

Moti Lal Vs. Emperor

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Court : Allahabad

Decided On : Dec-04-1935

Reported in : AIR1936All164; 153Ind.Cas.907

Appellant : Moti Lal

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. The applicant Moti Lal is the tenant of a zamindar called Basdeo. The latter distrained Moti Lal's crop and Moti Lal instituted a suit for illegal distraint. In that suit he valued the crop for purposes of court-fee at Rs. 40-3-8. The suit was contested but it was decreed and Basdeo's appeal was dismissed. The applicant eventually had a decree against Basdeo for Rs. 18-10-6 as costs. He put in an application for execution on 29th November 1934. In that he claimed not only the sum of Rs. 18-10-6 which was due to him under the decree but also a sum of Rs. 40-3.8 which was not due to him but was merely inserted in his plaint as the value of the crop distrained. The decree had been that the crop should be returned. Two warrants were issued for the arrest of Basdeo, but they were not served and no money was recovered. Then on 6th February 1935 the applicant apparently discovered that there was a mistake in his application, and he filed a further

application for amendment saying that the sum of Rs. 40-3-8 was not due to him and asking that his claim for that sum should be deleted. Basdeo made certain objections to the application for execution, and these eventually came before the District Magistrate in appeal and the District Magistrate ordered the prosecution of the applicant under Section 209, I. P. C., for fraudulently or dishonestly or with intent to injure or annoy any person making in a Court of justice a claim which he knew to be false. The defence was that this was a pure mistake due to inadvertence. The applicant was, however, convicted and sentenced to rigorous imprisonment for a period of six weeks and to a fine of Rs. 50. He appealed to the learned Sessions Judge, but his appeal was dismissed.

2. It seems to me that the learned Judge of the appellate Court did not pay sufficient attention to the question whether it had been established that the conduct of the applicant was fraudulent or dishonest or that he acted with intent to injure or annoy any person. The learned Sessions Judge seems to suggest that the mistake being obvious and the applicant having verified his application for execution it must be presumed that he was fraudulent or dishonest or acting with intent to injure or annoy. I do not think that this is a true proposition of law. The question of fraud or dishonesty or intent to injure or annoy must be decided like any other question of fact on the evidence. In the first place I find it very difficult to believe that the applicant would have wilfully made this mistake in his application. These applications for execution are compared by the office of the Court with the decrees or with some register in which the substance of the decrees is recorded, and normally no person making an application for execution could hope that an incorrect application would pass the scrutiny of the office. In the second place I cannot see what object the applicant could have had. The moment the judgment-debtor came to know of the application he would be able to point out to the Court that there was a mistake in it; and as that mistake was obvious on the face of the record, the present applicant could never have hoped in any way to substantiate the false claim which he was making. It might be said that he wished to annoy Basdeo by getting him arrested, but Basdeo never attempted to pay even the sum of Rs. 18-10-6 which was due from him and was obviously avoiding execution of the warrant, and I do not think that there is any force in this suggestion. There seems to be no ground whatsoever for thinking that Moti Lal was fraudulent or

dishonest or that he made a wilful mis-statement in his application. That being so his conviction was not justified. I allow this application for revision, set aside the conviction and sentence and direct that Moti Lal's bail bond be cancelled. If he has paid the fine or any part of it, the money shall be refunded to him.

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