
(1949) 08 RAJ CK 0001
In the Rajasthan High Court

Mt. Goran Devi

APPELLANT

Vs

Tuljaram

RESPONDENT

Date of Decision : 31-08-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 417, 420, 424

Citation : (1950) CriLJ 762

Hon'ble Judges : Atma Charan, J.C.

Bench : Single Bench

Judgement

-ORDER

Atma Charan, J.C.

1. The opposite party filed a complaint against the applicant in respect of offences punishable u/s 417 and 424, Penal code. His case was that the husband of the applicant had borrowed a sum of Rs. 1823 9.6, that the husband was dead and that he intended to file a civil suit for recovery of the sum and put in an application for attachment of the gold that the husband of the applicant had left in deposit with the Hind Bank. The applicant gave him to understand that he need not worry as she intended to hand over the gold after she recovered it from the Bank. He accordingly did not file the intended suit. The applicant subsequently recovered the gold but did not pay him the amount due from her and concealed the gold. The case, as such, of the opposite party was that the applicant committed an offence punishable u/s 417, Penal Code, in thus putting him off from filing the civil suit and committed an offence punishable u/s 424, Penal Code, in thus concealing the gold. The Magistrate after recording the statement of the opposite party u/s 200, Criminal P.C., allowed the case to proceed on. The applicant has come up in revision from this order of the Magistrate on the ground that the matter in dispute between the parties was only of a civil nature and should not have been allowed to be agitated before him by the Magistrate.

2. The opposite party in his statement says as below:

I paid a sum of Rs. 1523-9-6 to Seth Dwarka Dass, who died on 4th August 1948. Immediately on his death, I told the accused that she may either pay the money or I would sue and get their gold deposited in the Hind Bank attached by the Court. The accused asked me to wait so that she may recover the gold from the Bank and pay me the dues from that gold. Now she has recovered the gold, but he refuses to pay the money. Had she not given this false representation to me, I would have filed the civil suit and recovered the amount. She has also concealed the books of the accounts of her husband.

Even if it be assumed that what the opposite party says in his statement is correct, no offence whatsoever appears to be made out against the applicant. On the own showing of the opposite party the dispute between him and the applicant appears to be altogether of a civil nature, if at all. There could be no doubt that the complaint against the applicant has only been filed with a view to putting pressure on her and with a view to having a cheaper remedy by avoiding the civil court. The opposite party obviously had no lien over the gold said to be in deposit with the Hind Bank. The complainant was altogether free to have dealt with it anyway she liked,

3. The counsel for the applicant has drawn my attention to the rulings as reported in *Ran Bharosey v. Emperor* AIR 1936 Oudh 872 : 37 Cri.L.J. 907 and *Ba Yone Mating v. Ma Bla Kin* AIR 1933 Bang 297 : 85 Cri.L.J. 52 wherein it has been laid down as below:

A certain sum of money was paid by the grandson) of the judgment-debtor to the decree-holder under a promise of the decree holder that no further liability under the decree passed against the judgment-debtor would attach to them. There was no evidence on the record to show that at the time when the decree-holder received the sum, he had any dishonest intention to the detriment of the grandson. Subsequently the decree-holder made an application for execution and claimed relief against the grandsons:

Held that it could not be said in terms of Section 420, that the decree-holder cheated the grandsons and thereby induced them to deliver the sum. At the most it was a breach of contract but the breach of contract gives rise to purely civil action and did not amount to the criminal offence of cheating under Section 420.

No doubt a Court of revision should be most reluctant to interfere in a pending case, but where upon the alleged facts, there is no justification for the charges against the accused, he should not for a moment longer than is necessary be allowed to remain in the position of a person accused of an offence and forced to defend himself against a charge which there is no legal evidence to establish.

4. There is thus no reason as to why the proceedings going on in the court below be not quashed in entirety and the applicant directed to be discharged.

5. The application in revision accordingly is allowed, the proceedings going on in

the Court below are quashed in entirety and the applicant is discharged.