

In Re: Ganeshmal Sait and ors.

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SooperKanoon Citation : sooperkanoon.com/809422

Court : Chennai

Decided On : Feb-18-1948

Reported in : AIR1948Mad513; 1949CriLJ33; (1948)1MLJ412

Appellant : In Re: Ganeshmal Sait and ors.

Judgement :

ORDER

Govinda Menon, J.

1. On the findings of the learned Sessions Judge it seems to me that no offence under Section 384, I.P.C., has been committed. The learned Sessions Judge in paragraph (3) of his judgment gives the following finding:

The first accused and the other members were apparently convinced that P.W. 1 had received the bag containing the money from the third accused, and had misappropriated it for his own purposes. They would not therefore listen to the denial made by P.W. 1.

Accepting this finding, the question is whether the offence of extortion as defined in Section 383, I.P.C., can be said to have been made out. The chief element in the offence of extortion is intentionally putting a person in fear of any injury to that person, or to any other, and thereby dishonestly inducing the person so put in fear to deliver to any person any property or valuable security, etc. So the inducement must be dishonest. If the first accused dishonestly induced P.W. 1 by putting him

in fear of injury to himself or to any other to deliver property, his act would amount to extortion. In Section 24 'dishonestly' has been defined as:

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.

In this case, it cannot be said that by asking for the money which the first accused had lost he was trying to have any wrongful gain. So, the only other portion of the section applicable is 'causing wrongful loss.' If the first accused's intention was to cause wrongful loss to P.W. 1 he would be guilty. It is not only sufficient that there should be wrongful loss caused to one individual, but the person putting that individual in fear of injury must have the intention that wrongful loss should be caused. If the first accused honestly believed, as the learned Sessions Judge finds, that P.W. 1. had taken the money belonging to him (A-1) the attempt to get it back could not be said to be with the intention of causing wrongful loss to P.W. 1. Loss might have been caused to P.W. 1.; but it was not wrongful loss according to the first accused. Such wrongful loss should be caused as a result of an intention. On the findings of the learned Sessions Judge, there is a thorough absence of intention on the part of the first accused to cause wrongful loss and that being so, the offence under Section 384, I.P.C., has not been made out. If the first accused is not guilty of the offence, accused 3 to 7 who were only present to assist the first accused with a view to intimidate P.W. 1, according to the learned Sessions Judge, cannot be guilty at all.

2. The revision is allowed, and the petitioners are acquitted. The fine, if paid, will be refunded.