

indar Singh Vs. Emperor

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Court : Allahabad

Decided On : Nov-30-1925

Reported in : AIR1926All302

Appellant : indar Singh

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a criminal revision from a conviction of the accused under Section 406 of the Indian Penal Code.

2. The facts are as follows: One Harbans was declared an insolvent and Lala Ram was appointed Receiver of his estate in January 1925. The Receiver attached certain heads of cattle belonging to the insolvent and made them over to the applicant after taking a sapurdnama from him. The Receiver first fixed the 13th February for sale and three days earlier he sent a notice to the applicant to produce the cattle at the place where the auction was to take place but the notice was returned unserved and no auction took place. On this the Receiver fixed another date for sale and sent a fresh notice to the applicant, but even on that date the cattle were not produced, nor did the applicant turn up. Subsequently the Receiver received a notice from the applicant to the effect that the cattle attached by the Receiver did not belong to the insolvent but belonged to his brother who

had filed an objection in the execution Court and that the Receiver had no right to attach them. The Receiver replied that the applicant was bound to produce the cattle and he had no right to stop their production even if the insolvent's brother had filed an objection. To this the applicant replied that the sapurdnama was not binding on him and that he in fact filed a complaint under Section 420 of the Indian Penal Code in respect of it. On such reply being received the Receiver with the permission of the Additional District Judge, filed a complaint out of which this revision has arisen.

3. The complaint filed by the accused under Section 420 was dismissed summarily and he has not had that order revised. At the trial of the present case the accused denied that any cattle of Harbans had in fact been attached or handed over to him and he even denied a proper execution of the sapurdnama. The Courts below, however, have found these questions of fact against the applicant. I must therefore, assume that the heads of cattle had actually been attached by the Receiver and made over to the applicant, who executed a sapurdnama in respect of them. The learned vakil for the applicant has argued, firstly that no offence under Section 406 was committed as there has been no misappropriation and secondly that in view of a clause in the sapurdnama for the payment of the price of the cattle there was no criminal misappropriation. The applicant has not put the cattle to his own use nor has he disposed of them dishonestly. What has happened is that he is holding them still as trustee, but he is denying that he is holding them on behalf of the Receiver from whom he had taken them. He now asserts that the cattle belong to another person on whose behalf he holds them. Misappropriation has not been expressly defined in the Indian Penal Code. The illustrations to Section 403 all relate to cases where a person appropriates the article to his own use, but the illustrations cannot be taken to limit or narrow the scope of Section 403 itself. It seems to me that if a person sets apart an article for the use of another person, of which article he is a trustee of the complainant, he misappropriates it even though he has not put it to his own use. Section 403 is in no way restricted to appropriating property to one's own use. If a trustee repudiates the trust and asserts that he now holds the property on behalf of a person other than the one who entrusted him with it, he has misappropriated the property just as much as he would have been said to misappropriate it if he had

been putting forward his own claim to it. The applicant got possession of the cattle from the Receiver and undertook to return them to the Receiver. When subsequently he repudiated the right of the Receiver to attach the cattle, and asserted that they really belonged to the insolvent's brother, and that he would not hand them over to the Receiver, he must be deemed to have committed a misappropriation.

4. As regards the second point the relevant portion of the sapurdnama is as follows:

Whenever the Court or the Receiver demands the production of the attached property I shall deliver the same without objection. If for any reason I fail to deliver them then I shall pay the price, Rs. 950.

5. The argument of the learned vakil for the applicant is that when it was clearly stipulated that in case of failure to deliver the cattle the applicant would be liable to pay their price amounting to Rs. 950, his default cannot amount to a criminal misappropriation, and that at best his liability was only a civil liability. But the mere fact that there is a civil liability does not necessarily absolve one from criminal liability. When a Receiver attaches property and entrusts it to some person in the village he does not purport to sell it to him or dispose of it at that time. The Receiver may not even be in a position to know its true value. The intention of the parties is that the articles should be returned in specie or produced at the time when the auction sale is to take place. The covenant that the accused would be liable to pay a certain amount is more by way of security than because the property is transferred to him with liberty to dispose of it or withhold it. In such cases it is the true intention of the parties which must be taken into account. There can be no doubt that in this case it could never have been the intention of the Receiver that the property attached should not be actually produced when the auction is to take place. If such property is not produced the insolvent as well as the creditors may suffer; for it cannot be known beforehand what actual price would be fetched at the sale. I would dismiss the application.

6. The conduct of the accused has been both obstinate and stupid. Had he returned the heads of cattle when his prosecution began it would have been

possible to take a lenient view so far as the sentence is concerned as the accused is a very old man. The learned vakil for the applicant has stated before me that his client expressed his readiness to deliver the heads of cattle, etc., and that even now he is prepared to hand over the same. If the heads of cattle and other articles were delivered to the Receiver I would be prepared to interfere with the sentence. I accordingly allow this case to stand over for a fortnight. If by that time the cattle, etc., have been, delivered to the Receiver, and a duly sworn affidavit is filed before me stating that the delivery has been made, I would reduce the sentence. Put up for orders after two weeks.

7. The affidavit of Nain Singh, son of Indra Singh, shows that the accused has returned to the Receiver all the articles which were entrusted to him except two bullocks which have died and that he has paid to the Receiver Rs. 130 as their price, and that in addition he has paid Rs. 300 on account of the expenses and costs incurred in prosecuting the criminal case. In view of these circumstances as indicated in my previous order I uphold the conviction but reduce the sentence to the period already served. The bail bond is cancelled and he need not surrender.

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