by a Civil Court against a certain person for having given to that Court false information in regard to a certain matter. The order cannot be brought to this Court on the criminal side. At the utmost it could be brought up before this Court on the civil side and even in that aspect also it would be impossible to interfere under Section 115 of the Code of Civil Procedure. The

order I am afraid will stand, not because I would not set it aside, but because I am unable to do so. The application is rejected.

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