

Mithan Lal Vs. State

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Court : Delhi

Decided On : Apr-22-2002

Reported in : 2002VAD(Delhi)55; 2002CriLJ3422; 97(2002)DLT1004; 2002(63)DRJ529

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 345, 346, 349, 351, 397, 161 and 401; Delhi Lands (Restrictions on Transfer) Act, 1972 - Sections 3 and 9; Evidence Act - Sections 65

Appeal No. : Crl. R. No. 46/97

Appellant : Mithan Lal

Respondent : State

Advocate for Def. : Sunil Sharma, Adv.

Advocate for Pet/Ap. : B.K. Sharma, Adv

Disposition : Petition allowed

Judgement :

ORDER

By this order, I shall decide as to whether PW Mithanlal is guilty under Section 349 Cr.P.C. or not.

The respondent Mithanlal was cited as witness and he was holding the original documents, i.e., Gift deed of that plot in question. Being prosecution witness he was summoned for 30/4/94 but he failed to appear on that day. Consequently, he was summoned through bailable warrants for 06/8/94, he appeared on that day but could not be examined as he failed to produce the original documents. Thereafter, he was given several opp. to produce the original document but he failed to do so.

Consequently a show cause notice under Section 349 Cr.P.C. (Hereinafter called notice) was served upon him on 22/x/94. He was directed to file his reply but he failed despite giving several opportunities till date and till he was not conveyed the intention to produce the same.

Since the respondent has failed to discharge his duty by not producing the document in question and has failed to satisfy the Court, I am of the opinion that the respondent has nothing to say.

I therefore hold the respondent PW Mithanlal guilty for an offence punishable under Section 349 Cr.P.C. Announced Sd/-in the open court today. 3/4/95'

6. Ultimately vide orders dated 28th September, 1995 the petitioner was sentenced to seven days SI. He filed an appeal under Section 351 Cr.P.C. which was dismissed by the Court of Shri R.K. Yadav, Addl. Sessions Judge vide impugned judgment and order dated 14th January, 1997. This order is under challenge.

7. I have heard learned counsel for the petitioner and learned APP for the State and have been taken through the record. Learned counsel for the petitioner vehemently argued that the impugned order holding the petitioner guilty for the offence under Section 349 Cr.P.C. and sentencing him as aforesaid is at all not sustainable as the basic ingredients of the offence are not fulfilled; that there was no willful refusal on the part of the petitioner to produce the document and that the document was not in his power or possession. The document was taken away by the police. Learned APP for State argued to the contrary. In order to appreciate the respective contentions, it would be necessary to refer to Section 349 Cr.P.C.

which reads as under:-

349. Imprisonment or committal of person refusing to answer or produce document.--If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such question as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal such Court, may for reason to be recorded in writing, sentence him to simple imprisonment or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal he may be dealt with according to the provisions of Section 345 or Section 346.'

8. Section 349 Cr.P.C. empowers the Courts (after recording the reasons in writing) to sentence any person, who refuses to produce a document or a thing before the court or refuses to answer the questions put to him. Before Section 349 Cr.P.C. can be pressed into service, the court must be satisfied that: (a) the witness is called to produce a document or thing before a Criminal Court; (b) the witness refuses to produce the document or thing in his possession or power which the Court requires him to produce; and (c) despite reasonable opportunity, the witness fails to offer any reasonable excuse for such refusal. Only after these conditions are satisfied, the court, after recording reasons, may sentence a witness for a term not exceeding seven days simple imprisonment, unless in the meantime, the witness produces the document or thing. And in the event of his persisting in his refusal, the Court is empowered to initiate action for contempt against such person, as per the procedure laid down in Section 345 Cr.P.C. Thus, Section 349 pre-supposes that the document is in power and possession of the witness, who is required to produce the same. In the absence of a material on record that the witness is in possession of the document and that he has deliberately not producing the same, action under Section 349 Cr.P.C. cannot be initiated. This being a penal provision has to be given a strict interpretation.

9. In this case, to re-call the facts, accused Shankar Prasad filed a suit for permanent injunction against DDA, MCD, Khushal Singh, Pradhan (complainant) and some other private persons praying for an injunction against them and praying that the plaintiffs should be dispossessed from the said piece of land without due process of law. On receipt of summons, Khushal Singh lodged a report with the higher officials of police for registration of the FIR against Shankar Prasad. Inquiry was conducted and it was found that Deep Chand Tyagi, owner of the land had sold 600 sq. yards of land to Shankar Prasad and out of the same, 200 sq. yards of land was transferred by him to the society through its Secretary, Mithan Lal (petitioner) on 14th October, 1981 and on 10th October, 1983, the agreement was collected by the police. The report dated 23rd April, 1983 submitted by the Investigating Officer to the Deputy Commissioner of Police shows that the document was collected by him. It reads:-

'Sir,

The agreement regarding 200 sq. yards of land of Khasra No. 183 (min) of Village Shakarpur made by Dr. S.P. Aggarwal in favor of Sh. Mithanlal is attached herewith.

Submitted please.

SI K.R. Sharma'

10. In the seizure memo, it is stated that the photocopy of the agreement has been collected. No photocopy of the agreement is on record. Only a carbon copy duly signed by Shankar Prasad, Mithan Lal and the other witnesses is on record. Statement of Mithan Lal was recorded under Section 161 Cr.P.C. in that statement, Mithan Lal did not state that the document was in his possession and that he would produce the same. It is for the prosecution to establish that the document is in possession of the witness before any action would be initiated against him. In the absence of any such material, it could neither be concluded that the witness was in possession of the document nor that he had deliberately refused to produce the same. thereforee, the impugned judgment and order sentencing the petitioner to SI for seven days SI, is not sustainable.

11. Learned APP for State lastly argued that in the absence of the original document, the prosecution case against Shankar Prasad may fail. The argument also appears to be without any merit. As noticed above, carbon copy of the document duly signed by Shankar Prasad, Mithan Lal and other witnesses is already on record. This document can always be proved on the basis of secondary evidence under Section 65 of Evidence Act. But whether by such a document, transfer of land could be made, so as to constitute an offence, as defined in Section 3 of the DL(RT) Act, cannot be determined at this stage.

12. For the foregoing reasons, petition is allowed, impugned orders dated 3rd April, 1995 holding the petitioner guilty for the offence under Section 349 Cr.P.C. is set aside. Petitioner is discharged. Any observations made herein shall not affect the merits of the case. Trial court record be sent back.

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