

Muhammad Ismail Vs. Vahiduddin

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Court : Allahabad

Decided On : Dec-03-1925

Reported in : AIR1926All270

Appellant : Muhammad Ismail

Respondent : Vahiduddin

Judgement :

Mukerji, J.

1. This revision arises out of a suit for recovery of money brought on a promissory-note, dated the 10th of August 1923, admittedly executed by the respondent in favour of the plaintiff-applicant.
2. The Court below has found in effect that the plaintiff was prosecuting one Khatratullah for cheating, before cheating was made a compoundable offence. The plaintiff, on consideration of the respondent giving the promissory-note for the sum of Rs. 400, withdrew the complaint with the permission of the Court. On this finding the learned Judge held that the suit on the promissory note was not maintainable as it was against public policy to receive money or a promise to receive money in consideration of an agreement to stifle a criminal prosecution.
3. In this Court it has been urged that there is not only the promissory-note but also the additional facts that on three occasions the respondent admitted his

liability for the debt and on the third occasion also sent by money order a sum of Rs. 173 in part payment. The point for consideration is whether the subsequent acknowledgments of the liability and the part payment take the case out of the rule. Mr. Dar has argued that these acknowledgments and payment have materially affected the position of the applicant and that, therefore, he should succeed. He has, however, been unable to show that the applicant's civil remedy, if any, against Khairatullah has been lost owing to any conduct on the part of Wahiduddin, the respondent. The promissory-note is dated the 10th of August 1923, and it is quite possible that the civil remedy against Khairatullah is still open. There is nothing to show that Wahiduddin prevented the plaintiff from prosecuting his civil remedy against Khairatullah. Further, it appears that parties should be taken to have known the legal consequence of the transaction and if the plaintiff contented himself with giving up his claim against Khairatullah he must be taken to have known the fact that his claim on the promissory-note against Wahiduddin was not enforceable in a Court of law. In any view of the case the judgment of the Court below seems to have been right.

4. It appears that the suit involved two other items-small ones-and one of the pleas taken is that the Court below has not decided the plaintiff's claim as to those items. It has, however, been conceded before me to day that no evidence was adduced as to those two items.

5. The application fails and is hereby dismissed with costs.

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