Crown Prosecutor Vs. T. Sellamuthu

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Court : Chennai

Decided On : Dec-01-1938

Reported in : AIR1940Mad271

Appellant : Crown Prosecutor

Respondent : T. Sellamuthu

Judgement :

Wadsworth, J.

1. This is an appeal against an acquittal on a charge under Section 206, I.P.C. The accused was defendant 1 in a small cause suit, his son being defendant 2. A decree was passed for Rs. 231 in favour of the plaintiff - P.W. & here - against the accused the suit being dismissed as against the son. In execution of the decree a cow belonging to the accused was attached. A claim petition was filed by the wife of the accused. The claim was allowed on 14th May 1936 on the undertaking given by the accused that he would not for three months thereafter alienate a piece of land owned by him. On 25th May 1936, the accused executed a registered sale deed in respect of the property covered by this undertaking in favour of his son the exonerated defendant. After various proceedings this Court filed a complaint under Section 476(1), Criminal P.C., charging the accused with an offence under Section 206, I.P.C. The defence to the criminal complaint was, firstly, a denial of the undertaking, secondly, a plea that the motive was to satisfy

the pressure of his son for the discharge of debts, and thirdly, various legal contentions with which I shall deal separately.

2. There can be no doubt as to the fact of the undertaking which is embodied in Court records exhibited. It seems to me most unlikely that the motive of the accused was to satisfy the pressure of his son based on alleged old debts which according to the recitals in the sale deed are made up of a series of small hand loans mostly made months prior to the date of the sale. The undertaking having been given only a few days before the sale, it is incredible that the fact of the undertaking would not have been present prominently in the mind of the accused when he carried out the sale. The son denies that he knew about this undertaking. At any rate he was a party to the litigation and as such he must have known about the decree. On these facts, I find it impossible to agree with the conclusion of the Magistrate that the transfer was not fraudulent. The Magistrate supports his conclusion not by any clear finding of fact that the transfer has not been proved to be fraudulent but by certain legal contentions.

3. It is no doubt correct that the word 'fraudulently' in the Penal Code ordinarily connotes firstly, an element of deceit or secrecy and secondly, an intention to cause injury. In my opinion there can be no doubt about the latter element in this case. The accused having so recently given this undertaking must have known that the transfer in breach of the undertaking would have the effect of impeding the execution of the decree and he must have intended that it would have that effect. It is to my mind quite immaterial whether it would be possible for the decree-holder by taking other proceedings to defeat that attempt. If there being taken in execution of the decree and if that intention had as its motive the object of injuring the creditor, it does not matter whether the object was likely to be achieved or not. There remains the question whether there was the ingredient of deceit or secrecy in the act of the accused. It is argued that there could have been no secrecy because there was prompt registration. I do not agree with this contention as a statement of law. Although registration in theory implies publicity, in fact, it can be and frequently is carried out in such a way that the person adversely affected knows nothing about it. The proper way to regard this case is to look at the fact of the transfer along with the immediately preceding fact of the undertaking given to

the Court and taking these two facts together with the other known circumstances to deduce therefrom the intention of the transferor. He knew that his creditor had been lulled into a sense of security by the undertaking given in Court. With this knowledge he almost immediately carried out the transfer in favour of his own son, one who was not likely to publish the fact of the transfer in such a way that it would go to the ears of the creditor. To my mind it is patent that the object of the transferor must have been to deceive his creditor and to injure him by preventing the attachment of this property in execution. His object was to deceive because firstly, he promised the creditor in open Court that he would not alienate and then almost immediately afterwards, he transferred to a member of his own family. His object was to injure and to prevent execution against this property because he knew that his son having been exonerated in the suit would be in a position to claim the property as his own. To my mind it does not matter whether or not the creditor might by taking troublesome proceedings in the Civil Court circumvent this plot.

4. I am therefore of opinion that the case falls clearly under Section 206, I.P.C., and that the acquittal of the accused is wrong. I convict him of the offence with which he is charged and sentence him to a fine of Rs. 25 or in default to two weeks' rigorous imprisonment.