

Nirpat Singh Vs Emperor

Court: Allahabad High Court

Date of Decision: Sept. 26, 1947

Citation: AIR 1948 All 167 : (1947) 17 AWR 400

Hon'ble Judges: Harish Chandra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Harish Chandra, J.

The applicant Nirpat Singh was the supardar with respect to some sugarcane crop belonging to a judgment - debtor

which had been attached by the Amin on an application made by the decree-holder for the execution of his decree. The supratdar was

subsequently unable to produce the crop and it is said that it had been cut, pressed and turned into gur and had been made over to the decree-

holder himself. This suggestion was found to be false by the Courts below and the applicant was convicted accordingly u/s 424, Penal Code, and

sentenced to three months' rigorous imprisonment and a fine of Rs. 100.

2. It is, however, argued on behalf of the applicant that the attachment itself was illegal inasmuch as the warrant of attachment was not prepared in

accordance with the provisions of Order 21, Rule 24, Civil P.C., which require, among other things, that every such process shall be sealed with

the seal of the Court. It appears that the warrant of attachment in the present case does not bear the seal, although it bears the date on which it was

issued and has also been signed by the Judge. It is contended on behalf of the applicant that the mere fact that the warrant does not bear the seal of

the Court makes the attachment illegal and that the property in the crop did not pass from the judgment-debtor to the Court and that therefore no

offence can be said to have been committed with respect to it u/s 424, Penal Code. My attention has been drawn to two rulings. One is the case in

Beni Vs. Emperor, . In that case the applicant had been convicted u/s 379, Penal Code, for removing certain crops said to have been attached and

entrusted to a custodian. It was found that the attachment of the crop had been made by affixing copies of the warrant of attachment which were

signed by the Amin and did not bear the seal of the Court. It was held that the attachment was illegal and that the produce could not be deemed to

have passed from the possession of the judgment - debtor into the possession of the Court. I have doubts as to the correctness of the view taken

in this case. According to Rule 44 of Order 21, Civil P.C., a copy of the warrant of attachment shall be affixed on the land on which the crop was

growing and another copy on the outer door or on some other conspicuous part of the house of the judgment - debtor. It is not laid down that

these copies shall also bear the signature or the seal of the Court. In Beni Vs. Emperor, copies had been prepared by the Amin and they were

affixed by him in accordance with the provisions of the said rule. I am doubtful as to whether the attachment in that case was in fact illegal.

3. In the other case in Sarsar Singh Vs. Emperor, the Amin had not executed the warrant of attachment in the manner required by law. He did not

affix any copy of the warrant of attachment at the threshing floor where the crop had been stored nor was any copy affixed to the house of the

judgment - debtor. It was accordingly held that the attachment was illegal and that therefore the accused could not be convicted u/s 424, Penal

Code. There is, however, no authority for the view that the mere fact that the warrant of attachment does not bear the seal of the Court makes the

subsequent proceedings illegal when all the other requirements of law have been fulfilled. It is, however, pointed out that the learned Special

Magistrate, who tried the case, has in his judgment said that a copy of the warrant should have been affixed at the field. But I have gone through

the entire statement of the Amin and find no justification for this suggestion. In cross-examination no question was put to him suggesting that the

attachment had not been made by him in accordance with the procedure prescribed in the Code. I am accordingly not prepared to hold that the

attachment in the present case was in fact illegal and see no reason to interfere.

4. The application is accordingly rejected. The applicant will surrender to his bail and undergo the remaining portion of his sentence. He must also

pay the fine.