

Fattu and ors. Vs. Emperor

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Court : Allahabad

Decided On : Aug-30-1932

Reported in : AIR1932All692

Appellant : Fattu and ors.

Respondent : Emperor

Judgement :

Pullan, J.

1. This is aFn application in revision from an order of the Sessions Judge of Meerut, who confirmed the conviction and sentences passed upon seven applicants for an offence under Section 225-B, I.P.C. A warrant was issued by a Revenue Court for the arrest of one Sarup Singh. Sarup Singh was arrested but he was rescued from the peons who arrested him. These facts maybe taken as admitted.

2. This application in revision challenges the legality of the warrant. This objection is twofold. In the first place the warrant does not disclose the name or official designation of the person to whom the warrant was issued for execution, and secondly the warrant was served simultaneously with a notice under Order 21, Rule 37, Civil P.C.

3. In our opinion the warrant was defective for both the reasons stated by the learned counsel. A warrant must be issued to some person for execution; and where no name or description of that person is given in the warrant, the person arrested can have no knowledge that the persons who present the warrant are legally authorized to do so. It may be that the person who is arrested is unable to read the warrant and has no knowledge as to whether the warrant is or is not properly filled up but it is the duty of the Court to issue a warrant in proper form, and where a warrant is incomplete-it has been held by more than one High Court that the subsequent release of a person arrested under such a warrant is not an offence under Section 225-B, I.P.C. There is a very recent decision on this point by a learned Judge of this Court reported in *Jagannathv. Emperor* : AIR1932 All227 . In that case a warrant had been issued to the Nazir, and the Nazir without any endorsement made it over to a subordinate official. It was held that the warrant was defective and did not authorize the person who directed the peons to make the arrest, and that accordingly an escape from custody in such a case was no offence. In our opinion the learned Judge decided that case on correct principles and the present case is a stronger one, for in this case the warrant which should contain the name of the person to whom the warrant was issued for execution is blank. There is a parallel case recently decided by the Patna High Court, *Baclri Gope v. Emperor* A.I.R. 1926 Pat. 237, in which a warrant, otherwise complete, was defective as it was afterwards found that the seal of the Court was missing. Although this fact was not known to the persons who rescued the person arrested, the Court held that, as the warrant was defective, they had committed no offence under Section 225-B.

4. The second objection to this warrant raises a point which as far as we are aware, has not previously been before any High Court. Under Rule 37, Order 21, Civil P.C., a Court may instead of issuing a warrant for arrest, issue a notice calling upon the judgment-debtor to appear before the Court on a date specified in the notice and show cause why he should not be committed to the civil prison. The second clause of this rule reads as follows:

Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

5. In the present case the Court adopted what is, in our opinion, a most improper procedure. It issued simultaneously a notice calling upon the judgment-debtor to appear before the Court on the 30th (April) and a warrant for his arrest. Both the notice and the warrant were served on the 19th of April. In our opinion this rule is clear. There were two courses open to the Court; either it could issue a warrant of arrest, or it could issue a notice giving the judgment-debtor a date on which to appear in Court. If the Court follows the second mode of procedure, the question of arrest could only arise when the judgment-debtor fails to comply with the notice. On the 19th April the judgment-debtor had 'still 11 days within which to comply with the notice, and his arrest within that period was illegal, for the Court by adopting this procedure had taken away its own right to issue a warrant of arrest before the 30th of April.

6. We cannot emphasize too strongly our feeling that in all these matters of the arrest of a judgment-debtor the procedure laid down in the Code must be carefully observed by the Courts. The liberty of the subject cannot be trifled with and every judgment-debtor can require by right that the Court ordering his arrest shall observe to the letter the law as laid down in the Code. In the present case we consider that the warrant was defective in itself, and its issue was illegal. Consequently we have no hesitation in finding that the persons who released this judgment-debtor from custody were not rescuing a person who was under a lawful arrest, and therefore they committed no offence under Rule 225-B, I.P.C. We accordingly accept* this application in revision, set aside the judgments of the Courts below and quash the conviction and sentences.