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In Re: Mania Goundan

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Court : Chennai

Decided On : Oct-10-1911

Reported in : (1914)ILR37Mad47

Judge : Spencer, J.

Appellant : In Re: Mania Goundan

Judgement :
ORDER

Spencer, J.

1. The petitioner has been convicted of an offence under Section 423, Indian Penal Code. This little used section of the Penal Code makes punishable the act of a person who dishonestly or fraudulently executes an instrument which purports to transfer any property and which contains any false statement relating to the consideration for such transfer, or relating to the person or persons for whose use or benefit it is really intended to operate. What the accused did in the present case is stated in the Sub-Magistrate's judgment. Knowing that the prosecution second witness was in undisturbed enjoyment of half the portion of the land in question, that the prosecution second witness had sold that portion to the prosecution first witness for Rs. 75, and that the prosecution first witness was in the enjoyment of that portion, the accused in order to cause loss to the prosecution first witness and gain to himself sold the whole land for Rs. 120 only, while the half of it was sold for

Rs.

75. The Magistrate also finds the statement in the document that the whole land at the time of the execution of it was in the accused's enjoyment and possession to be false. It is clear that the law does not make punishable every false statement contained in an instrument of transfer. It must be a statement relating to the consideration or to the person to be benefited thereby. In this case it is the first prosecution witness, not the purchaser who complained. The first-class Magistrate who heard the appeal found three false statements contained in Exhibit C, viz.,

(1) an assertion that the whole plot belonged to the appellant,

(2) the mention of the sale price as Rs. 120 whereas a moiety had been sold for Rs. 75 and

(3) a' statement that the vendee purchased the whole land whereas the vendor was only legally entitled to sell a moiety. The last of these is obviously not a statement of the character made punishable under the section. It is not, as the Magistrate suggests, a false statement as to the person for whose benefit the sale is to operate, for the identity of the vendor or vendee is not disguised, The Public Prosecutor is unable to support the conviction on the second head and the attempt has been rightly abandoned, for the fallacy lies in confusing consideration with value. It is hardly necessary to point out that the different portions of the same field may differ in value. The first statement does not relate to the consideration for the transfer. The Public Prosecutor argues that the property itself is the consideration from one point of view, but this is not the ordinary meaning of the term, nor is it the meaning of the term where it is employed in Emperor v. Mahabir Singh I.L.R. (1903) All. 31 which is the only reported case on this section of the Code so far as I am aware. The property is the subject of the sale, the price is the consideration. I consider that no offence has been made out under Section 423 by the facts of this case as found. The conviction is therefore set aside and the fine, if paid, must be refunded. It may be pointed out that the alteration sentence ordered by the first-class Magistrate was illegal as it amounted to an enhancement under the ruling in Queen Empress v. Ishri I.L.R. (1897) All. 67

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