

Mohammad Yakub Vs. Emperor

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Court : Allahabad

Decided On : Jul-12-1938

Reported in : AIR1938All534

Appellant : Mohammad Yakub

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is a criminal revision by Mohammad Yakub, Sub-Inspector of Police, who has been fined by the District Magistrate Rs. 100 or four months' simple imprisonment under Section 166, Penal Code and Rs. 50 fine or two months' simple imprisonment under Section 342, Penal Code. The sentence has been confirmed by the learned Sessions Judge of Benares. I need not recapitulate all the facts and allegations in this matter which have been fully set out in the judgments of the Courts below. Briefly the matter arose from a report of theft made by one Jamna Halwai of Phulpur town in police station Ahraula, district Azamgarh of which the Sub-Inspector, Mohammad Yakub, was then in charge. This report of theft was made on 6th September 1935 against Mohan, Jethu and Sukhdeo Bhars. On 22nd September 1935 Ram Parichan, constable, made a report that he had seen a number of persons including the complainant Jamna Halwai collected

at the house of Matadin and the persons there decided that Jamna should not identify the property or the accused. On 7th October 1935 the second officer and two constables, Ram Parichan and Rameshar Ram, were at Phulpur and the constables reported to the second officer that Sukhdeo Bhar was at the 'bara' of Matadin and they went to arrest him, but Sukhdeo shut the door and Matadin, Sant Bax and six others offered resistance and assaulted them. The second officer sent a report to the thana and a case under Sections 147 and 332/149, Penal Code, - was registered against Matadin and others on the night of 7th October. On the morning of 8th October, Matadin and others were told that the tahsildar wanted to see them and they went to the tahsildar, who did not want to see them, and it is alleged that the second officer arrested them and took them in a lorry to thana Ahraula where they were put in the lock-up. On 8th October which was a Sunday, Parmeshar, Musai and some other persons went to Azamgarh and made an application to the Sub-divisional Magistrate at his house for the release of Matadin and five others on bail. The Sub-divisional Magistrate accepted the bail bonds of the sureties and wrote an order dated 8th October 1935, 7 P.M., to the officer in charge of police station Ahraula setting out that he had accepted bail for Matadin and five others and stating:

You are hereby directed to release the above-named six accused and hand them over to their sureties at once.... This order has been given to the sureties to be presented at the thana and they have been ordered to appear in Court with the accused to-morrow.

2. Now this order was not complied with and Matadin and the other five persons were brought by lorry from thana Ahraula to Azamgarh and released in the afternoon of Monday, 9th October. The prosecution produced a number of witnesses who stated that the order of the Magistrate was taken to thana Ahraula about 4 A.M. on 9th October and Sub. Inspector Mohammad Yakub refused to release Matadin and the five others and sent them instead in a lorry to Azamgarh. Now the defence of the Sub-Inspector is that when the sureties arrived at the thana he had already despatched Matadin and the five other men to Azamgarh and for that reason he was not able to release them. The Courts below have found that that defence is false and that the Sub-Inspector had the general diary altered

and that the words in regard to Matadin and others 'ja rahe hain' had been altered to 'ja chuke hain' and that an alteration had also been made in the report, Ex. D-2, which the Sub-Inspector Mohammad Yakub sub. mitted to the Superintendent of Police as he had added the words in another ink 'and they have actually been despatched.' Learned Counsel for the applicant in revision did not attempt to controvert these findings of the Courts below but he argued Shat under Para. 12 of the Police Regulations the order of release should have been communicated to the Sub-Inspector through the Superintendent of Police. That paragraph states : 'All communications between Magistrates and the police officers must be conveyed through him' that is, the Superintendent of Police.

3. Now in the first place the Police Regulations are a volume of orders by the Local Government and there is no paragraph in the Criminal Procedure Code giving the Local Government power to issue orders for carrying out the provisions of the Criminal Procedure Code. The Criminal Procedure Code therefore cannot be modified by any orders of the Local Government in a departmental Code. Now there is nothing in the Criminal Procedure Code which suggests that orders of release passed by a Magistrate must be communicated through a Superintendent of Police. In the case of an investigation by a Sub-Inspector, Section 167 of the Code lays down that if the investigation cannot be completed within 24 hours fixed by Section 61 the accused must be produced before the nearest Magistrate for orders. Such a Magistrate may order the detention of the accused and if he does not pass such an order then the accused would have to be released under Section 61. Now there is nothing in Section 167 which indicates that the order either of detention or of release should be communicated through the Superintendent of Police. In many cases it will be impossible to do this; for example the Magistrate might be in camp and when an accused is brought before him by a Sub-Inspector under Section 167, naturally the order is communicated directly to the Sub-Inspector or the police having custody of the accused. In the present case the application for bail was made to the Magistrate on a Sunday when the office of the Superintendent of Police was closed. It would not have been possible therefore for the Magistrate to send his order to the office of the Superintendent of Police to be forwarded. He adopted the method of giving his order for release directly to the sureties and there is nothing in the Code which indicates that the Magistrate was

incorrect in taking this course. Under Section 496, Criminal P.C., where a person is accused of a non-bailable offence the Court may grant bail and there is nothing in that Section which provides that the order for release shall be communicated through the Superintendent of Police. Now it is to be noted that the statement made by the accused on this point was as follows:

Why did you not release them on receiving orders from the S.D.M.?

A. - They had already been despatched on remand to Azamgarh when the Section D.M's. orders were received.... As the bail order came direct to me in contravention of Para. 12, Police Regulations I put up the bail order along with my report addressed to S.P. and S.D.M. for orders.

4. This shows that no ground was taken that the reason for non-compliance with the order was that it was received under circumstances contrary to Para. 12; but that that was merely a matter which the police officer reported to the Superintendent of Police. A further reference was made by learned Counsel to the evidence of D.W. 20, Mr. B.B.S. Jetly, Superintendent of Police, who was at that time in Azamgarh. In examination-in-chief this witness stated:

Paragraph 12 of Police Regulations was strictly enforced by me at that time; my general orders were that no order should be taken on papers not received through me. They should be submitted to me for orders.

5. Now no written orders have been produced by the defence to show that Mr. Jetly had issued any general orders in regard to Para. 12 of the Police Regulations which could have misled the accused. Mr. Jetly does not state that he considers that an order of release like the present should have been sent through him. In cross-examination his attention was invited to this order, Ex. D-1, and he stated:

I saw Ex. D-1 at the time, but I cannot say if I saw the orders on the bail application as I do not ordinarily see these. P.I. merely reports what bail has been allowed.

6. It is clear therefore that the evidence of Mr. Jetly does not support the contention of learned Counsel for the applicant that the order of release should

have been sent through Mr. Jetly's office. Now even if such a contention had been correct, I do not consider that a Sub-Inspector of Police would be entitled to disobey an order of release by a Magistrate on account of such a technical objection. From the argument put forward on behalf of the applicant by learned Counsel, it appears to me that the applicant has no sense of discipline and the argument that he would be entitled to disobey such an order shows that he is not a person with a proper understanding of the relations between a Sub-Inspector and a Magistrate. The Criminal Procedure Code gives a Magistrate authority to order release on bail and it is certainly not for a Sub-Inspector to refuse to carry out such an order on the mere technical quibble that he thought that such an order should be communicated to him through the Superintendent of Police. For these reasons I find no merit in the arguments put forwards by learned Counsel for this accused Sub-Inspector. As regards the sentence which' has been passed on the Sub-Inspector the fines of Rs. 100 and Rs. 50 appear to me to-be lenient in view of the way in which the Sub-Inspector has conducted his defence, and particularly in view of the fact that the station diary was altered. For these-reasons I dismiss this application in revision. The stay order is discharged.