Shukrulla vs State on 15 July, 1952

Equivalent citations: AIR1952ALL962, AIR 1952 ALLAHABAD 962

ORDER

Desai, J.

1. The applicant has been convicted under Section 30 of the Administration of Evacuee Property Act, 1950, for realising from tenants rent in respect of a house belonging to his mother-in-law who has gone away to Pakistan and thereby become an evacuee. There is ample evidence given by the tenants of the house to the effect that they paid the rent to the applicant on his demand. Their evidence also shows that the applicant knew that his mother-in-law, the owner of the house, had gone away to Pakistan and become an evacuee. The conviction of the applicant is challenged on two grounds. One is that it is based upon the evidence of the tenants who themselves were liable to prosecution under Section 30 and were thus accomplices in the offence. The other is that the house in dispute has not been declared as evacuee property by the Custodian. There is no substance in either of the grounds.

2. Even if the tenants who gave evidence against the applicants were to be treated as accomplices in the offence said to have been com- mitted by the applicant, there is no defect in the conviction based upon their evidence. The question at all times before the Court below was whether the evidence given by those witnesses should be believed or not. Once it found that it was worth being believed, it could base conviction on it. Moreover, it is by no means certain that the tenants were accomplices. They could not be liable to prosecution under Section 30 unless they themselves knew or had reason to believe that the house was evacuee property. The applicant knew or had reason to believe that it was evacuee property, but they might not have known or had reason to believe that it was so.

2a. Under Section 30 any person who receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be evacuee property is punished. This section does not make it necessary that the property should have been declared to be evacuee property by the Custodian. What is evacuee property is defined in Section 2(f); in substance, it means the property of an evacuee, regardless of whether it has been declared to be evacuee property by the Custodian or not. The definition does not at all make it necessary that the property should have been declared to be evacuee property.

Under Section 7 the Custodian is given the power to declare property as evacuee property, but that does not mean that so long as he has not declared it, the property is not evacuee property. There is certainly nothing in Section 7 to suggest that the property becomes evacuee property only on being declared to be so. On the contrary, the opening words of the section show that the property has to be evacuee property before the Custodian gives notice of the proceedings for declaring it to be so. The

immediate effect of the declaration is to vest the evacuee property in the Custodian and there-after he manages it. So the purpose behind the provisions relating to the declaration is simply to vest the evacuee property in the Custodian and not to bring into existence evacuee property. Though there has been no declaration, the property can still be evacuee property, but it would not vest in the Custodian and he would have no power of managing it. The Court below was, therefore, right in its view that the applicant could be convicted under Section 30 even though he realized rent before the property was declared to be evacuee property by the Custodian.

3. There is no force in this application and it is dismissed.