

Rameshwar Vs. Emperor

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Court : Allahabad

Decided On : May-01-1934

Reported in : AIR1934All879

Appellant : Rameshwar

Respondent : Emperor

Judgement :

Bennet, J.

1. This is an application in criminal revision against an order of the Sessions Judge confirming a conviction of Rameshwar, who is on bail, and sentence of 6 months' rigorous imprisonment, under Sections 225B-34J, Penal Code. The facts are, that some constables went to arrest one Mahadeo and the present accused resisted the arrest and Mahadeo ran away. The point taken in revision is that the order of arrest issued under Section 55, Criminal P.C., did not comply with the provisions of Section 56, Criminal P.C., 'as the warrant did not specify the offence or other cause' for which the arrest was to be made. The Sub-Inspector in charge of a police station sent a requisition under Section 55, Criminal P.C., to the head-constable in charge of an outpost for execution and the head-constable sent constables under him to execute that requisition but did not accompany those constables. The requisition in question is stated to be Ex. A of Criminal Record 70 of 1933 and that requisition has not been summoned before this Court in revision.

It is however stated that the requisition was under Section 55, Criminal P.C. The point taken by learned Counsel is that under Section 56 the offence or other cause should be specified in the requisition. Now there is no question of specifying 'the offence' because the arrest was not made for any offence. 'An offence' is defined in Section 4(o), Criminal P.C., as

any act or omission made punishable by any law for the time being in force.

2. In the present case the requisition under Section 55 was issued in order that security for good behaviour should be taken from Mahadeo and that proceedings should be taken before a Magistrate which would result in an order under Section 118, Criminal P.c. for such security. The point argued by learned Counsel is that the words 'other cause' in Section 56, means that the requisition should have specified either Section 109 or Section 110, Criminal P. O. No authority was shown for this proposition. There is no form given in the Criminal Procedure Code for a requisition under Section 56. There is a form for a warrant, form No. 2, under Section 75 printed in Schedule 5. That form says:

Where...as...of stands charged with the offence of (state the offence) you are hereby directed to arrest the said.

3. Learned Counsel concedes that it would be sufficient for a warrant to name the section of the Penal Code; for example it would be sufficient to say Section 379, Penal Code, and it would not be necessary to add the word 'theft.' But the contention of learned Counsel is that in the present case the requisition should have named Section 109 or Section 110. No form being specified for Section 56 we are reduced to a consideration of the words of the section which merely are that the cause for which the arrest is to be made is to be specified. What is the information which should be given to the accused by the requisition? Is it sufficient for him to know that he is to be reported to a Magistrate and sent under arrest with a view to the Magistrate requiring him to furnish security for good behaviour, or is it necessary that at that early stage of his arrest he should be informed whether the Magistrate is likely to frame his preliminary order under Section 109 or Section 110, Criminal P.C.? The cases in which arrest may be made under either of these sections are united in the provisions of Section 55, Criminal P.C. In the

present case by mention of Section 55, Criminal P.C., in the requisition the accused could have known, if he had not run away before his arrest that he was to be arrested with a view to a report for security to be of good behaviour being taken from him. I consider that the reference to Section 55, Criminal P.C., was sufficient. It is further to be noted that the Code does not contain provisions for an investigation in the case of an arrest of this nature similar to the investigation in the case of a cognizable offence under Ch. 14. What happens under Section 55 is that an officer in charge of the police station having certain evidence available causes the arrest of a person and sends him with a report to the Magistrate reporting the circumstances. The Magistrate then considers whether on the alleged circumstances a preliminary order should be made under Section 109 or Section 110. It is a fact that to a certain extent those sections overlap and a set of circumstances alleged might come under either of those sections and it is for the Magistrate to determine under which section he shall make his preliminary order. Under these circumstances I consider that it is sufficient for the police officer in his requisition to specify Section 55, Criminal P.C., and that by so doing he conveys sufficient information to the person to be arrested. There was therefore no irregularity, in my opinion, in the warrant on this ground.

4. The next ground which was argued did not appear in the grounds of revision but was argued before the lower Court. This was that the names of the constables who went to make the arrest should have been endorsed on the requisition. There is no provision in Section 56 for any such procedure. That section states that the document - an order in writing - shall be 'delivered' to the officer required to make the arrest, and further in Section 54, ninthly, it is provided that a police officer may arrest any person for whose arrest a requisition has been received from another police officer. Both these sections specify exactly what are the particulars which are required in the requisition but they do not specify that one of the particulars required is the name of the officer making the arrest. There is therefore no section which lays down that there must be such an endorsement on a requisition. Learned Counsel referred to a ruling reported in *Queen Empress v. Dalip* (1896) 18 All. 246. That was a case in which a Magistrate had issued a warrant under Section 114, Criminal P.C., for the arrest of Dalip and warrant was copied in the thana and a copy was given to certain police officers to execute as a warrant. In

view of the provisions in Section 77, Criminal P.C., and other sections of the Code it was held that it was not sufficient for the police officers effecting the arrest to be in possession of merely a copy and not of the original document. In the present case there is no such question as the police officers who went to make the arrest were in possession of the original requisition and not a copy. I find nothing irregular in the circumstances of the arrest. This application in revision is therefore dismissed. The applicant must surrender to his bail and undergo the rest of his sentence.

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