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Court : Allahabad

Decided On : Aug-16-1920

Reported in : AIR1920All306; 59Ind.Cas.411

Judge : Gokul Prasad, J.

Appellant : Molai and ors.

Respondent : Emperor

Judgement :

Gokul Prasad, J.

1. This is an application in revision against an order of the Sessions Judge of Allahabad, confirming an order of Mr. Radha Mohan, Magistrate First Class of Mirzapur, which has arisen under the following circumstances: Takawi loan was advanced to a certain number of persons on their joint and several responsibilities. Except two, all the debtors repaid the advances made to them. So far as these two debtors were concerned, the Tahsildar made a report that efforts had been made to realise the loans but with no result. He solicited orders for the attachment of the property and obtained the necessary orders from the Magistrate of the district. He directed the qurkamin to make the attachment and the property was attached and put by the amin in charge of a shahna. The attachment having produced no effect, the amin was directed by the Tahsildar to sell the property and, when he arrived at the spot, it was reported by the shahna that the property (crops) was taken away

by the owners, that is, the accused. The defence taken was that wild boars had destroyed the crops, but the first Court came to the conclusion that the accused committed the offence of theft inasmuch as they removed the property which was in possession of the shahna and that the story of the property (crops) having been destroyed by wild pigs was a myth. The applicants in revision went up in appeal to the Additional Sessions Judge and it was argued before him that, inasmuch as there was no valid attachment, there was no theft. The learned Additional Sessions Judge, in the course of his judgment, says that 'when the qurkamin took standing crops into his custody and placed it in the custody of shahna that amounts to attachment. Besides, all the accused admit that the property was attached,' and he maintained the conviction. I am surprised to see this new proposition of law laid down by the learned Additional Sessions Judge of Mirzapur. The rules regulating recovery of takawi loans are embodied in Section 5 of Act XII of 1884, and lay down that the same procedure has to be observed as in the case of arrears of Government revenue. Section 149 of the Land Revenue Act No. III of 1901 lays down that 'every attachment and sale ordered under this Section shall be made according to the law in force for the time being for the attachment and sale of moveable property under the decree of a Civil Court.' So far as the Civil Courts are concerned, there can be no legal attachment unless the attaching officer has in his possession a warrant of attachment issued by a competent authority. In the present case it is admitted that there was no warrant at all; therefore, the attachment if it could be called so, under cover of the order of the Tahsildar was no attachment in law. The mere fact that the accused thought that there had been an attachment does not make the attachment a valid one. The remarks of the learned Additional Sessions Judge are incomprehensible. There having been no valid attachment effective in law, there was no transfer of legal possession and the property continued to be, in the eyes of the law, in the possession of the accused. Therefore, the accused could not be said to have committed theft. I am supported in this view of the validity or otherwise of the attachment by the case of Emperor v. Ganesh Lal 27 A. 258 : A.W.N. (1804) 229 : 1 Cr. L.J. 896 : 1 A.L.J. 595. I am in full accord with the reasons given by Aikman, J., in that case. I am informed that the takawi due has been paid since but that, of course, does not influence my decision stated above. I, therefore, quash the

conviction, set aside the sentence and direct it at their bail bonds be discharged.

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