

The State Vs. Indra Padhan

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Court : Orissa

Decided On : Mar-05-1959

Reported in : AIR1960Ori23; 1960CriLJ267

Judge : G.C. Das, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 224; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 46, 54, 56, 59 and 59(2)

Appeal No. : Government Appeal No. 7 of 1958

Appellant : The State

Respondent : indra Padhan

Advocate for Def. : A.B. Roy, Adv.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeal dismissed

Judgement :

ORDER

G.C. Das, J.

1. This is an appeal by the State of Orissa against an order of Shri T. Misra, Magistrate 1st Class, Baudh, acquitting the respondent, Indra Padhan of a charge

under Section 224, Indian Penal Code. The fact giving rise to the present appeal are these :

2. There was a case of theft in village Mohakudpali as a result of which certain properties belonging to one Krutartha Meher were stolen which were found the following morning in possession of the respondent in village Karadi within the Police station of Boudh. The villagers of Karadi detained the respondent in their village and sent information to the Police Station of Boudh. The Officer-in-charge of the Boudh Police Station being otherwise busy, deputed P.W. 1, Arikhit Behera, constable No. 242 to village Karadi on September 28, 1957. P.W. 1 on his arrival took charge of the respondent along with another accused, Raghunath Behera then in custody of the Chowkidars P.Ws. 3 and 6. P.W. 1 with P.Ws. 3 and 6 thereafter started for the Police Station taking the respondent with them. At the Karadi Dak Bunglow they decided to take rest for the night and allowed the respondent to sleep on the verandah of the said Dak Bunglow along with others. P.W. 1, the two choukidars and P.W. 4 kept watch over the respondent. Sometime during the night P.W. 1 went to sleep leaving the respondent in charge of P.Ws. 3 and 6. Early next morning it was discovered that the respondent had escaped from custody. Since there was another accused, P.W. 1 kept watch over him and deputed the Chowkidar to search for the respondent. He did not send any information to the Police Station since he was expecting the Sub-Inspector anytime there. At about ten o'clock however, the A.S.I, arrived on the spot and the constable, P.W. 1 lodged the first information report, Ext. 1. Thereafter the officer-in-charge of the Boudh Police Station (P.W. 10) came there and took over the investigation.

3. The learned Magistrate on a careful consideration of the evidence on record came to the conclusion that P.W. 1 never arrested the respondent and hence when under Section 66 of the Criminal Procedure Code a particular procedure has been laid down for the subordinate officers when deputed by superior officers is not complied with the respondent cannot be said to be in lawful custody of P.W. 1. Accordingly a conviction under Section 224 is not warranted. In the result he acquitted the respondent.

4. The main question for consideration in this case is whether the respondent escaped from any custody in which he was lawfully detained. Further, in order to convict the respondent under Section 224, I. P. C. the prosecution must prove that there was a lawful arrest within the meaning of Section 54 or Section 56 of the Code of Criminal Procedure.

5. Mr. G. Rath, learned Standing Counsel, on behalf of the State of Orissa, contended that since it was not the case that the Constable, P.W. 1, was sent to effect the arrest of the respondent by his superior officer, the failure to produce the command certificate is not fatal to the prosecution. He, however, rested his argument on pure question of law. According to him the respondent was legally arrested by the villagers under the provisions of Section 59 of the Code. He urged that Section 56 does not apply to the present case.

P.W. 1 being a Police Officer had the independent power under Section 54 to effect the arrest since the villagers had arrested the respondent earlier under Section 59 and handed him over to P.W. 1. The question of following the procedure as laid down in Section 56 does not apply at all. Thus, his whole contention was that the learned Magistrate was wrong in acquitting the respondent of the charge under Section 224, Indian Penal Code.

6. Section 54 lays down the procedure as to when the Police may arrest without warrant. Clause (1) of Section 54 provides that any Police Officer may, without an order from a Magistrate and without a warrant arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. There are certain other clauses to section 54 with which we are not concerned in this case.

Thus Section 54(1) gives power to the Police Officer to arrest without warrant. True it is that section 54 is independent of Sections 56 and 59. Section 59 lays down the procedure as to when an arrest can be effected by a private person. All that it says is that any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender and without unnecessary delay shall make over any person so arrested to a Police

Officer, take such person or cause him to be taken in custody, to the nearest Police Station. Thus, in order to enable a private person to effect an arrest of any person first of all a cognizable offence must be committed in his presence. Here in the present case no cognizable offence has been committed in the presence of the villagers. Learned Standing Counsel contended that as soon as the respondent came to pledge the ornaments the following morning with P.W. 9, Chiranjilal Agarwala, he was suspected at least being a receiver of stolen property.

But there is no evidence to the effect that these villagers arrested him on account of the fact that he was suspected of having received stolen property. The evidence is that the respondent was detained by the villagers on the ground of suspicion, because Krutartha identified those articles to be his which had been stolen from his house. Thus, the villagers could not have effected a legal arrest. Even if the villagers had effected a legal arrest under Clause (1) of Section 59 the respondent must be re-arrested by the Police Officer under sub-s. (2) of Section 59.

There is no evidence on record that he was re-arrested by P.W. 1. It was then contended that his arrest comes under the latter part of S, 46, that is there was a submission to the custody. Unfortunately there is not an iota of evidence on record that the respondent did in fact submit to the custody by word or action. Admittedly P.W. 1 was sent by the Officer-in-charge of the Police Station of Boudh, to effect the arrest of the respondent.

Section 56 lays down that when any officer in charge of the Police Station or any Police Officer making an investigation under chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

The Officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person shall show him the order, P.W. 1 admitted in his evidence that he was given a command certificate, but no such command certificate was produced at the trial. What section 56 contemplates is that when a subordinate officer is deputed to arrest

without a warrant, he must be delivered with an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

But no such written order is forthcoming in this case. There is also no evidence of any cognizable offence having been committed by the respondent. All that P.W. 10 had said is that he had registered a case at Baudh P. S. Crimes Nos. 49/57 and 50/57 on 28-9-57 and had directed his A.S.I., T. N. Gantayat to take up the preliminary investigation. The A. S. I., P.W. 2 took down a written report from Arikhit Behera, the Constable, and took up the preliminary investigation. P.Ws. 3 and 6 no doubt support that the respondent had escaped from the custody of P.W. 1.

The co-accused of the respondent also had been examined in this case as P.W. 8 and he supported the prosecution case also. P.Ws. 7 and 9 are the villagers who deposed to the fact which led to the taking into custody of the respondent along with another as they were suspected to have been implicated in a case under Section 447/380 of the Indian Penal Code. The respondent doubtless admitted the escape but under the influence of liquor. None of the witnesses can testify to the fact that there was a lawful arrest before the escape.

7. The second part of Section 224 of the Indian Penal Code provides that whoever intentionally escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. In order therefore to warrant a conviction under Section 224 it is elementary to prove that the accused-res-pondent intentionally escaped or attempted to escape from the lawful custody.

There is no evidence that the respondent was at the time of his escape under any lawful custody. Mr. Ray relied upon a case of the Allahabad High Court reported in (S) AIR 1955 All 438, State v. Ram Chandra. In that case the learned Judges held that where a police officer deposes his subordinate to effect an arrest of an accused without a warrant, then under Section 56 he has to deliver to the officer required to make the arrest an order in writing.

Therefore, for want of such a written order the arrest of the accused by such an officer is illegal. They further held that the essential difference between Section 54 and Section 56, Criminal P. C., is that while the former lays down in what cases may a police officer arrest a person without warrant, the latter prescribes the procedure to be followed in those cases when instead of making the arrest himself the police officer deposes an officer subordinate to him to do so.

The reason for the prescribing of this procedure appears to be to pin both the superior and the subordinate officer down to their respective responsibilities where the former does not choose to act for himself but through the latter. But there may, however, be a class of cases where, besides being armed with an order contemplated by Section 56, a Police Officer may also be possessed of the requisite information or requisition under Section 54, in which case his act will be supportable if it could assume legality under either section.

8. Mr. Ray also relied upon two decisions of the Patna High Court in AIR 1940 Pat 361, *Gulabi Mohta v. Emperor*; and AIR 1932 Pat 171, *Kartick Chandra v. Emperor*. Both the cases were decided by the same learned Judge. In AIR 1940 Pat 361, *Dhavle J.*, held that where a Police Officer who is not present on the spot asks the constable to bring a certain person to thana with some papers, the order does not amount to a direction for arrest as contemplated by Section 56 unless the order is given in writing.

Eventually he found that the person cannot be convicted under Section 224, Penal Code nor can persons assisting him be convicted under Section 225 and Section 353. In the case of *Kartick Chandra Maity* in AIR 1932 Pat 171, the same learned Judge took the view that if a constable is effecting an arrest specifies a certain power which proves to be wanting resistance to him or escape from his custody constitutes no offence.

Where the Constable purports to act under a warrant which is found to be invalid, and where there is no allegation by the constable in his deposition that he proceeded under Section 54 (1). Section 54 (1) does not apply. The learned Standing Counsel relied on a case in AIR 1938 Pat 229, *Jioo Mian v. Emperor*, where the decision of *Dhavle J.*, in AIR 1932 Pat 171, has been distinguished.

Varma J., in that case, however, held that the issue of a written order under Section 56 does not limit the power conferred by Section 54.

Accepting the decision in AIR 1938 Pat 229, to be the correct position in law, I find that in the instant case there is nothing on record to show that a cognizable offence had been committed by the respondent or any reasonable complaint had been made against him except the fact that P W. 10 had stated that he had registered certain cases in his diary at the Police Station.

The petition of complaint in this case is not before this Court nor is there any material on record to show that a reasonable complaint had been made against the respondent in order to enable P. W. 1 to exercise his powers under Section 54, of the Code of Criminal Procedure. Thus, the prosecution has failed to prove that there was an arrest either under Section 54 or Section 56 of the Code.

In any view of the matter, I am inclined to hold that the prosecution has failed to bring home the charge under Section 224 against the respondent and the learned Magistrate is quite correct in acquitting him.

In the result the appeal is dismissed.

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