

Naini Mal Vs. Emperor

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Court : Allahabad

Decided On : Jun-15-1923

Reported in : AIR1924All189; 74Ind.Cas.708

Judge : Walsh, J.

Appellant : Naini Mal

Respondent : Emperor

Judgement :

Walsh, J.

1. This appears to be an outrageous proceeding lacking either in legal justification or common sense, so far as I can understand, From the somewhat scanty materials before me, it appears that four men were charged a long time ago with stealing 59 bags of mustard seed from the grain market. The thieves appear to have dealt with the seed by selling 113 maunds of it to the firm of the present petitioner. This transaction by the present petitioner's firm took place at a considerable distance, i.e., 30 or 40 miles from the scene of the crime. No charge has been made against them for receiving nor could any such charge be reasonably made. They allege that they gave every facility to the prosecution to trace the accused, showing the dealings which the thieves had had in the commodity and produced their books to show that they themselves as purchasers had dealt with the grain in the ordinary course of business. Under such

circumstances as these, a Criminal Court ought to hesitate a long time before making an order for restitution even if the goods were still in esse. Where a question of bona fides and of title by purchase, or otherwise, clearly arises, the duty of the Criminal Court is to leave the complainant to his remedy in the Civil Court if he thinks he has one. But so far as I can gather from Section 517 the jurisdiction of the Criminal Court is confined to an order at the conclusion of the trial for the disposal of the property which has been stolen and which is before it in the criminal proceeding. It need not be in the possession of the Court but it must be still capable of being earmarked, and such an order can only be made at the conclusion of the trial and in the presence of the purchaser of the commodity who has a right to be heard. According to the allegation made before me, which derives corroboration from what the Sessions Judge has said in his judgment dealing with an application which was subsequently made him, it appears that what has happened is this. After one trial of three of the thieves had taken place in the year 1921, and after a second trial of the fourth thief had taken place in midsummer 1922, on the 17th of February 1923 a First Class Magistrate issued an order attaching other property of the applicants as security, or by way of satisfaction, for an assumed liability of the value of the grain which they had purchased two years before in the ordinary course of their business, and it is alleged before me that moveable property of the applicants is now under attachment. Put, shortly, the action of the Magistrate may be summarised in this way that, it is equivalent, not merely to hearing and adjudicating, but also to issuing execution upon a judgment in a suit for damages in favour of some body or another, who is not before him, against somebody else who had no notice of the proceeding. Such a proceeding has no relation as far as I can see to anything known to the law either in the Criminal or Civil Code. If it is possible to give it legal terminology; it would appear that the order of attachment is equivalent to an order of an Execution Court executing a decree for Rs. 855-8-3 as damages for a cause of action which I am unable to specify against a person who has never been sued and who was not even before the Court. If it be the fact that the order was made six months after the last trial this is sufficient to condemn it, but apart from that the proceeding seems to be absolutely unintelligible and to have no reasonable basis. I am quite unable to understand what the Magistrate thought he was doing. The Sessions Judge

himself was obviously in a difficulty in applying any legal phraseology to the proceeding, and he resorted to the convenient colloquialism in saying that the original owners of the mustard seed 'wanted their mustard back.' I have no doubt they did, but most people whose property is stolen want it back or its price. That does not give a cause of action, and certainly does not give jurisdiction under this section. I have taken the unusual course of dealing with the matter summarily because the petition which ought to have been supported by an affidavit, appears to state facts which are uncontradicted, and which are corroborated by the Sessions Judge's judgment. I am not surprised that the Sessions Judge felt himself incompetent to deal with the proceeding and got out of the difficulty by denying himself jurisdiction to interfere with an order, which had no jurisdiction in its inception. I am willing to listen to any representation which the District Magistrate chooses to make to me or the Magistrate who made this order, if they find it worth while to pursue this matter any further. No harm can be done by quashing the whole proceeding forthwith,, because if this application is based upon any misrepresentation of fact, I can set aside this order and revive the attachment, and if the Magistrate is right in thinking that he can make this order at any time after the trial, there is no reason why, after giving notice to the applicants, he should not try and make another,, though I do not suggest that he, should, do so. A copy of this order must be sent to the District Magistrate of Agra with a direction that no further proceedings of any kind in relation to this, attachment be permitted, and I direct that such property as has been attached be released, from attachment. A further, copy must be sent to the District Magistrate of Mainpuri and I suggest to him that he should call upon the First Class Magistrate who made this order to explain himself. If either of these gentlemen wish to submit any explanation to this Court, it may be sent to me and I will deal with it in due course, but I do not require this to be done because I think the whole proceeding was illegal and the less. I hear of it the better.