
(1942) 01 CAL CK 0018
In the Calcutta High Court

Rajshahi Banking and Trading Corporation Ltd.

APPELLANT

Vs

Surendra Nath Mitra

RESPONDENT

Date of Decision : 29-01-1942

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 476

Citation : AIR 1942 Cal 434

Hon'ble Judges : Derbyshire, C.J.;Bartley, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—The Rajshahi Banking and Trading Corporation, Limited, who are the petitioners before us, obtained a decree against Surendra Nath Mitra, a pleader of 6, Kabir Road, Tollygunge, for money lent to him which had not been repaid in the Court of the Subordinate Judge of Rajshahi. The decree was transferred to Alipore where the judgment-debtor lived; a money execution case was started in the Court of the Fourth Subordinate Judge at Alipore and a warrant of attachment of moveable property in Form No. P. 24 was issued and signed by the Subordinate Judge. It was directed to the bailiff of the Court and after stating the amount of the decree it directed the bailiff to attach the moveable property of the debtor "which shall be pointed out to you by the plaintiff sufficient to cover the amount of this warrant."

2. The secretary of the plaintiffs and two peons to whom the warrant of attachment had been handed by the Nazir of the Court went to the defendant's residence and, according to their story, explained the contents of the warrant to the defendant, and it is alleged that the defendant then got angry and assaulted the secretary and the two peons. Thereupon the bank moved the Subordinate Judge to take action in the matter against the defendant u/s 476/195, Criminal P.C., in respect of an offence alleged u/s 186, Penal Code. The learned Judge refused to do so. He, I think, rightly said that Section 476, Criminal P.C., had nothing to do with the matter. As regards Section 195(1)(a), Criminal P.C., he said that the process server was at liberty to go and complain himself, but that

he, the Judge, was not in charge of the Nezarat and it was doubtful whether the process server was a public servant within the meaning of Section 195(1)(a), Criminal P.C., and he declined to make a complaint. Then it was suggested to him that he should direct the peon to make a complaint. By this time the debtor had taken steps under the Bengal Agricultural Debtors Act in respect of his debts and the Subordinate Judge had stayed the proceedings in the execution case. The learned Judge said:

This proceeding has arisen in connection with the execution of the decree for the debt. Moreover the Board may decide that the debt does not exist. In these circumstances it will not be proper to prosecute the judgment-debtor for resisting execution of a decree for a non-existent debt. Under the above circumstances I refrain from directing the process server to lodge a complaint in the Criminal Court.

3. At the time, that is 22nd December 1940, the peon, as it is alleged, was assaulted, there was no question of any proceedings under the Bengal Agricultural Debtors Act. The position then was that the peon had been given a warrant, that is to say, an order from the same Subordinate Judge, to do certain things and he went presumably to do what the Judge order him to do. It was the Judge's duty to protect that peon when he was carrying out the order of the Court. Both the Subordinate Judge and the peon are public servants within the meaning of Section 21, Penal Code, and on the face of the application it would appear that there was a matter to be enquired into as to whether the defendant had committed an offence within the meaning of Section 186, Penal Code. Clearly, the peon was subordinate to the Subordinate Judge whilst he was carrying out the Judge's order. In my view, the Judge made excuses for not taking steps to protect the peon. Unless peons are protected they cannot carry out their duties and the administration of justice may become a farce. In my opinion on the facts before us the Subordinate Judge ought to have made a complaint in respect of the occurrence so that the matter could have been examined by the proper criminal Court to see whether an offence u/s 186, Penal Code, had been committed or not. The rule is accordingly made absolute, the order of the Court below is set aside, and the matter is remanded to the Court from which it came for the learned Judge to rehear the petitioners' complaint and in the light of the remarks I have made to deal with the matter according to law.

Bartley, J.

4. I agree.