

Bharosa Vs. Emperor

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Court : Allahabad

Decided On : Apr-17-1914

Reported in : AIR1914All194; 25Ind.Cas.351

Judge : Tudball, J.

Appellant : Bharosa

Respondent : Emperor

Judgement :

Tudball, J.

1. This is an application in revision in a case under Act XIII of 1859. The applicant was ordered by a Magistrate to refund the sum of Rs. 339-10-0 advanced to him and when he failed to pay, he directed him to be imprisoned for two months. This order was slightly modified by the Sessions Judge who reduced the sum from Rs. 339-10-0 to Rs. 239-10-0. The first contention on behalf of the applicant is that the case is one which does not fall within the purview of the Act. After an examination of the contract made between the parties and the evidence in the case I have no hesitation in holding that the applicant is a labourer within the meaning of the Act. It is not a case of a contract to supply bricks, but a case of a contract to do some work by one who is a workman earning his living by laying and burning bricks.

2. The next contention was that as the period of time within which he was to perform the contract had elapsed no order under the Act could be passed in regard to payment, and in this respect I am referred to *Khoda Bakhsh v. Moti Lal Jaihari* 11 C.W.N. 247 : 5 Cr.L.J. 66 and *Narsing Prasad Singh v. Emperor* 35 C. 1028 : 12 C.W.N. 869 : 8 C.L.J. 312 : 8 Cr.L.J. 134. The two Judges who decided the latter case differed on the point in question. Reading the language of the Act and giving to it its ordinary plain meaning, I fail to see why the fact that the period had elapsed should prevent a Magistrate from passing, an order for refund of the money advanced. The case reported as *Khoda Bakhsh v. Moti Lal Johori* 11 C.W.N. 247 : 5 Cr.L.J. 66 gives no reason whatever for the opinion expressed therein nor does the decision in *Narsing Prasad Singh v. Emperor* 35 C. 1028 : 12 C.W.N. 869 : 8 C.L.J. 312 : 8 Cr.L.J. 134. give any further reasons. There is nothing in the language of the Act which makes such an order impossible or incorrect. The application, therefore, fails and is dismissed. The applicant who is on bail will have to surrender unless he pays the amount.

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