

**Sarsar Singh Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Mar-14-1934

**Reported in :** AIR1934All711

**Appellant :** Sarsar Singh

**Respondent :** Emperor

**Judgement :**

**Bajpai, J.**

1. Sarsar Singh was convicted by a Magistrate under Section 424, Penal Code, and directed to pay a fine of Rs. 40 or in default to suffer rigorous imprisonment for four months. The conviction and sentence was maintained in revision by the learned Sessions Judge. The facts are that in execution of a decree against Sarsar Singh the amin went to the spot and purported to attach the crops of Sarsar Singh and appointed a shahana. The crops were later on removed by Sarsar Singh and on a complaint made by the shahana the accused was prosecuted and sentenced as mentioned above. A pure question of law was raised before the learned Sessions Judge and is also raised before me. It is said that no copy of the warrant of attachment had been affixed by the amin at the threshing floor where the crops had been stored nor was any copy affixed to the house of the judgment-debtor and therefore the provisions of Order 21, Rule 44, Civil P.C., were not complied with. It is said that there was no valid attachment and the accused was

entitled to remove the crops. The learned Sessions Judge is of the opinion that because the judgment-debtor was present at the time and the so-called attachment had been made to his knowledge and proclaimed on the spot therefore the attachment was legal. I cannot subscribe to this view. If the provisions of the law were not complied with the attachment would be illegal and the property would not pass from the judgment-debtor to the Court. This was the view taken by Niamatullah, J., in the case of Ram Sakal Singh v. Emperor : AIR1931 All142 . Although the learned Judge was considering the case of the accused from the point of view of Section 378, Penal Code, but he has definitely held that attachment is affected only by affixing a warrant of attachment provided for by Order 21, Rule 44, Civil P.C.

2. The decision of the learned Sessions Judge that the attachment was legal is therefore not sound. It is then contended by the defence that the accused under these circumstances was perfectly entitled to remove his crops which had not been validly attached and the mere fact that he has removed the crops does not prove that he has done so dishonestly. On behalf of the Crown however it is urged that the intention of the accused may be presumed from the fact that he removed the crops after the action of the Amin even if that action was not according to the strict letter of the law. The words 'dishonestly' in Section 24 is used in a technical sense which is at variance with its popular significance as implying deviation from probity. Dishonesty in law is at times different from the dishonesty of the market place. Intention has got to be proved and it is conceded that there is no proof of a dishonest intention. It is how ever argued that a dishonest intention may be presumed regard being had to all the circumstances of the case. I am of the opinion that a dishonest intention may be presumed only if an unlawful act is done or if a lawful act is done by unlawful means.

3. In the present case the act of the accused in removing the crops when the attachment was illegal is not un lawful per se nor were any unlawful means employed in effecting the removal. I am therefore not prepared to presume a dishonest or fraudulent intent; nor is there any finding by the learned Sessions Judge to the effect that the crops were removed dishonestly as there was in the case of Subudhi Rautho v. Balarama Pudi (1903) 26 Mad. 481, relied on by the

Crown, The Rangoon High Court under very similar circumstances has held that the accused cannot be convicted under Section 424, Penal Code : see the case of Maya Gyok v. Emperor A.I.R. 1928 Rang. 285. The Madras High Court in the case of King Emperor v. Gopaldasamy (1902) 25 Mad. 729, came to the same conclusion. There is also a case of this Court which favours the defence: see the case of Gurdial v. Emperor : AIR1933 All46 . For the reasons given above I allow this application, set aside the conviction and the sentence and direct that the fine if paid be refunded.

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