

**Emperor Vs. Debi**

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**SooperKanoon Citation :** [sooperkanoon.com/454053](http://sooperkanoon.com/454053)

**Court :** Allahabad

**Decided On :** Mar-11-1907

**Reported in :** (1907)ILR29All377

**Judge :** Richards, J.

**Appellant :** Emperor

**Respondent :** Debi

**Judgement :**

**Richards, J.**

1. The facts out of which this reference arises are as follows: The native police of Alipur, a Native State, suspecting one Paran Singh of theft, searched his house in British India, arrested him in British India, and handed him over to the custody of one Debi, chaukidar of Gedo, a place situated in British India. Debi permitted Paran Singh to escape. He was thereupon charged under Section 223 of the Indian Penal Code, that being a public servant he was bound as such public servant to keep Paran Singh in confinement, Paran Singh being a person charged with, or convicted of, an offence, or lawfully committed to custody. Now Paran Singh had neither been charged with, nor convicted of any offence. The question is--was he lawfully committed to custody? He had been arrested by the Native State Police in British territory, and it is quite clear that they had no right to arrest him there. The Magistrate in his explanation says that the chaukidar Debi was a

police officer, and under Section 54, Clause (7), he was entitled to arrest Paran Singh without a warrant. In the case of *Empress of India v. Kallu* (1880) I.L.R., 3 All., 60 the contrary was held. In *Kalai v. Kalu Chaukidar* (1900) I.L.R., 27 Calc., 366 the Court, following the case I have just mentioned, held that where a person had committed a theft and had been made over to the custody of a village chaukidar, the accused could not be convicted under Section 225 of the Indian Penal Code, for rescuing the alleged thief from lawful custody. The Court held that the chaukidar was not 'lawfully detaining' the alleged thief. The same view was taken by this Court in the case of *King-Emperor v. Johri* (1901) I.L.R., 23 All., 266. I think the conviction ought to be set aside as suggested by the District Magistrate. I accordingly set aside the order of the Magistrate dated 20th December 1906, acquit Debi of the offence with which he was charged, and direct his immediate release. His bail bond will be vacated.

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