

Ajgoot Singh vs Rex on 20 February, 1950

Equivalent citations: AIR1950ALL490, AIR 1950 ALLAHABAD 490

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. In proceedings Under Section 145, Criminal P. C., Lal Barti Singh was appointed a supurdar and was made over a large quantity of disputed crop. He undertook to produce it when required by the police or the Court. After the termination of the proceedings he was asked to deliver the property to the party held entitled to possession, but he failed to deliver it.
2. The Magistrate then first gave a finding about the quantity which was entrusted to him and then ordered for the attachment of movable and immovable property of Lal Barti Singh up to the value of Rs. 6,800/- under Order 40, Rule 4, Civil P. C. As a result of this order half share in certain zamindari, a pucca house and two bungalows were attached.
3. Ajgoot Singh, father of Lal Barti Singh, objected to the attachment. His objection was rejected with respect to the property attached except with respect to the second bungalow which was ordered to be released in favour of Mt. Sumera. Ajgoot Singh went in revision to the Sessions Judge, who made this reference for the setting aside of the Magistrate's order.
4. It is clear that the order passed by the learned Magistrate was illegal.
5. The provisions of the Civil Procedure Code cannot apply to any proceedings in connection with anything done or purporting to be done under the provisions of the Criminal Procedure Code unless under some provision of law certain specific provisions of the Civil Procedure Code were made applicable to proceedings under the Criminal Procedure Code. All references in the order of the learned Magistrate to the provisions of the Civil Procedure Code, in support of his order, are irrelevant.
6. Lal Barti Singh did not execute any kind of bond, but simply undertook to produce the property when required. He did not bind himself in any such manner that in case he would not deliver the property he would pay a certain specified amount. Even if he had executed a bond, the proper procedure for realising the penalty on account of forfeiture of that bond would have been in accordance with the provisions of Section 514, Criminal P. C. Section 514, Sub-section (2) authorises

the Court to recover the penalty by attaching and selling the movable property belonging to that person or his estate. Section 514 does not authorise the Magistrate to realise the penalty from immovable property of the defaulter.

7. Lal Barti Singh might have committed some criminal offence in not delivering the property which was entrusted to him. He can be prosecuted for that offence.

8. I am, therefore, of opinion that the order of the learned Magistrate was wrong and deserves to be set aside. I, therefore, accept the reference, set aside the order of the learned Magistrate and order the release of the property in suit from attachment.