ALLAHABAD HIGH COURT

Gurdial

Vs

Emperor

(Pullan, J.)

05.10.1932

JUDGMENT

Pullan, J.

1. This is an application in revision of an order of the Sessions Judge of Mainpuri. The four appellants are cultivators whose crop was attached in execution of a decree and they have been prosecuted under Section 424, Penal Code, for removing that crop from the possession of the shahna. The main ground for revision of the order is that the warrant of attachment was returnable on 12th April 1932 and the attachment was made on 15th April 1932. The warrant, therefore, had no force on the date on which the attachment was made, and it is argued on behalf of the judgment-debtors that in those circumstances they committed no offence when they removed the crop from the possession of the shahna on 18th April. The Sessions Judge would not consider the point, because in his opinion once the attachment had been made and no application was made by the judgment-debtors to challenge its legality, they could not lawfully remove the crop and they are therefore guilty of an offence under S. 424, I.P.C, in that they dishonestly removed their own property. The provisions of Order 21, Rule 24 are mandatory and Clause (3) as applied to this High Court runs:In every such process a day shall be specified en or before which it shall be executed and that day shall be specified on or before which it shall be returned to the Court.

2. It appears to me that where the process has a date fixed for its return under this section it cannot be executed after that date and any person, whose property is attached, after the date fixed for the return of the process, may when charged with a criminal offence under Section 424, I.P.C., say that this property has never been lawfully removed from his possession and that therefore he can commit no offence by taking the property in his own use. This appears to be the view taken by the Calcutta. High Court in *Sheikh Nasir v. Emperor*[1] and by the Madras High Court in *Emperor v. Gopalasamy*[2] In the latter ruling it is pointed out that there is no presumption that a distraint made for arrears of rent is legally made and if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint.

In this case the prosecution has failed to prove that there was a legal distraint. Thus in my opinion no offence under Section 424 was committed.

3. A second question arises in this case owing to the fact that the shahna immediately made over the property to the judgment-debtors for threshing, and it is at least questionable whether it can be held that once the property was made over to the judgment-debtors. for threshing it can be said to be no longer in their possession but in that of the shahna. If the property is in their possession they could only be charged with refusing to return it; not with removing it, and such an offence is not contemplated by Section 424, Penal Code. I accordingly allow this revision and set aside the conviction and sentence of all the applicants and direct the fine if paid shall be returned, to them. They need not surrender to their bail.

Cases Referred.

1[1910] 37 Cal 122
2[1902] 25 Mad 729