

**Narain Das Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Mar-29-1927

**Reported in :** 102Ind.Cas.485

**Judge :** Iqbal Ahmad, J.

**Appellant :** Narain Das

**Respondent :** Emperor

**Judgement :**

**Iqbal Ahmad, J.**

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note for Rs. 1,500 vis., the difference between the real and the bogus price before the execution of the sale-deed and accordingly Nathu Mal passed a pro-note duly signed by him for the said amount in favour of Narain Das, but ante-dated the same to the 25th of January, 1925. A draft of the sale-deed was also prepared. It is alleged that Narain Das then went to consult his local lawyer Babu Duli Chand, and took with him the pro-note, the stamp paper and the draft of the sale-deed. When Narain Das did not return Nathu Mal went in his search and was informed that Narain Das had left for his village, Nathu Mal followed Narain Das and found him in the village, and asked him either to have the sale-deed executed or to return the pro-note. It is said that Narain Das put off the matter and did not get the

sale-deed executed nor returned the pro-note. Then Nathu Mal reported the matter to the District Magistrate, but the District Magistrate took no action and directed Nathu Mal either to file a civil suit or to make a formal complaint in a Criminal Court. Nathu Mal then went to Ghaziabad and filed a civil suit in the Court of the Munsif on the 5th or 6th of February, 1925 for a declaration that the pro-note dated the 25th of January, 1925 was without consideration.

3. Narain Das contested the suit on the ground that he had money dealings with Nathu Mal for a long time, and that the pro note was for a consideration, and that there was no contract for sale as alleged by Nathu Mal, and that he being a co-sharer in the village could not be afraid of pre-emption, and, therefore, there was no occasion to get an inflated price entered in the sale deed. He stated that about 1-| years prior to the institution of the civil suit one of his servants had filed a complaint against one Dwarka Das son-in-law of Nathu Mal, and Dwarka Das was convicted in that case by the trial Court but the case was compromised in the Appellate Court, and Narain Das' case was that Dwarka Das thought that Narain Das was really at the bottom of that case, and it was he (Dwarka Das) who persuaded Nathu Mal, to concoct the story that the pro note was without consideration. The civil suit was tried by Mr. Kidar Nath Munsif. He disbelieved the statements of Narain Das and of Chuttan Lal and of Nand Kishore who stated that the pronote was for consideration, and overruled the pleas urged in defence, and passed a decree in favour of Nathu Mal in terms of the reliefs prayed for in the plaint, on the 2nd of June, 1925. Narain Das filed an appeal against the decree in the Court of the District Judge. During the pendency of the appeal the parties agreed to refer the dispute between them to the arbitration of one Bakhtawar Singh. The arbitrator gave an award in favour of Nathu Mal on the 26th of February, 1926. Narain Das filed objections to the award on the 9th of March, 1926, but those objections were dismissed for default on the 27th of March, 1926. On the 22nd of April, 1926, Narain Das applied for setting aside the order of dismissal for default, and during the pendency of this application the parties agreed to abide by the oath of one Umrao Singh. On the 7th of June, 1926, Umrao Singh made a statement on oath to the effect that the pro-note was not for consideration. Because of the statement of Umrao Singh the application for restoration was dismissed on the 7th of June, 1926.

4. On the 17th of June, 1926, Nathu Mal filed applications in the Court of the Munsif of Ghaziabad under Section 476, Criminal Procedure Code praying that the Munsif should make complaints against Narain Das, Chuttan Lal and Nand Kishore applicants under Section 193 of the Indian Penal Code. These applications were heard by Mr. Daya Nand Joshi who had succeeded Mr. Kidar Nath Munsif. He granted the application against Narain Das but rejected the applications against the other two applicants noted above. Both Nathu Mal and Narain Das filed appeals in the Court of the District Judge. Narain Das appeal was heard by the District Judge and was dismissed. Nathu Mal's appeal was transferred to the Court of the Additional Judge which was presided over by Mr. Shimbhu Nath Dube. Mr. Shimbhu Nath Dube allowed the appeal of Nathu Mal and directed the institution of complaints against Chuttan Lal and Nand Kishore for an offence punishable under Section 193 of the Indian Penal Code.

5. All the three applicants as already stated have been found guilty and have been convicted.

6. In revision before me certain facts were relied upon by the learned Counsel for the applicants with a view to show that the story of Nathu Mal was improbable and should not have been believed. As there was ample material upon the record to justify the findings of fact arrived at by the learned Sessions Judge, I cannot go into the evidence, and interfere with those findings, and I must accept the same as binding on me.

7. But it is argued that inasmuch as the Appellate Court had decided the case in accordance with the statement of a referee, the learned Munsif had no jurisdiction to proceed under Section 476, Criminal Procedure Code. It is pointed out that the fact of the parties agreeing to abide by the oath of a referee precluded a judicial consideration by the Appellate Court of the evidence in the civil suit, and the statement of the referee was in view of the provisions of Section 11 of Oaths Act (X of 1873) to be treated as conclusive. In short it is argued that the judgment of the learned Munsif should be deemed to have been discharged, and the suit having terminated by the statement of a referee, the Courts below had no jurisdiction to make a complaint for an offence punishable under Section 193 of

the Indian Penal Code. I am unable to agree with this contention. The offence of perjury was committed in a proceeding in the Court of the Munsif of Ghaziabad and as such that Court was fully competent to proceed under Section 476 of the Criminal Procedure Code. If it appears to a Court that any of the offences enumerated in Section 198 (1)(6) and (c) have been committed 'in or in relation to a proceeding in that Court,' it has jurisdiction to proceed under Section 476, Criminal Procedure Code. The mere fact, that in the Appellate Court the parties agreed to compromise the matter, or to get it decided by a reference to arbitration, or in accordance with the statement of a referee, cannot take away the jurisdiction vested in the trial Court to make a complaint under Section 476, Criminal Procedure Code provided that Court is satisfied that 'it is expedient in the interests of justice that such a complaint should be made.' At the same time there is much to be said in favour of the contention advanced on behalf of the applicants that in the circumstances of this case either a complaint should not have been made against the applicants or if made, Nathu Mal should also have been prosecuted. Nathu Mal on his own showing was, by antedating a fictitious pro-note with the intention of causing logs to a possible pre-emptor, guilty of having committed forgery. In short, both Nathu Mal and Narain. Das had conspired to bring into existence a false document for the purpose of defeating the just rights of any co-sharer who was inclined to assert his right of pre-emption, and if the sale-deed had been executed and a pre-emption suit had been filed one would not have been surprised to find Nathu Mal testifying to the fact that the pro-note was supported by consideration. Moreover the dispute between the parties having terminated by the statement of a referee appointed by them, I cannot hold that Nathu Mal could have asked for the prosecution of the applicants in the interests of purity of administration of justice. Further in this connection I cannot overlook the fact that the learned Munsif who tried the suit did not initiate proceedings under Section 476, Criminal Procedure Code. However, the applicants have been prosecuted and convicted and it is sufficient to say that the question of propriety of the prosecution of the applicants has been urged at a very late stage of the case. It ought to have been taken up at the time when the order for the prosecution of the applicants was passed. Once that order was passed the Magistrate had jurisdiction to try the case. But I will take the matters referred to above into

consideration in awarding the sentences passed on the applicants.

8. As already stated above the learned Munsif rejected the application of Nathu Mal and declined to make a complaint against Chuttan Lal and Nand Kishore, but on appeal the learned Additional Judge made complaints against them under Section 193 of the Indian Penal Code. It is argued on behalf of Chuttan Lal and Nand Kishore that the learned Additional Judge had no jurisdiction to make a complaint and in this connection my attention has been drawn to Sub-clause (6) of Clause (1) of Section 195 and to sub Clause (3) of Section 195 and to Section 476(b) of the Code of Criminal Procedure. It is pointed out that a complaint for an offence punishable under any of the sections of the Indian Penal Code, enumerated in Section 195(1)(6) Criminal Procedure Code, could be made either by the Munsif of Ghaziabad or by the Court to which that Court was subordinate within the meaning of Clause (3) of Section 195, Criminal Procedure Code vis., the Court 'to which appeals ordinarily lie from the appealable decrees or sentences of the Court of the Munsif. It is urged that in view of the provisions of Section 21(1) of Bengal N.W.P. and Assam Civil Courts Act (XII of 1887) appeals against the decrees of Munsifs ordinarily lie to the Court of the District Judge, and as such no other Court except the Court of the District Judge had jurisdiction to make a complaint against Chuttan Lal and Nand Kishore. In support of this argument reliance has been placed on the cases of Ram Charan Chandra v. Tirupulla Sheikh, 13 Ind. Cas. 1007 : 39 C. 774 : 16 C.W.N. 645 : 13 Cr. L.J. 191, Hari Mandal v. Keshab Chandra Manna 14 Ind. Cas. 760 : 40 C. 37 : 16 C.W.N. 903 : 13 Cr. L.J. 296 : 16 C.L.J. 515 and Rajdhari Lal v. Rameshar Lal an unreported Since reported as 101 Ind. Cas. 247-[Ed.] decision in Civil Revision No. 161 of 1926 decided by this Court on the 11th of January, 1927. I am unable to agree with the contention of the learned Counsel for the applicants. It is true that under Section 476, Criminal Procedure Code, the order of the learned Munsif refusing to make a complaint could be challenged only in the Court to which an appeal ordinarily lies from the appealable decrees of the Munsif, i.e., in the Court of the District Judge. But it is to be remembered that in, view of the decision in Banwari Lal v. Jhunka : AIR1926 All229 Cr. the proceedings taken by a Civil Court under Section 476, Criminal Procedure Code, are to be deemed as proceedings of a civil nature and are, therefore, governed by the rules relating to civil cases. By Section

8 of the Civil Courts Act (XII of 1887) an Additional Judge is competent to discharge -any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions the Additional Judge is competent to exercise the same powers as the District Judge. If the District Judge was competent to make a complaint against Chuttan Lal and Nand Kishore, the Additional Judge, to whom the District Judge transferred the appeals filed by Nathu Mal, was equally competent to make a complaint. For these reasons I am unable, with all respect, to agree with the view taken in the cases relied on by the learned Counsel for the appellant. The view I take is in consonance with the view taken in the cases of Mutsaddi Lal v. Mule- Mal 13 Ind. Cas. 384 : 9 A.L.J. 95 : 34 A. 205 and Ram Charan v. Mewa Ram 61 Ind. Cas. 513 : 43 A. 409 : 19 A.L.J. 192 : 3 U.P.L.R. (A.) 39 : 22 Cr. L.J. 385. I hold that the learned Additional Judge had jurisdiction to make complaints against Chuttan Lal and Nand Kishore. In considering the question of sentences passed on the applicants I cannot overlook the fact that, for the reasons already assigned, I would have been reluctant to lend (he weight of judicial authority to complaints against the applicants on the application of Nathu Mal, and as such I have come to the conclusion that I must not send the applicants back to Jail. At the same time taking the nature of the offence committed by the applicants and particularly by Narain Das, I must enhance the amount of fines imposed on them.

9. Accordingly I reduce the sentence of imprisonment passed on all the applicants to the term already undergone by them but enhance the fines imposed on Narain Das from Rs. 200 to Rs. 500 and on Chuttan Lal and Nand Kishore from Rs. 100 to Rs. 125. In default of payment of fine Narain Das will undergo rigorous imprisonment for a period of six months and Chuttan Lal and Nand Kishore will undergo rigorous imprisonment for three months. If the applicants pay the fines imposed on them they need not surrender to their bail which will stand cancelled the moment the fines are paid. With this modification in the sentences passed on the three applicants I reject the three applications.