

(1912) 06 CAL CK 0028
In the Calcutta High Court

Krishna Charan Mohanti and Another	APPELLANT
Vs	
Mohasay Radha Kanto Roy and Another	RESPONDENT

Date of Decision : 11-06-1912

Acts Referred:

Citation : 16 Ind. Cas. 410

Hon'ble Judges : Beachcroft, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal on behalf of the judgment-debtors against an order of the District Judge directing execution to proceed against them on the basis of a decree made against their father. It appears that their father was the agent of the respondents and was liable to account for sums of money-received by him. On or about the 21st October 1895, the respondents called upon the father of the appellants to account for all sums received and to produce the amount in his hands in cash. This he failed to do. He thereupon acknowledged liability for the sum of Rs. 3,000 and executed a promissory-note payable on demand. A suit was subsequently brought on this promissory note and a decree obtained against the executant on the 13th November 1900. After the death of the original judgment-debtor, execution has been taken out against his sons, and their defence is that the ancestral property in their hands is not liable to be seized in execution of this decree, because it is based on a debt which must be deemed an illegal for immoral debt. This contention prevailed in the Court of first instance; but upon appeal, the District Judge has negatived it. In support of the present appeal, it has been argued on behalf of the sons that their father had embezzled the money of his principal and consequently the act whereby a liability was imposed on him, was a criminal act, and, the debt itself was illegal and immoral. In support of this view, reliance has been placed upon the cases of Mahabir Prasad v. Basdeo Singh 6 A. 234 : A.W.N. (1884) 47; Pareman Dass v. Bhattu Mahton 24 C. 672 and McDowell v. Ragava Chetty 27 M. 71. In our opinion, there is no substance in this contention. The District Judge has found upon the evidence that there is no proof that any criminal offence was committed by the

father of the appellant. No doubt he failed to account for the money of his principal in his hands. But failure to account for the money may create a civil liability; it does not necessarily constitute a criminal offence. Consequently, as pointed out in the cases of *Natasayyan v. Ponnusami* 16 M. 99 : 3 M.L.J. 1; *Kanemar Venkappayya v. Krishna* 31 M. 161 : 17 M.L.J. 613 : 3 M.L.T. 353 : 2 M.L.T. 529 and *Erasala Gurunathan Chetty v. Addepally Raghavalu Chetty* 31 M. 472 : 3 M.L.T. 394 : 8 Cr.L.J. 147 the sons are liable to pay this debt. The authorities on this subject will be found analysed and reviewed in the judgment of this Court in the case of *Chakouri Mahton v. Ganga Proshad* 12 Ind. Cas. 609 : 15 C.L.J. 228 : 16 C.W.N. 519 : 39 C. 862 where the well established distinction between a criminal offence and a breach of civil duty is explained and applied. In the view we take, it is not necessary to examine the refined distinction suggested in the case of *Tirumalayappa Moodeliar v. Veerabudra* 19 M.L.J. 759 : 4 Ind. Cas. 1090 between a wrongful taking of money and a taking not initially wrongful but followed by misappropriation. It is sufficient to hold, in the words of the learned Judges of the Madras High Court in *Natasayyan v. Ponna Sami* 16 M. 99 : 3 M.L.J. 1 quoted with approval in *Peary Lal v. Chandi Charan* 11 C.W.N. 163 at p. 169 : 5 C.L.J. 80 that upon any intelligible principle of morality, a debt due by the father by reason of his having retained for himself money which he was bound to pay to another, would be a debt of the most sacred obligation and for the non-discharge of which punishment in a future state might be expected to be inflicted, if in any."

2. The result is that the order of the District Judge is affirmed and this appeal dismissed with costs. We assess the hearing fee at three gold mohurs.