

Emperor Vs. Rameshwar and ors.

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SooperKanoon Citation : sooperkanoon.com/455201

Court : Allahabad

Decided On : Mar-05-1914

Reported in : (1914)ILR36All262

Judge : George Knox, J.

Appellant : Emperor

Respondent : Rameshwar and ors.

Judgement :

George Knox, J.

1. Rameshwar and two others were arrested by the police, presumably in exercise of powers under either Section 54 or 55 of the Code of Criminal Procedure, on the 23rd of June, 1913. They were not produced before the court until the 25th of June 1913. The police upon producing them before the magistrate asked for an order of remand, and that order of remand was granted. So far as the record shows, the order of remand was the usual order passed under Section 167 of the Code. Section 167 does not appear to have been framed for cases in which action is taken under Section 112 of the Code. In any case a magistrate acting under chapter VIII of the Code has no power to act until after he has recorded an order in writing under Section 112. If this case had been properly dealt with, the magistrate should, under Section 112, have made an order in writing setting forth the substance of the information received the amount of the host} to he executed, the

term for which it was to be in force, and the number, character and class of sureties required. That order should then and there have been read over to Rameshwar and others, under Section 113. The case was not one which fell under Section 114, for Rameshwar and others were present in court. After the order had been read over, the magistrate should have proceeded to inquire into the truth of the information upon which action had been taken and to take such further evidence as might appear necessary. In brief, no person is to be called upon to show cause why an order should not be made against him until there is before the magistrate some information which such magistrate has reason to believe. The magistrate has only to read Section 114 carefully and he will see that, even when immediate arrest of the person is considered expedient, there must be before the magistrate a report or information, and the substance of that report or information must be recorded by the magistrate. The Code gives the magistrate no power to issue a summons, warrant or order of detention until he has first upon his table something recorded by him in writing showing the grounds upon which he is taking action. No possibility is given or intended to be given for persons to be detained by orders of a magistrate until the magistrate has first by a separate order in writing shown that he has considered over the order which he is about to make and has reason to believe that such an order is required in the interests of the public. The detention between the 25th of June, and the 2nd of July, 1913, was action not warranted by law. The error pointed out by this Court in *Empress v. Babua* (1881) I. L. R. 6 All. 132. In the matter of the petition of *Daulat Singh* (1889) I. L. R., 14 All., 45, and *King-Emperor v. Paimal Nai* (1912) 10 A. L. J. 357 has been repeated in the present case, and as long as it continues to be repeated so long will persons whose cases should be promptly considered and decided be kept in custody while the police lay themselves open to the suspicion of ransacking the country round in order to justify the action they have taken. In the present case these persons were detained in custody for all but two months. Now if the police had got together the information before they proceeded to arrest Rameshwar and others, this case should easily have been decided well before the 24th of June, 1913. Let the record be returned.