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Court : Allahabad

Decided On : Aug-13-1931

Reported in : AIR1932All227; 140Ind.Cas.118

Appellant : Jagannath

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is an application in revision from conviction under Section 225-B, I. P.C. The applicant was a judgment-debtor, and a warrant for his arrest was issued against him to the Central Nazir of the Banda Court. In the Banda Judge-ship there is a Karwi Subdivision where there is a registration clerk, to whom all processes for service are usually sent for execution. As the accused was a resident of Karwi, the nazir sent the warrant of arrest to the registration clerk at Karwi, who issued the warrant in the name of four civil Court peons. Out of these four named peons, two peons Gokul Prasad and Mahomed Husain, went to get the service effected. They arrested the accused, but he took them to his shop on the excuse that he had pail Rs. 200 out of the decretal amount and that the remaining amount was to be paid by instalments. The accused assured them that he had got a receipt about the payment of the money and would show it to them at his shop, which was only at a short distance from the place. When the accused

arrived at his shop

he gave a sudden jerk to the chaprasis whereby the peons received hurt and the accused, after freeing himself, entsred his house.

2. The chaprasis then made a report to the police station, on which the accused was prosecuted and has been convicted under Sections 225-B and 353, I. P.C, but has been given only one sentence of six months and a fine of Rs. 30.

3. So far as the facts go, there can be no! controversy now in revision. I must accept the facts as found by the Sessions Judge.

4. The learned advocate for the applicant has however urged that the warrant of arrest had been illegally issued, and therefore the conviction is illegal.

6. As stated above the warrant was issued by the Court in the name of the Central Nazir of Banda. There is nothing in the Civil Procedure Code which would prevent the officer to whom the warrant is issued from delegating his authority to some other subordinate officer for excuting the warrant : Dhdram Chand v. Queen-Empress [1895] 22 Cal. 596. If the Central Nazir had made an endorsement on the back of the warrant authorizing the registration clerk at Karwi to get the warrant executed, I would have no hesitation in holding that the registration clerk at Karwi would have authority to appoint peons under him to go and effect the arrest. Unfortunately the warrant does not bear any endorsement by the Central Nazir at all, It merely appears to have been sent by his office to the registration clerk at Karwi, apparently for execution, and it was the clerk who directed the peons to go and make the arrest. The clerk had stated that this was done in pursuance of the practice which has prevailed at Banda. Karwi is a subdivision in the Banda Judgeship, and it is obvious that the Central Nazir at Banda cannot personally execute warrants for Karwi. The materials on the record however are too meagre to justify an assumption that there was a proper delegation of authority which empowered the clerk to get the warrant executed by the peons under him. The order of the District Judge has not been brought on the record, and there is a certain amount of uncertainty and doubt left on this point. I therefore think that it would not be just to uphold the conviction of the accused under Section 225-B.

Obviously if the warrant was defective and did not authorize the person who directed the peons to make the arrest, there would be no lawful apprehension within the moaning of Section 225-B and accordingly no resistance or illegal obstruction to any such lawful apprehension, or escape from custody in which he was lawfully detained. I must accordingly set aside the conviction under Section 225-B.

7. I was inclined to hold that even if the registration clerk at Karwi was not empowered to issue the warrant to the peons the peons were public servants acting in execution of their duty as such public servants when in pursuance of the order of the registration clerk they arrested the accused, and that when the accused pushed them, and in that way assaulted them, he would be guilty of the offence under Section 353, I.P.C. of which he has been convicted, Section 99, I. P.C. lays down that 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 the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. If that section applied, there would bo no right of private defence to the accused when he assaulted and caused hurt to the peons. I would have therefore thought that the accused could be properly convicted under Section 353, I.P.C.

8. But the learned advocate for the accused has brought to my notice the case of Queen-Empress v. Dalip [1896] 18 All. 246, which is a Division Bench ruling. In that case it was held that where the warrant issued was illegal, the officers executing that warrant could not be considered to be acting in the discharge of their duty as such public servants, which expression also occurs in Section 332, I.P.C. As a single Judge I am bound by the opinion expressed in that case. The language of Section 332 is similar to that of Section 353, I am therefore constrained to hold that the conviction of the accused under Section 353 cannot be upheld. But as the lower appellate Court has found that there was assault and hurt was caused to the two peons, and there can be no right of private defence, I alter the conviction under Section 353, I. P, C. to one under Section 352, I.P.C. There was only one sentence inflicted on the accused for conviction under both the sections. As the main charge falls to the ground I must reduce the sentence,

and in substitution of the sentence imposed by the Magistrate, I order that the applicant should have rigorous imprisonment for the period already undergone, and in addition pay a fine of Rs. 100. In default of the payment of the fine he should undergo simple imprisonment for three weeks.