

Emperor Vs. Rajbansi and ors.

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Court : Allahabad

Decided On : May-02-1920

Reported in : (1920)ILR42All646

Judge : Walsh, J.

Appellant : Emperor

Respondent : Rajbansi and ors.

Judgement :

Walsh, J.

1. These proceedings must be set aside on the ground of irregularity. The charge was the usual one against several people, including the two applicants Rajbansi and Siar, under Section 110 of the Code of Criminal Procedure, the alleged ground being that they were habitual thieves and house-breakers. There has been an appeal to the District Magistrate, who points out that these two men in particular are of comparatively recent appearance in this capacity and are entitled to more lenient treatment, but the point taken before me is a good one. The two applicants were arrested on the 9th of September under Section 55. That arrest was lawful as the ground on which they were arrested was that they were 'reputed habitual thieves and house-breakers. They were then taken before the Sub-Divisional Officer who, on the 9th of September, the same date as the report made of their arrest and of the grounds on which they had been arrested, fixed the 19th

of September, for the production of evidence presumably with the object of issuing a notice under Section 112. As the Magistrate seems doubtful about the procedure it is desirable to point out that Section 112 requires him to make an order which is really a notice in writing setting forth the substance of the information which he has received, the amount of the bond to be executed, the term and the number, character and class of sureties, if any, required, so that he has to receive substantial information in order to found his authority to issue a notice to show cause. It is only after he has done that the actual hearing under Section 110 can by law take place at all. In fixing the date, the 19th September, it looks as though the evidence of which he required production was the evidence the substance of which it was necessary to set forth in the notice because he had not got it on the 9th and he did not then purport to issue notice. He thereupon detained the applicants in custody from the 9th to the 19th without having issued any notice at all. That was wrong. The procedure in such cases is clearly indicated by the Act, but it is further emphasized by the case of *King Emperor v. Paimal Nai* (1912) 10 A.L.J. 351, where my brother Knox pointed out that the Magistrate should not detain a person under Section 110 unless he has information upon which he can make the order required by Section 112. When the 19th of September arrived the Magistrate made matters worse by not merely issuing the notice on that date--the notice had in fact been dated the 19th September--but he seems to have forgotten the object with which he had fixed the 19th and proceeded to treat the evidence which had been given by the Sub-Inspector as the evidence in the hearing under Section 110 and fixed a further date for the accused to produce their evidence. One result of that proceeding, which was clearly irregular, is that the accused, who had been kept in detention for ten days without any opportunity having been given to them, were suddenly called upon to conduct their case without the slightest warning or opportunity of obtaining legal assistance. The defence is just as much entitled to be heard and developed during the evidence for the prosecution as after the prosecution evidence is closed, so that there was double irregularity. I rather doubt whether the notice was a good one. It is impossible to lay down any standard to which such notices are to conform, but when the Legislature provided that a Magistrate should make an order in writing setting forth the substance of the information received, it certainly meant a great deal more than telling a man that

he was a suspected thief, because, however substantial that expression may be as an offensive description of an individual, it gives the person alleged to be that character not the slightest intimation as to what are the grounds upon which it is based. If that notice is sufficient, all that would be necessary would be to call upon anybody in India to show cause on the mere statement that he was suspected by the police to be an habitual thief, but the procedure clearly requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate. On the other hand, I make this general observation that it may be of assistance to the Bar, at any rate in any case in which I am concerned, that where the real ground for complaint against the proceedings of the court below does not appear in the grounds of an application for revision and the gentleman appearing for the person showing cause (in this case the Assistant Government Advocate) has been taken by surprise, I should certainly make no order until the person showing cause had an opportunity of investigating the ground which is urged in court and of which he has had no previous notice. That is an ordinary business arrangement, and it is clear that the court ought not to make any order upon either party until they have had full opportunity of meeting the points in the case. In this application there was no reference whatever to the omission of the Magistrate under Section 112 and the irregularity committed on the 19th of September, and although it would be possible for anybody examining the record to discover it for himself, it is very often like looking for a needle in a bundle of hay, and if we had not found by the incontrovertible papers on the record that the matter was too clear for argument, I should have adjourned the case for Mr. Malcomson to get an explanation from the Sub-Divisional officer. In this case it is not necessary, but as a rule I think it a desirable practice that parties applying in revision should be confined, where cause is shown, to the grounds upon which the original order issuing notice was made.

2. This application is allowed and the proceedings are set aside.