

Ramjit and ors. Vs. Emperor

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Court : Allahabad

Decided On : Nov-22-1937

Reported in : AIR1938All120; 173Ind.Cas.734

Appellant : Ramjit and ors.

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is a criminal revision by six persons against sentences under Sections 225-B, 332 and 147, I.P.C., which have been reduced by the lower Appellate Court to six months' R.I. in the case of some accused and in the case of accused Nos. 5 and 6, Mt. Ram Piari and Mt. Javitri, to the period already undergone-and fine. The case has been argued at very great length for over an hour and learned Counsel is unable to show that there was something irregular in the procedure of arrest. In this case, the validity of the warrant is not questioned and it is admitted that a perfectly valid warrant for the arrest of Mt. Javitri was issued by a Magistrate in the Punjab and was sent in a valid manner for execution in this Province. The arrest was for Mt. Javitri, as a witness in a case brought on the complaint of her husband under Section 498, I.P.C., and as in the case of all warrant for arrest of witnesses the warrant waftailable. The finding of the lower Appellate Court is that the head

constable and, three constables went to the house of Ramjit and Ramjit opened the door and the head constable told Ramjit that he had a warrant for the arrest of Mt. Javitri, and in evidence it is stated that the warrant was shown. Ramjit shut the door and the head constable pushed the door open and went inside accompanied by two witnesses, Dori Lal and Jiwa Ram, and Dori Lal pointed out Mt. Javitri and Bajab Ali constable arrested her. There, upon Ramjit, Mt. Rampiari and ML Javitri grappled with the head constable and with Rajab Ali constable and struck them blows with their fists and rescued Mt. Javitri who ran inside a room and on the cry of these accused three other accused, Sewa, Beda and Mihi Lal, all relatives came up and these persons forcibly turned out the head constable and the constables from the house and continued to attack them at the door and Mt. Rampiari and Mt. Javitri threw brickbats at the constables. The head constable and others then used their batons and overcame the assault and effected the arrest of all six persons. Now the defence made was that one Narain had obtained a warrant of arrest and attacked the house of Ramjit at 4 A.M. and there had been a marpit and long after that marpit, the constables came and arrested the accused persons. No claim was made in the trial Court that the provisions of Section 80 for the execution of the warrant had not been properly carried out. In the lower Appellate Court and this Court a new defence has been taken that the procedure of arrest was not correct and that therefore a right of private defence arose. Now on this point Section 99, I.P.C., provides as follows:

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may be not strictly justifiable by law.

2. It has not been shown that any ruling of this Court has even held that the irregularities alleged by learned Counsel for the applicants would bring the case outside the scope of Section 99, I.P.C. and would entitle the accused persons to have a right of private defence. The rulings of this Court which have been produced, such as *Jagannath v. Emperor* : AIR1932 All227 are rulings where there has been an irregularity in the warrant which the Court has held rendered the warrant invalid as in that case there was no endorsement by the central nazir, but

the case of a warrant of which the validity is unquestioned stands on a different footing. Learned Counsel argued to the lower Court and here that the warrant should have been shown to Mt. Javitri before her arrest. Now Section 80, Criminal P.C., provides as follows:

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required shall show him the warrant.

3. This shows that it is not necessary to show the warrant unless so required. As regards notifying the substance of the warrant, no line of defence was taken in the Court below that the substance of the warrant had not been notified. The evidence of the head constable was that the warrant was shown to Ramjit and resistance was immediately offered when Rajab Ali attempted to arrest Mt. Javitri and that that resistance continued until the police overcame it, and the head constable then states : 'After the fight I showed it (the warrant) to all the three P.Ws. and to other people'. The warrant therefore was shown as soon as the head constable had overcome resistance and effected the arrest. I do not think that there was anything irregular in the procedure in effecting this arrest. If resistance had not been offered] at once, doubtless the reason for the arrest, and the fact that the warrant wasailable, and the contents of the warrant would have been communicated at once to Mt. Javitri, but the finding is that directly the constable arrested her, i.e. touched her in the sense of Section 46(1), Criminal P.C., she began to resist and that resistance on her part and on the part of Ramjit and Mt. Javitri created such a disturbance that any further communication by the police was for the moment impossible. The police in my opinion acted correctly in overcoming the resistance and then in showing: the warrant and communicating its substance.

4. It has been suggested that the sentence-should be reduced. The sentence has been already reduced and the sentence on the two women was merely imprisonment until the order of the lower Appellate Court and only a sentence of fine remains. As regards the amount of sentence, six months' R.I. for a determined assault of this nature appears to me to be lenient. The application in revision is therefore dismissed. The accused must surrender to their bail and undergo the

remaining part of their sentences.

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