The State Vs. Ram Chandra

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Court : Allahabad

Decided On : Feb-15-1955

Reported in : AIR1955All438; 1955CriLJ1120

Judge : Desai and ;Chowdhry, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 54, 54(1), 54(9) and 56; Code of Civil Procedure (CPC) , 1908

Appeal No. : Govt. Appeal No. 382 of 1951

Appellant : The State

Respondent : Ram Chandra

Advocate for Def. : P.C. Chaturvedi, Adv.

Advocate for Pet/Ap. : J.R. Bhatt, Asstt. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.

1. This is an appeal by the State Government against the acquittal of one Ramchandra, alias Sethi, of an offence punishable under Section 224, I. P. C.

2. It appears that there was a communal riot on the night between 29 and 30-3-1950 in Sani-Udiyar, Patti Malla Kamsyar, district Almora, in which a number of muslims were killed. Harsingh Kanungo received a report of the occurrence on 30-3-1950 at his head-quarters at Bageshwar. It may be mentioned here that a Kanungo is alsoentrusted with the duties of a Circle Inspector of Police, a Patwari with those of a Sub-Inspector of Police and their peons with the duties of constables in the district of Almora. In this report the respondent was specifically mentioned among those who are said to have committed the murders. Har Singh reached Sani-Udiyar on 31-3-1950 and sent for Dewansingh Patwari from Malla Kamsyar the same day. On 2-4-1950 Harsingh gave a written order, described as Parwana, to Dewansingh directing him to arrest the respondent at Beninag, as he was wanted in connection with the Sani-Udiyar murder case, and to send him to the lock up at Almora.

Taking Bhairab Datt peon with him Dewansingh reached Beninag, and with the help of that peon and another peon Dharmanand, whom he took from Jiwanand Patwari stationed there, he arrested the respondent at about 10 p.m. on 2-4-1950 in the hospital at Beninag. The respondent was kept in the house of Jiwanand Patwari that night. The following morning Dewansingh, Bhairab Datt and Dharmanand started with the respondent, who was handcuffed, for Almora. At village Bans, about 10 miles from Beninag, where they reached at noon, they were attacked by a number of persons and the respondent was rescued. On the intervention of some elders, however, he was restored to the custody of Dewansingh and his peons. As the latter apprehended further danger on their way to Almora they wrote to the Naib Tahsildar Saniudiyar for more help. Shersingh Patwari and Premsingh Mal-guzar joined them the same night, and the following morning (the morning of 4-4-1950) they were joined by Harsingh Kanungo, Hansa Datt Patwari and Gulabsingh peon.

The whole of this party left Bans on the morning of 4-4-1950 with the respondent in handcuffs and reached village Saliya, about 10 miles from Bans, at noon and halted there at the shop of one Narotam for midday meals. After the rest of the party had taken their meals, and while Gulabsingh and Bhairab Datt were eating, a party of 200 or 250 men arrived from the side of Beninag. The respondent had

been put up in the upper storey of Narotam's shop. The crowd of men from Beninag demanded the release of the respondent. Their re-quest was refused. Thereupon they went up to the room in the upper storey of Narotam's shop, pushed Dewan Singh down the stairs arid rescued the respondent from the custody of Dharmanand peon. The crowd then took the respondent with them towards Beninag.

3. Dewansingh submitted a report of the occurrence to the Sub-Divisional Magistrate on 5-4-1950 in which the entire story from the time of the issue of the order for the arrest of the respondent until his rescue at Saliya was described in detail. Bhola Datt Tripathi Naib Tahsildar was entrusted with the investigation of the occurrence at Saliya by the District Magistrate, and the Naib Tuhsildar eventually submitted a charge-sheet against 27 men, including the present respondent. Seventeen of them were discharged by the Committing Magistrate, while nine of them were committed to sessions to take their trial for offences punishable under Section 147 and Sections 225 and 352 read with S, 149, I. P. C. and the respondent was committed to take his trial for an offence under Section 224, I. P. C. The Additional Sessions Judge of Kurnaon. by his judgment dated 16-10-1950, acquitted all the ten. The present appeal has been filed against the acquittal of only the respondent Ramchandra alias Sethi

4. In the committing court the respondent merely denied that he had escaped from the lawful custody of Dewansingh Patwari at Saliya on 4-4-1950. Before the Sessions Judge he denied that he had been arrested at Beninag & stated that Dewansingh Patwari took him from the hospital at Beninag towards Almora without putting any handcuffs on him on giving it out to him (the respondent) that he was wanted for interrogation by some officers at Almora. With regard to the incident of 4-4-1950 he stated that they all stopped at a shop, that after taking his food he had gone to sleep and was awakened by Dewansingh, that he then found 100 or 125 men. collected there, that Dewansingh asked him to go with those men to Beninag as he said that the officers were at Beninag and his statement would be recorded there, and that he then accompanied those people to Beninag. Asked why the prosecution witnesses had deposed against him, he simply stated that none of them had deposed against him. He produced no defence.

5. The learned Sessions Judge, before whom the identity of the respondent was also questioned, held that the respondent was the person for whose arrest Harsingh Kanungo had issued orders to Dewansingh Patwari, and that the respondent was actually arrested and handcuffed and was being taken to Almora when the aforesaid incident took place at Saliya. He however acquitted the respondent on two grounds: (1) that his arrest was illegal because it was doubtful that any written order for his arrest had been issued and because the 'prosecution had failed to prove that Dewan Singh had before making the arrest notified to the respondent the substance of the said order or shown it to him, and (2) that the respondent could not be said to have escaped from the lawful custody of Dewansingh because he was an unwilling agent and had to yield to the mob.

6. So far as the finding of the learned Sessions Judge on the second point is concerned, it is wholly unsupported by the evidence on the record. (After reviewing the evidence his Lordship proceeded): If: will be remembered that the statement of the respondent himself is against the theory of his having been an unwilling agent or yielded to the mob, for he said that he went away with the people to Beninag because he was asked by Dewansingh to do so. There is nothing on the record to support the latter portion of this statement. The earlier portion of it therefore remains, and consequently on his own showing, the respondent willingly went away with his rescuers. It is manifest therefore that the learned Sessions Judge disregarded the statement of the respondent himself and put an entirely wrong interpretation on the testimony of the prosecution witnesses, and that the only proper conclusion which he should have drawn from the testimony of those witnesses and the statement of the respondent was that the respondent did escape at Saliyn from the custody of those who had arrested him for an offence punishable under Section 302, I. P. C.

7. As regards the finding based on an interpretation of Section 56, Criminal P. C. the learned Assistant Government Advocate argued that the finding of the learned Sessions Judge that no written order had in fact been issued by Harsingh Kanungo to Dewansingh Patwari was wrong, that it was not necessary for Dewansingh to have shown the written order to the respondent at the time of his arrest because he was not required by the respondent to do so, and that the

omission on the part of Dewansingh to notify to the respondent the substance of the written order before making his arrest was an inegularity which was cured by Section 537, Criminal P. C. In support of the last contention he cited -- 'Rangpal v. Emperor', AIR 1917 All 85 (A). In the alternative, he contended that even if there was no written order, as required by section 56, Criminal P. C., the arrest was legal under either tile first or the ninth clause of sub-s, (1) of Section 54, Criminal P. C. And in this connection he cited the ruling reported as -- 'Keshavlal Harilal v. Emperor' AIR 1937 Bom 56 (B).

8. So far as the argument in connection with Section 56, Criminal P. C. is concerned, it is not necessary to express any opinion on the point of whether an omission to notify the person arrested of the order for his arrest is an irregularity covered by Section 537, Criminal P. C., for the finding of the learned Sessions Judge that no written order appeared in fact to have been issued by Harisingh Kanungo to Dewansingh Patwari seems to be correct. The evidence on this point consists of the statements of Harisingh and Dewan Singh. The written order in question, dated 2-4-1950, which is an order in pencil on a plain piece of paper, was also filed. Dewansingh has admitted in cross-examination that this written order was with him all the time and that he gave it to the Prosecuting Inspector in the Committing Magistrate's Court before he entered the witness-box. That is how the written order came to be filed in Court. Dewansingh admitted that he made no entry as to the receipt of this written order from Harisingh on 2-4-1950 in his register of Amad-tarnili. He explained this omission by adding that he had taken over charge as Patwari of Malla Kamsyar on 30-3-1950 and that it was only on 7 or 8-4-1950 that he got the necessary papers from his predecessor-in-office. This is not a satisfactory explanation since he should have made the necessary entry after he had received the register on 7 or 8-4-1950.

Dewansingh further admitted that at the time of the issuing of the order Harsingh did not obtain his signature on any register as proof of the order having been issued. Harsingh Kairungo also admitted in cross-examination that he maintains a Tamih register but that the written order in question was not entered in it or any other register. It may be that ordinarily it is not necessary for a police officer issuing such an order, or for one receiving it, to make an entry in any register, but

from the answers given by Dewansingh and Harsingh in their cross-examination it would appear that the practice, so far at least as Almora district is concerned, was that such entries were made in registers. If this was not so, the District Government counsel should have clarified it by a re-examination of the witnesses; but this was not done.

Furthermore, it is admitted by both these witnesses that when Dewansingh submitted to Harsingh a memo of the search of the accused and a report as to the execution of the order for his arrest, the written order in question was not returned with the papers. Nor was the written order attached even to the report which Dewansingh submitted to the Sub-Divisional Magistrate on 5-4-1950 There is no endorsement on the back of the written order about its having been executed by Dewansingh. All these omissions are contrary to the ordinary procedure adopted in the matter of execution of orders or warrants of arrest. The learned-counsel for the respondent pointed out in this connection the opening words of the said report dated 5-4-1950 submitted by Dewansingh to the Sub-Divisional Magistrate. These words are 'As ordered by the Peshkar I arrested the accused Ramchandra Sethi.' He argued that the description Peshkar did not apply to Harsingh Kanungo but to the Naib Tahsil-dar, and that therefore the prosecution case that a written order had been issued to Dewansingh by ITarsingh was incorrect.

This argument has however no force since a perusal of the rest of the report shows that Har Singh has been specifically described- in it as Feshkar. This much however is clear that there is no specific mention in this report of a written order having been issued to Dewansingh at any time. In view of these circumstances, the conclusion arrived at by the learned Sessions Judge that the written order was a spurious document and had been prepared at the time when Dewansingh was entering the witness-box does not seem to be in-correct. It follows therefore that for want of a written order, as provided by Section 56, Criminal P. C., the respondent's arrest by Dewansingh was illegal.

9. The argument of the learned Assistant Government Advocate in the alternative under Section 54, Criminal P. C. is also unsupportable. The essential difference between Sections 54 and 56, Criminal P. C. is that while the former lays down in

what cases-may a police officer arrest a person without warrant, the latter prescribes the procedure to be followed in those cases when instead of making the arrest himself, the police officer, provided he is an officer in charge of a police station or a police officer making an investigation under Chap. 14 of the Code, deputes an officer subordinate to him to do so. The reason for the prescribing of this procedure, though it is quite unnecessary to probe! into it, appears to be to pin both the superior and the subordinate officer down to their respective responsibilities where the former does not choose to act for himself but through the latter.

Thus, in the matter of making an arrest without warrant a police officer may in one case derive his authority under the one but not the other of the two sections while in another case he may derive it under both the sections, depending upon the circumstances of each case. If he acts on his own initiative and not in execution of an order from one of the officers mentioned in Section 56, he acts within the four corners of Section 54 and the legality or otherwise of his action must be judged in accordance with the provisions of that section and that section alone. If, on the other hand, he acts in execution of an order of the said nature without being possessed of the requisite information or requisition to enable him to - act on his own under Section 54, he can only act legally if he complies with the provisions of Section 56. There may, however, be a boss of cases where, besides being armed with an order contemplated by S, 56, a police officer may also be possessed of the requisite information or requisition under Section 54, in which case his act will be supportable if it could assume legality under either section. The police officer in the aforesaid Bombay case cited by the learned Assistant Government Advocate had such a dual authority.

10. In the said Bombay case a cartman was charged with having caused hurt to a child by rash and negligent driving. The Police Sub-Inspector who had got information of the occurrence, went to the dispensary where the child had been taken. While he was recording there the statement of the child's father, he was informed in the presence of two constables, that the cartman had refused to stop when asked to do so. Thereupon, the police Su' -Inspector ordered the constables to go and arrest the cartman. One Keshav Lal physically prevented the constables

from arresting the cartman and was therefore convicted under Section 353, I. P. C. It was urged in revision against the conviction before the High Court that as the constables were acting under the order of their superior officer the case fell under Section 56, and advantage could not be taken of the provisions of Section 54, but as the constables had no written order, as required by Section 56 the arrest was illegal.

Repelling this contention it was held by Broom-field and Wassoodew JJ., that Section 56 did not limit the statutory power of making the arrest which the constables had under Section 54 independently of Section 56 inasmuch as they were present when the complaint was made to the police Sub-Inspector at the dispensary of the cartman being concerned in the cognizable offence under Section 338, I. P. C., irrespective of the fact that they had also been ordered by the Police Sub Inspector to effect the arrest of the cartman. It was therefore held that the arrest by the constables was legal and the petitioner had been rightly convicted for an offence under Section 353, I. P. C.

11. It was argued in the present case that if it were thus possible to fall back upon Section 54 to legalise the act of a police officer when it was otherwise illegal under Section 56, the provisions of the latter section would be rendered nugatory. That is however not a correct view of the matter, for as adverted to above, in certain cases a police officer may only act on the authority of an order under Section 56 because he may not have the requisite information etc., to enable him to act under Section 54. Thefalling back on Section 54 is thus not a matter of arbitrary choice but depends, as already remarked, on the facts and circumstances of a particular case.

12. It may also be mentioned that Clause (9) added to Sub-section (1) of Section 54 by the Criminal Procedure Code, Amendment Act 18 of 1953 is not interchangeable with the provisions of Section 56(1) since the former relates to a police officer acting for himself on receipt of a requisition from another police officer, but the latter to his acting as a subordinate officer on being ordered to do so by one of the superior officers mentioned in the section. Whatever else may be a requisition under the said clause, this much at least is certain that an order by

one of the said superior officers to a subordinate officer cannot be one, for the Legislature would not make two separate provisions under the same Act if both meant the same thing.

13. In the light of the above interpretation of the provisions of Sections 54 and 56, Criminal P. C., the arrest of the respondent by Dewansingh Patwari cannot be supported either under the first or' the ninth clause of Sub-section (1) of Section 54, Criminal P. C. It cannot be supported under the former clause since there is nothing on the record to show that he possessed the requisite information etc., enabling him to arrest the respondent on his own responsibility. He was not in Sani-Udiyar when the murders are said to have been committed there on the night between 29 and 30-3-1950. He was also not present when the report of this occurrence was made to the Sub Divisional Magistrate. In fact, there is nothing on the record to show that Dewansingh had received the requisite information about the said occurrence in Sani-Udiyar at any stage before he was ordered by Harsingh on 2-4-1950 to arrest the respondent.

Indeed, Dewansiugli himself never purported to have acted on his own accord on any such information, as is provided by Clause (1) of Section 54(1). On the contrary, he purported to act specifically under the authority of an order of Harsingh who was making an investigation into the case. That being so, Dewansingh could not also be said to have acted, for reasons recorded above, under Clause (9) of Section 54(1). It follows therefore that the arrest of the respondent was illegal under Section 56, and that the facts of this case do not justify the arrest being legalised under the first or the ninth clause of Section 54(1), Criminal P. C. The finding of the learned Sessions' Judge therefore that the respondent had not committed an offence punishable under Section 224, I. P. C. was correct. The present appeal should accordingly be dismissed and the order of acquittal of the respondent for the said offence maintained.

Desai, J.

14. 1 agree with my learned brother that the finding of the trial court that no written order was issued by Harsingh to Dewansingh for the arrest of the respondent is

justified by the circumstances of the case and cannot be upset in Government appeal. Section 56, Criminal P. C. requires that when an officer-in-charge of a police station or art investigating officer requires any subordinate officer to arrest without a warrant any person who can lawfully be arrested without a warrant, he must deliver to him an order in writing specifying the person to be arrested and the offence for which the arrest is to of made and the subordinate office?must, before making the arrest, notify to the person to be arrested the substance of the order, and if. so required by him, show him the order.

As Dewansingh was not armed with a written order, he could not act under Section 56. He had power to arrest the respondent without a warrant only if he was handed over a written order by Karsingh; in the absence of a written order he could not possibly exercise the power conferred upon him by Section 56. He was undoubtedly ordered by Har Singh to arrest the respondent; he himself did not profess to proceed to arrest him on his own initiative in exercise of the powers conferred by Section 54 of the Code, and the circumstances also do not favour the view that he intended to exercise the powers conferred by Section 54. But the order of Harsingh was verbal and not written and under the law could not authorise Dewansingh to arrest the respondent. If still Dewansingh proceeded to airest the respondent, the arrest was illegal and the respondent committed no offence by freeing himself from Dcwansingh's custody.

15. Dewansingh could not arrest the respondent even under the powers conferred by Section 54. He had no information that the respondent was concerned in any cognizable offence; he was not investigating the offence supposed to have committed by the respondent. No complaint had been made to him, and he had received no information; that he had committed a cognizable offence. He had no reason to suspect that he might have committed a cognizable offence. He could not, therefore, arrest him without a warrant under Clause (1) or the section. The only other clause of the section that might possibly apply is Clause (9) under which person, for whose arrest a requisition has been received from any police officer can be arrested without a warrant, provided that the requisition shows that the person might lawfully be arrested without a warrant by the officer issuing the requisition. The word 'requisition' is of wide import, but I doubt if it includes a

verbal order. I would have no hesitation in conceding that it includes a written order in whatever form it may be.

But the words 'it appears therefrom' in the clause indicate, that the requisition must be in writing; the words do not go well with a verbal requisition. However the matter is not free from doubt and I may concede for the moment that the word 'requisition' includes a verbal order also. Consequently Dewansingh could plead that on account of the requisition received by him from Harsingh, the respondent became a person who could be arrested without a warrant by him. If there were no other facts or circumstances, 'I would have agreed with the learned Government Advocate that Dewansingh could lawfully arrest the respondent without a warrant. But there are the additional facts that Harsingh, was an officer incharge of a police station or a police officer making an investigation and that Dewansingh was an officer subordinate to him which attract the applicability of Section 56. Harsingh was bound to pass an order in writing and hand it over to Dewansingh and Dewansingh could not arrest the respondent in any other manner.

It is a mandatory provision that when a stationor investigating officer requires any subordinateofficer to arrest a person without a warrant, he mustdeliver to him an order in writing. It follows thatsuch an officer cannot verbally require a subordinate officer to arrest a person without a warrant; if he could do so, the effect of the word 'shall' in the section would disappear. It is not open to him to have recourse to Clause (9) of Section 54 and issue a verbal requisition to the subordinate officer. He certainly has not been given discretion in the matter or provided with the alternative means of achieving his object. Section 54 only enumerates persons who can be arrested without a warrant; it does not lay down duties of police officers, nor even rights except where they can be implied from the liability of the person to be arrested without a warrant. Thus Clause (9) confers a right upon a police officer, who has received a requisition from another for the arrest of a person who can be arrested without a warrant by the latter, to arrest the person without a warrant corresponding to the liability of the person to be arrested without a warrant; but the latter police officer is not under any obligation to issue a requisition.

The clause does not lay down that he shall issue a requisition just as Section 56 lays down that a station or investigating officer shall deliver a written order to the subordinate officer. It is true that when a police officer wants another of equal status or of lower status but not subordinate to him to arrest without a warrant a person (who can be arrested by himself without a warrant), he will naturally have to ask or require the other to do so and that amounts to his issuing a requisition. But the necessity of issuing a requisition arises not on account oi a statutory provision of law, but because in the very nature of things he cannot help issuing a requisition. It is also true that Section 56 uses the word 'shall' because it insists upon a particular kind of order to be issued to the subordinate officer whereas Clause (9) does not require any particular kind of requisition.

The fact, however, remains that the Legislaturehas contemplated that if a station or investigating officer requires a subordinate officer to arrest a person without a warrant, the must issue a written order to him. This mandatory provision must have priority over the non-mandatory provision in the ninth clause; it is not open to a station or investigating officer to adopt the procedure of Clause (9) by merely issuing a requisition to the subordinate officer, because by doing so he would be not complying with the mandatory provision of Section 56. It is obvious that when two provisions of law apply to a given set of circumstances, one requiring a person to do a certain act and the other imposing no such obligation, the person must do the act because if he were to rely upon the other provision, he would be infringing, or not complying with, the mandatory provision. By doing the act he would be complying with, or not infringing, either of the two provisions; whereas by not doing the act he would be not complying with one provision at least. Since he must comply with all provisions of law, the must comply with the provision requiring him to' do a certain act.

Therefore it was not open to Harsingh (who was a police officer making an investigation and who wanted the respondent to be arrested without a warrant) to issue a mere requisition to Dewansingh who was a police officer subordinate to him) under Clause (9); he was bound by Section 56 to issue a writtenorder instead. This means that Dewansingh could not arrest the respondent without a warrant under Clause (9); if he could arrest him, he could arrest him under 'S. 56

only. Of course if he had received a reasonable complaint or a credible information or had reason to suspect that the respondent was concerned in a cognizable offence, he could arrest him without a warrant under Clause (1). The reason for this difference is that though a station or investigating officer cannot issue a requisition under Clause (9) when he must issue a written order under Section 56, he may refrain from issuing either a requisition or a written order, and that he would not prevent the subordinate officer from arresting the person against whom he has received a reasonable complaint or a credible information or whom he suspects of having been concerned in a cognizable offence. The power conferred upon him under el. (1) is derived from his possession of a complaint, knowledge or suspicion, whereas the power conferred by Clause (9) is derived by him from a requisition and depends upon the legality of the requisition. If the requisition is illegal, because the officer issuing it had no right to issue it, it confers no power upon him to arrest the person.

16. The officer to whom a written order is issued under Section 56 is bound to comply with it, whereas the officer to whom a requisition is issued under Clause (9) is not bound to comply with it -- he has a right to arrest the person mentioned in the requisition but is not bound by any law to do so. Clause (9) contemplates the issue of a requisition to an officer of equal status or even of higher status; Section 56, on the other hand, expressly deals with the issue of a written order to a subordinate officer. That is why in Clause (9) the word used is 'requisition' and in Section 56 'order'. The provision in Clause (9) is a general provision; that in Section 56 is a special provision dealing not with any police officer who can arrest a person without a warrant but with a particular police officer, e.g., a station officer or an investigating officer, and not with any police officer who may be required to arrest but with a particular police officer, e.g., a subordinate officer.

It is one of the principles of interpretation of statutes that if there are two provisions, one of a general nature & the other of a special nature, which govern a particular case, it is the latter that would govern it & not the former. A written order is undoubtedly a requisition and if it were possible to apply either Section 56 or Clause (9) to a case in which a station or investigating officer requires a subordinate officer to arrest a person without a warrant, it would be open to the

subordinate officer not to comply with the order by contending that it is a requisition issued under Clause (9) and he is not bound by any law to execute it, and also not to notify the person to be arrested the substance of the order and not to show the order to him even if he wants to see it one and the same contention (sic). The Legislature could not have allowed a subordinate officer to circumvent the mandatory provisions of Section 56 by having recourse to the provision of cl, (9) like this;in other, words the Legislature did not contemplate the applicability of Clause (9) to a case which can be governed by Section 56.

17. My conclusions, therefore, are that Harsinghcould get the respondent arrested by DewansinghI only by issuing a written order to him and not byissuing a requisition to him, that even if the verbal order given by him to Dewansingh could be deemed to be a requisition, it would be a requisition beyond his power and could not authorise Dewan-singh to arrest the respondent, that Dewansingh could not arrest the respondent under his own powers because he did not have the necessary com-plaint, information or suspicion and that he himself did not profess to act under Section 54. The respondent's arrest was, therefore, unlawful and he committed no offence by rescuing himself.

18. I agree with my learned brother that the appeal should be dismissed.