

Emperor Vs. Maiku

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Court : Allahabad

Decided On : Feb-27-1919

Reported in : (1919)ILR61All483

Judge : George Knox, J.

Appellant : Emperor

Respondent : Maiku

Judgement :

George, Knox, J.

1. Maiku was on his trial before the Sessions Court of Farrukhabad on the 24th of July, 1918, He was being tried on the offence of dacoity. He was acquitted, and the order passed by the learned Sessions Judge ran as follows: 'I acquit Maiku of offences charged under Section 395 of the Indian Penal Code and direct that he be set at liberty.' Instead of being released from custody, as this order directed, he was then and there re-arrested, and as a matter of fact was not released from custody until the 17th of January, 1919. As we shall presently see, the order of re-arrest and subsequent proceedings were entirely illegal and some one is responsible for this very serious act of detaining a person in illegal custody. I examined Syed Ali Abid, Deputy Superintendent of Police, who was stationed at Fatehgarh in July, 1918, and he says that the usual procedure in cases of this kind is that the accused, who are acquitted, in order to be released, are sent back to

jail; the bar fittings are removed and the accused are released. The authority under which the accused Maiku was re-arrested was an order issued by the Superintendent of Police as far back as the 30th of May, 1917. It runs as follows: 'In future arrest all men acquitted in dacoity cases by Sessions under Section 55.' Section 55 of the Code of Criminal Procedure says that any officer in charge of a police station may arrest or cause to be arrested any person who was by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury. This order was an order issued without any authority and with a contempt for the personal liberty of the subject which is somewhat startling. It has been condemned and the illegality of it pointed out by more than one ruling of this Court. A Full Bench ruling of this Court, see *Empress v. Madar Weekly Notes*, 1885, p. 59, characterizes it as follows: 'It is intolerable that the police should pursue the investigation of crime, by defying all the provisions of the law for the protection of the liberty of the subject, under the colourable pretension that no actual arrest has been made, when, to all intents and purposes a person has been in their custody' and again the Full Bench pointed out that the procedure is illegal and is a gross and unwarrantable breach of the powers entrusted to police officers, But the police appear to have gone on further in deliberately breaking the law, When a person is arrested under Section 55, Section 57 requires that where the true name and residence of the persons re-arrested has been ascertained, he shall be released on his executing a bond, with or without sureties to appear before a Magistrate, if so required. It is idle for the police to say that they did not know the true name and residence of Maiku; they should have taken him at once before a Magistrate within 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Some attempt was made before me to say that this was done, but the evidence of Ram Narain Agarwala, the Magistrate before whom Maiku was eventually taken, is to the effect that Maiku was not placed before him on the 24th of July, 1918, but on 5th of August, 1918. His evidence was taken before the Deputy Commissioner of Sitapur. The very fact that Maiku was detained in this way for 12 days leads to the inference that the police had not at the time of arrest the evidence necessary, if indeed they had any

evidence at all, whereby it could be shown that Maiku had the reputation of being an habitual offender. In this connection there is a document on the record which is very suggestive. When he was produced in the police office just after his re-arrest, the report says this man has never been convicted before '(sazayafra sabiq nahin hai).' I am surprised that the Magistrate viewed the detention of this man with such apparent indifference. Here was a man for whose release orders had been issued and who is put up before this Magistrate after what one must term an illegal detention for twelve days. Instead of proceeding to look into the matter, he puts it aside on the ground that the trial under Section 110 could not proceed, as an application was pending before the District Magistrate. That application was an application by this wretched prisoner calling attention to the fact that orders for his immediate release were passed and still here he was detained in custody. It augurs ill for the personal liberties of an accused if a Magistrate whose duty it is to protect him shows such indifference to his being detained as though he were a criminal subject, It seems almost idle to call the attention of the Magistrate to this grave irregularity when this Court has on several previous occasions called attention to it without any effect. I can only again point out that for a police officer or a Magistrate to detain an accused person when orders have been passed by the Sessions Judge for his immediate release, is a most grave irregularity and might expose a Magistrate and police officer to very serious results. The proceedings taken after the orders of the release of the accused are entirely without jurisdiction. I allow the application and set them aside.

2. I again draw the attention of the District Magistrate of Farrukhabad to the direction that Maiku is to be released forthwith without any bond or recognizance or limitation of any kind until such can be taken under any warrant of law.

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