(1868) 01 CAL CK 0005

Calcutta High Court

Case No: None

Janoki Singh Roy		APPELLANT
	Vs	
Kaloo Mundul		RESPONDENT

Date of Decision: Jan. 30, 1868

Judgement

Sir Barnes Peacock, Kt., C.J., Macpherson and Hobhouse, JJ.

The question seems to have been raised by the Judge of the Small Cause Court, and to have been referred to this Court for an opinion, in consequence of a decision in the case of Dwarkaloll Mitter Bourke''s Rep., Pt. i, 109. I certainly was surprised to find that the question had been raised, for, so far as I was concerned, I never entertained a doubt upon the subject. The rule is very clearly laid down in s. 282 of the Code of Civil Procedure. It says that "a defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding-section, but his property shall continue liable, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than Rs. 100, and on account of a transaction bearing date subsequently to the passing of this Act."

2. In the case referred to, that of Dwarkaloll Mitter Bourke''s Rep., Pt. i, 109., the defendant in the suit had been arrested for non-payment of the amount of a decree, but, in consequence of the creditor''s not having deposited subsistence money according to law, he was discharged; and the question was whether he could be retaken. A rule issued calling on the prisoner to show cause why he should not be re-arrested on the old writ, or why a new writ should not be issued in execution of that decree. It appeared to me that the prisoner, having once been discharged, came clearly within the rule laid down in s. 282, and that he could not be retaken, and upon that question only I expressed my opinion, I said:-- "I am of opinion that the rule ought to be refused. To grant the application would necessarily lead to great injustice and oppression. It would enable a creditor to drag a debtor up before the Court, as often as he pleased, simply for the purpose of harassing him. In the Mofussil, where the Courts are far apart and means of access difficult, this would be

an intolerable hardship. The Legislature could never have contemplated such a state of things. In England, the discharge of a man''s person once from execution is a discharge for ever. The principle applying here, that ''no man should be twice vexed on the same charge'' is a very proper one, and the rule must be refused." These remarks were applicable to the question then before the Court, namely, whether the prisoner could be retaken, and his person seized in execution, he having been once discharged in consequence of the creditor not having deposited subsistence money. Morgan, J., seems to have had some doubts upon the question, and according to the report as given in Mr. Bourke''s reports, he is made to say:-- "I am not quite satisfied upon the point, and would like to have further time to consider whether there is any real distinction in the Act between the words ''release'' and discharge. In England, when a capias issued, the plaintiff was supposed to be satisfied. That did not seem to be so here. The terms of Act VIII of 1859 seem to imply the power to arrest both person and property; and it seems to me that the arrest of the person is not the full satisfaction here, that it is under English law. I have doubts upon the subject, but I do not wish to oppose the judgment of my learned brethren." Phear, J., said:-- "I concur with the Chief Justice. The rule, if granted, would have, as already pointed out, only one result. I think therefore it should be refused." So that really the question turned simply upon the point whether a prisoner, once discharged from custody for want of deposit of subsistence money, could be retaken. If he could be taken once, he might be discharged again the next day, or the next week, and then taken a third time and let out, and so on interminably, just as his creditor might choose. It appears to me that does not affect this case, where the creditor simply seeks to have his decree satisfied by levying execution upon the property.

3. An answer will be sent to the Small Cause Court that, after a debtor has been arrested in execution of a decree, and discharged at the request of the creditor, his personal property may be taken in execution under the same decree.

Seton-Karr, J.

4. I am of the same opinion. As I understand the reference, the sections of Act VIII of 1859 applying to the case are 278 and 282. The debt is for money exceeding Rs. 50, and, consequently, the defendant was liable to be imprisoned for a period not exceeding six: months. He was released from imprisonment after four months and twenty-five days; and, as I read those sections, this release of his person did not bar the attachment of his personal property to make good the debt.

Jackson, J.

I am of the same opinion as the Chief Justice. I desire simply to add that I never should have entertained any doubts upon this point myself; but in consequence of the expression of opinion attributed to Morgan, J., and to the tenor of the decision, as we find it, in the somewhat obscure report of Mr. Bourke, it appeared to me that some doubt had been thrown upon the ability of the Court to issue a warrant, either

against the person, or the goods of the debtor under the circumstances stated. I entirely concur in the opinion that has been expressed by the Chief Justice.