

Emperor Vs. Nepal and ors.

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Court : Allahabad

Decided On : May-01-1913

Reported in : (1913)ILR35All407

Judge : Tudball, J.

Appellant : Emperor

Respondent : Nepal and ors.

Judgement :

Tudball, J.

1. The thirteen applicants have been convicted of offences under Sections 147, 225B and 332 of the Indian Penal Code. Their convictions and sentences were upheld on appeal. The present application for revision raises two points--(1) That the arrest without a warrant of Nepal by the police was illegal and therefore the resistance offered to the police constituted no offence, and (2) that the sentences are too severe. According to the evidence on the record, the Sub-Inspector, Har Parsad, deputed certain police officers subordinate to himself to arrest Nepal against whom the police were about to take proceedings under Section 110 of the Code of Criminal Procedure with a view to his being bound over to be of good behaviour. According to the evidence, the police officer in question gave a written order to his subordinate officer to carry out this arrest. The plea in revision is that in the absence of the authority under chapter VIII of the Code of Criminal

Procedure, the police cannot arrest without a warrant a person against whom proceedings under Section 110 are contemplated. Under Section 55, Clause (c), an officer in charge of a police station may arrest or cause to be arrested any person who is by repute an habitual robber, house-breaker, or thief or 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 is a section which is independent of Chapter VIII, although proceedings under Chapter VIII may follow such arrest as a natural sequence. Such a police officer may arrest without an order from a magistrate and without a warrant.

2. Section 55 says: 'He may in 'like manner' arrest' and 'like manner' refers to Section 54, which gives a police officer power to arrest without an order from a magistrate and without a warrant in certain specified cases. Section 56 points out that where any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant any person, he may deliver to the officer required to make arrest an order in writing. So far as the evidence on the record goes, all the provisions of these sections were fully complied with, and the police were justified in making the arrest or attempting to make the arrest. Moreover, according to the evidence of the Sub-Inspector, the action he was taking was in pursuance of the permission of the Sub-divisional officer. Even that was not necessary under Section 55. The plea has, therefore, no force in the circumstances of the present case.

3. There remains the question of sentence. The only portions of the sentences which need any comment, are the fines. Nepal has received a sentence of two and a half years' rigorous imprisonment and a fine of Rs. 100. Moti Ram has been sentenced to one year's rigorous imprisonment and a fine of Rs. 300. Musammat Ram Kunwar, the wife of Nepal, to four weeks' imprisonment and Rs. 30 fine. The three youths, Har Lal, Jagram and Kamal Singh, have been bound over under Section 562 and have been fined Rs. 75, Rs. 20 and Rs. 20. The other applicants have been sentenced to imprisonment only. In some cases, where fines are imposed in lieu of terms of imprisonment, it may be necessary to impose heavy fines. But, in the present case, the accused have received substantial sentences

of imprisonment and the extra fines imposed will transfer a part of their punishment to their dependents also. In the case of Nepal, I set aside the fine completely. His sentence under Section 225 B, will remain six months without fine. In the case of Moti Ram, his sentence is a fine of Rs. 300 under Section 225 B plus one year's rigorous imprisonment under Section 332 of the Indian Penal Code and six months under Section 147 of the Indian Penal Code. In his case, as the fine is the only sentence imposed under Section 225 B, I reduce it to one of Rs. 30 or in default six weeks' imprisonment. In the case of Ram Kunwar, she was sentenced to a fine of Rs. 30 under Section 225 B. No term of imprisonment was imposed for this offence. For offences under Sections 147 and 332 of the Indian Penal Code, she has received two weeks' imprisonment in each. In her case, I reduce the fine to Rs. 5 or in default to imprisonment for two weeks. In the case of the three youths, Har Lal, Jagram and Kamal Singh, I reduce the fine in each case to a nominal sum of Re. 1 or in default to two weeks' imprisonment. In all other respects the sentences will stand. The fines or the balances of the fines, as the case may be, if paid, will be refunded.