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Mt. Goran Devi Vs. Tuljaram

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Court : Rajasthan

Decided On : Aug-31-1949

Reported in : 1950CriLJ762

Judge : Atma Charan, J.C.

Appellant : Mt. Goran Devi

Respondent : Tuljaram

Judgement :
ORDER

Atma Charan, J.C.

1. The opposite party filed a complaint against the applicant in respect of offences punishable Under Section 417 and 424, Penal code. His case was that the husband of the applicant had borrowed a sum of RSection 1823 9.6, that the husband was dead and that he intended to file a civil suit foe recovery of the sum and put in an application for attachment of the gold that the husband of the applicant had left in deposit with the Hind Bank. The applicant gave him to understand that be need not worry as she intended to hand over the gold after she recovered it from the Bank. He accordingly did not file the intended suit. The applicant subsequently recovered the gold but did not pay him the amount due from her and concealed the gold. The case, as such, of the opposite party was that the applicant committed an offence punishable Under Section 417, Penal

Code, in thus putting him off from filing the civil suit and committed an officer punishable Under Section 424, Penal Code, in thus concealing the gold. The Magistrate after recording the statement of the opposite party Under Section 200, Criminal P.C., allowed the case to proceed on. The applicant has come up in revision from this order of the Magistrate on the ground that the matter in dispute between the parties was only of a civil nature and should not have been allowed to be agitated before him by the Magistrate.

2. The opposite party in his statement says as below:

I paid a sum of RSection 1523-9-6 to Seth Dwarka Dass, who died on 4th August 1948. Immediately on his death, I told the accused that she may either pay the money or I would u suit and get their gold deposited in the Hind Bank attached by the Court. The accused asked me to wait so that she may recover the gold from the Bank and pay me the dues from that gold. Now she bas recovered the gold, but he refuses to pay the money. Had she not given this false representation to me, I would have filed the civil till it and recovered the amount. She has also concealed the books of the accounts of her husband.

Even if it be assumed that what the opposite party say in his statement is correct, no offence whatsoever appears to be made out against the applicant. On the own showing of the opposite party the dispute between him and the applicant appears to be altogether of a civil nature, if at all. There could be no that the complaint against the applicant has only been filed with a View to putting pressure on her and with a view to having a cheaper remedy by avoiding the civil court, The opposite party obviously had no lien over the gold said to be in deposit with the Hind Bank. The complainant was altogether free to have dealt with it anyway she liked,

3. The counsel for the applicant has drawn my attention to the rulings as reported in Ran Bharosey v. Emperor A.I.R. (33) 1936 oudh 872 : 37 Cr.L.J. 907 and Ba Yone Mating v. Ma Bla Kin A.I.R. (20) 1933 Bang 297 : 85 Cr.L.J. 52, wherein it has been laid down as below:

A certain sum of money was paid by the grandson) of the judgment-debtor to the decree-holder under a promise of the decree bolder that no further liability under the decree passed against the judgment-debtor would attach to them. There was no evidence on the record to show that at the time when the decree-holder received the sum, he had any dishonest intention to the at them subsequently the decree-holder made an application for execution and claimed relief against the grandsons:

Held that it could not be said in terms of Section 420, that the decree-holder cheated the grandsons and thereby induced them to deliver the sum. At the most It was a breach of contract but the breach of contract gives rise to purely civil action and did not amount to the criminal offence of cheating under 3. 420.No doubt a Court of revision should be most reluctant to interfere in a pending case, but where upon the alleged facts, there is no justification for the charts against the accused, be should not for a moment longer than is necessary be allowed to remain in the position of a person accused of as offence and forced to defend himself against a charge which there is no legal evidence to establish.

4. There in thus no reason as to why the proceedings going on in the court below be not quashed in entirety and the applicant directed to be discharged.

5. The application in revision accordingly is allowed, the proceedings going on in the Court below are quashed in entirety and the applicant is discharged.

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