

Abdul Sattar Vs. Moti Bibi

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Court : Kolkata

Decided On : Jan-30-1930

Reported in : AIR1930Cal720

Appellant : Abdul Sattar

Respondent : Moti Bibi

Judgement :

Cuming, J.

1. In the case out of which this rule arises the petitioners Abdul Sattar and Abdul Hamid have been convicted under Section 448 and Section 323, I.P.C., and sentenced under Section 448 to pay a fine of Rs. 250 each. No separate sentence was passed with regard to the conviction under Section 323, I.P.C. The case for the prosecution was that the two petitioners went with a Naib Nazir of the civil Court and some peons to execute a decree for ejection from a house in Dacca which they had obtained against their sister's husband Muhammad Ali. On their arrival the delivery of possession was opposed by the complainant in the case on the ground that the house belongs to her and that she was not a party to the decree. It is alleged that in the absence of Mohammad Ali the complainant's husband, the petitioners and other persons forcibly dragged the complainant out of the house. The case for the defence was that they went to execute the civil Court decree and that they had not assaulted the complainant.

2. On the facts as found by both the lower Courts it is quite clear that the conviction under Section 448, I.P.C., cannot stand. It is clear from the facts found, that the two petitioners went to the house with civil Court officers and entered the house not for the purpose of intimidating, insulting or annoying any person or to commit any offence, but to execute a civil Court decree which they had obtained against one of the occupants of the house. It does not seem to be suggested that the decree was obtained by fraud. The Naib Nazir had to make over possession to them, and to do that they could enter the house with him as they did and receive possession from him. In such circumstances no conviction for criminal trespass can possibly stand.

3. So far as regards the charge of assault is concerned the learned Judge has found that the petitioners dragged the complainant who happens to be their sister out of the house. Order 21 Rule 35, provides that

where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf, and, if necessary by removing any person bound by the decree who refuses to vacate the property.

4. The complainant was not a party to the decree and therefore the two petitioners were not entitled to forcibly remove her. The proper procedure so far as she was concerned no doubt would have been by way of an application under Order 21, Rule 98; therefore by forcibly removing the complainant from the house they were clearly guilty of assault. The conviction under Section 323, I.P.C., must therefore stand. As far as can be understood from the evidence the assault was not a very serious one. No doubt she alleged that they kicked her and beat her. The learned Judge found that they merely removed her forcibly from the house. I think the ends of justice will be met by sentencing the petitioners to pay a fine of Rs. 20 each under Section 323, I.P.C., and I order accordingly. In default of payment of fines they will undergo simple imprisonment for one week. The fines, if realized, will be given to the complainant as compensation.

5. The convictions and sentences under Section 448, I.P.C., are set aside and the fines, if paid, must be refunded.

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