Maiku Vs. Emperor

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Court : Allahabad

Decided On : Feb-27-1919

Reported in : AIR1919All160(2); 50Ind.Cas.989

Judge : Knox, J.

Appellant : Maiku

Respondent : Emperor

Judgement :

Knox, J.

1. Maiku was on his trial before the Sessions Court of Farrukhabad on the 24th of July 1918. He was being tried for the offence of dacoity. He was acquitted and the order passed by the learned Sessions Judge ran as follows: I acquit Maiku of offences charged under Section 395, Indian Penal Code, and direct that he be set at liberty.' Instead of being released from custody as this order directed, he was then and there re-arrested and as a matter of fact was not released from custody until the 17th of January 1919. As we shall presently, see the order of re-arrest and subsequent proceedings were entirely illegal and some one is responsible for this very serious act of detaining a person in illegal custody. I examined Syed Ali Abid, Deputy Superintendent of Police, who was stationed at Fatehgarh in July 1918, and be says that the usual procedure in eases of this kind is that the accused, who are acquitted, in order to be released are sent back to jail, the bar

fittings are removed and the accused are released. The authority under which the accused Maiku was re-arrested was an order issued by the Superintendent of Polioe as far back as the 30th May 1917. It runs as follows: 'In future arrest all men acquitted in dacoity cases by Sessions under Section 55.' Section 55 of the Code of Criminal Procedure says that any officer in charge of a Police Station may arrest or cause to be arrested any person who was by repute a habitual robber, housebreaker or thief, or a habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury. This order was an order issued without any authority and with a contempt for personal liberty of the subject which is somewhat startling. It has been condemned and the illegality of it pointed out by more than one ruling of this Court. A Full Bench ruling of this Court, see Empress v. Madar A.W.N. (1885) 59 : 4 Ind. Dec. (N.S.) 607, characterises it as follows: It is intolerable that the Police should pursue the investigation of crime, by defying all the provisions of the law for the protection of the liberty of the subject, under the colourable pretension that no actual arrest has been made, when, to all intents and purposes, a person has been in their custody.' And again the Full Bench pointed out that the procedure is illegal and is a gross and unwarrantable breach of the powers entrusted to Police Officers. But the Police appear to have gone on further in deliberately breaking the law. When a person is arrested under Section 55, Section 57 requires that where the true name and residence of the persons re arrested has been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required. It is idle for the Police to say that they did not know the true name and residence of Maiku; they should have taken him at once before a Magistrate within 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Some attempt was made before me to say that this was done, but the evidence of Ram Narain Agarwala, the Magistrate before whom Maikn was eventually taken, is to the effect that Maiku was not placed before him on the 24th of July 1918 but on the 5th of August 1918. His evidence was taken before the Deputy Commissioner of Sitapur. The very fact that Maiku was detained in this way for 12 days leads to the inference that the Police had not at the time of arrest the evidence necessary, if indeed they bad any

evidence at all, whereby it could be shown that Maiku bad the reputation of being an habitual offender. In this connection there is a document on the record which is very suggestive. When he was produced in the Police Office just after his rearrest, the report says this man has never been convicted before ('saza yafta sabig nahin hai'). I am surprised that the Magistrate viewed the detention of this man with such apparent indifference. Here was a man for whose release orders had been issued and who is put up before this Magistrate after what one must term an illegal detention for 12 days. Instead of proceeding to look into the matter be puts it aside on the ground that the trial under Section 110 could not proceed as an application was pending before the District Magistrate. That application was an application by this wretched prisoner calling attention to the fact that orders for his immediate release were passed and still here he was detained in custody. It augurs ill for the personal liberties of an accused if a Magistrate whose duty it is to protect him shows such indifference to his being detained as though he were a criminal subject. It seems almost idle to call the attention of the Magistrate to this grave irregularity when this Court had on several previous occasions called attention to it without any effect. I can only again point out that for a Police Officer or a Magistrate to detain an accused person, when orders had been passed by the Sessions Judge for his immediate release, is a most grave irregularity and might expose a Magistrate and Police Officer to very serious results. The proceedings taken after the orders of the release of the accused are entirely without jurisdiction. I allow the application and set them aside.

2. I again draw the attention of the District Magistrate of Farrukhabad to the direction that Maiku is to be released forthwith without any bond or recognizance or limitation of any kind until such can be taken under any warrant of law.