

Tirkha Vs. Itwari

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Court : Allahabad

Decided On : May-07-1914

Reported in : AIR1914All417; 25Ind.Cas.344

Judge : Banerji and ;Chamier, JJ.

Appellant : Tirkha

Respondent : itwari

Judgement :

1. In this case one Tirkha was ordered by the Joint Magistrate of Cawn-pur to undergo rigorous imprisonment for one month under Section 2 of Act XIII of 1859 and at the conclusion of the sentence to work for one and a half month for his employer, Itwari, and also to re-pay his employer Rs. 20, which had been advanced to him.

2. It appears that, on November 22nd, 1911, Tirkha took an advance from Itwari and agreed to work for him for twenty months. At the end of about fourteen months he ran away. Itwari complained to the Magistrate under Act XIII of 1859 and on June 19th, 1913, the Magistrate ordered Tirkha to work for six months more. Tirkha worked on and off for four and a half months and then ran away again. Itwari complained to the Magistrate again and on February 9th, 1914, the Magistrate sentenced Tirkha to one month's rigorous imprisonment and ordered him to work' for one and a half month more and also to re-pay the advance. The

Sessions Judge has referred the case to this Court with the recommendation that the Magistrate's order should be set aside on the ground that he had no authority to pass any order, under Section 2 of the Act, after the expiry of the period for which the man agreed to work. The reported cases show that there has been some difference of opinion on the question whether an order can be passed under Section 2 of the Act after the expiry of the term of the contract, but holding the view that we do in the present case we need not express any opinion on this point. It seems to us quite clear that if the Magistrate had power to pass any order under Section 2 of the Act in February this year, he could only sentence the workman to imprisonment. Under the first paragraph of Section 2 of the Act the Magistrate was competent at the option of the complainant, either to order the workman to re-pay the advance or such part thereof as seemed just and proper or to order him to perform the work according to the terms of his contract. Then the second paragraph provides that if the workman fails to comply with the said order the Magistrate may sentence him to imprisonment for a term not exceeding three months or if the order be for re-payment of a sum of money, may sentence him to imprisonment for three months or until such sum of money be sooner paid, In the present case the Magistrate's order was that Tirkha should work. There was no order that he should re-pay the advance. Therefore when Tirkha failed to comply with the Magistrate's order, the Magistrate could do no more than sentence him to imprisonment. It is quite clear to us that the Magistrate could not add to the sentence of imprisonment and order that Tirkha should work for a further period and also re-pay the advance. The sentence of imprisonment has been undergone. We set aside the order of the Magistrate requiring the man to work for a further period and to re-pay the advance