

Hari Pada Moitra Vs. Emperor

Hari Pada Moitra Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/858797

Court : Kolkata

Decided On : Dec-08-1936

Reported in : AIR1937Cal234

Appellant : Hari Pada Moitra

Respondent : Emperor

Judgement :

Cunliffe, J.

1. The petitioner here was convicted under Section 69, Provincial Insolvency Act, for concealing some of his assets in the schedule filed in his insolvency. He was sentenced to three months' rigorous imprisonment and the conviction and sentence were upheld by the learned Sessions Judge who heard the appeal in the lower Court.

2. The history of this man's commercial business is rather curious. Apparently he was in the habit of making deposits with a local bank known as the Berhampore Bank, one of whose directors was a person who did a loan business under the appellation of Berhampore Bank. At one time he had Rs. 7,500 in the bank and that was some twelve years ago. He, to suit his own purposes, withdrew a part of this deposit and made a re-deposit in the name of his wife. She was called Usha Bala Debi. He then went on operating on the account. For example, we find him negotiating a loan with the bank of Rs. 2,000 and making a reference to this sum

of money which stood in his wife's name. I have no doubt whatever that the reason why he made that reference was that he was calling the bank's attention in some rough way to the fact that they were holding money belonging to him or his family outside the loan. At the same time, I do not believe that he was putting forward this Rs. 4,000 as an absolute security for his loan or giving the bank a lien. Subsequently the wife brought a civil suit against the Bagchi Babus for the return of Rs. 4,000. It is not quite clear to me why that action was not brought against the bank, but apparently she brought it against the Bagchi Babus and the defendants to that suit compromised it. It was the subject of a settlement decree and that is the last we know of it. What happened to the money, if it reached the wife, is unknown to us. The facts were certainly not found in the lowest Court.

3. Then comes the insolvency of the present petitioner and when he filed his schedule, it is said that he concealed his interest which was a benami interest in the four thousand rupees in the hands of the bank. It seems to me that it is nowhere found and it is by no means certain that the four thousand rupees are in existence at all now, and unless it is a real item of asset of the insolvent it seems to me he cannot properly be convicted and sentenced for concealing it: 19 months had elapsed between the filing of the insolvency petition and the consent decree obtained by the wife concerning the four thousand rupees. The learned Magistrate and the learned Sessions Judge seem to me to have misappreciated the true position. For example we find the lower appellate Court using these words:

The transaction (that is the four thousand rupees deposit) admits of only one reasonable interpretation and that is that the amount of Rs 4,000 lying with the Bagchis in the name of Usha Bala was money belonging to her husband, the present appellant.

4. It seems to beg the question that the money was no longer either in the hands of the bank or in the hands of the Bagchi Babus. I should think it quite likely that the present petitioner was not completely straightforward over his assets, and if this four thousand rupees exist either in part or in a converted form he probably has some interest in it and in all possibility a Judge in insolvency would be perfectly justified in refusing him his discharge unless a better disclosure is made.

But it is another thing to convict a man on a criminal charge when the facts do not disclose criminal intention beyond per-adventure. The rule accordingly is made absolute and the conviction and sentence passed upon the petitioner are set aside. The petitioner, who is on bail, is discharged from his bail bond.

Henderson, J.

5. I agree and only desire to point out how futile and misconceived these proceedings were. I do not suppose that Section 69, Provincial Insolvency Act, was ever intended to apply to questions of this kind. As my learned brother has pointed out, the asset which the petitioner was supposed to have omitted from the schedule had ceased to exist at the time when the petition for insolvency was filed. Now whether he made any reference to the matter in the schedule or not and whether he is convicted or acquitted in these proceedings, the receiver most certainly will not be able to take out the proceedings in execution of the decree which has been obtained by the petitioner's wife. It is only after proper proceedings have been taken by the learned Judge under the provisions of Section 4 to determine the question once and for all, that this property could be brought into the petitioner's assets at all. It seems to me to be impossible to say that the petitioner had concealed property which at the time of the filing of the schedule was not his property at all in the absence of a decision by a competent Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com