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Nandsingh and ors. Vs. the State

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Court : Rajasthan

Decided On : Feb-27-1951

Reported in : AIR1951Raj105

Judge : Kanwarlal Bapna, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 97 and 99; Code of Civil Procedure (CPC) - Order 21, Rule 24 and 24(2)

Appeal No. : Criminal Revn. No. 332 of 1950

Appellant : Nandsingh and ors.

Respondent : The State

Advocate for Def. : Mansharam, Govt. Adv.

Advocate for Pet/Ap. : Chandmal, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Kanwarlal Bapna, J.

1. This is a revn by four accused, Nandsingh, Gurudeosingh, Mt. Nihar Kaur & Mt. Nand Kaur, against their convictions & sentences.

2. The Subdivisional Mag, Karanpur, convicted the first two accused under Section 324, I. P. C. & sentenced them to undergo four months' rigorous imprisonment & to pay a fine of Rs. 50/-; the latter two were convicted under Section 323 I. P. C, & sentenced to undergo one month's simple imprisonment & a fine of Rs. 50/-. On appeal, the learned Ses J., Ganganagar, maintained the conviction & sentences of accused Nandsingh & Gurudeosingh. As regards Mt. Nihal Kaur & Mt. Nand Kaur, the conviction was maintained but the sentence was reduced to payment of fine only. All the four accused have come up in revn.

3. The case for the prosecution is that one Thamban Singh had a decree for recovery of money against Nandsingh & in execution thereof a warrant of attachment of a cart belonging to the Judgment-debtor was issued by the Ct of Munsif, Karanpur, on 25-3-1949 returnable on 8-4-1949. One Shivnarain P. W. 4, Sawar of the Ct, went to the residence of Nandsingh accompanied by Thambansingh, his two sons, Lalsingh & Jarnailsingh, as also one Mulsingh as Motbir. The cart was attached by Shivnarain & made over to Thambansingh to be carried away & Jarnailsingh wanted to yoke the bullocks when Mt. Nand Kaur & Mt. Nihal Kaur assaulted Thambansingh, Lalsingh & Jarnailsingh. Nandsingh & Gurudeosingh also came up & assaulted them causing several inlaries. The report was made by Lalsingh, another son of Thambansingh, at police station, Karanpur, & the four accused were challaned & sentenced as aforesaid. It may be observed that Gurudeosingh is the son of Nandsingh, Mt. Nand Kaur is sister of Nandsingh, & Mt. Nihal Kaur is the wife of Nandsingh. Two other persons, Mt. Meeran & Sarjit Kaur were also challaned but were acquitted.

4. The only point urged in this revn is that the warrant of attachment was illegal &, therefore, the four accused petnrs had committed no offence in resisting execution & in committing the alleged assault in order to save their property from wrongful attachment. It appears from a perusal of the warrant that it does not contain the name of the officer or person to whom it was addressed or delivered for execution. The space kept for insertion of the name is blank. Under Order 21, Rule 24 (2), it is laid down that every process of attachment shall bear date, the day on which it is issued & shall be signed by the Judge or such officer as the Ct may appoint in this behalf & shall be sealed With the seal of the Ct, & delivered to the proper

officer to be executed. The learned Govt Advocate contended that the rule only contemplates delivery of the warrant to an officer whose duty it is to execute & the omission to mention the name of the officer in the warrant to whom it was delivered for execution does not make the warrant illegal. In my opinion, while the rule lays down that the warrant is to be delivered to the proper officer for execution, it contemplates that the name of such officer whether by his personal name or by designation should be entered in the warrant as otherwise it will not be possible for the judgment-debtor to know whether the person who has brought the warrant has authority to execute it. It is apparent that if the warrant is not endorsed for execution to any person whether by personal name or as holder of post, any person who may steal the warrant or may find the warrant could purport to act under the same. It has been held in 'Chelli Latchanna v. Emperor', AIR (29) 1942 Pat 480: (43 Cr LJ 795), that the person to whom the warrant of attachment is addressed, must be named on the face of the warrant & that where a warrant is incomplete in this. respect, no legal attachment can be effected under it. In this case reliance was placed on a decision of the Allahabad H. C. in 'Fattu v. Emperor', AIR (19) 1932 All 692: (34 Cr LJ 455). That case actually related to a case of arrest under a warrant but it was held that a. warrant must be issued to some person for execution & where no name or description of that person was given in the warrant, the warrant was illegal. In 'Prag v. Emperor', AIR (29) 1942 Oudh 256: (43 Cr LJ 518), warrants were issued by an Assistant Collector authorising a Kurk Amin to execute them. The Kurk Amin returned the warrants with the report, of his inability to execute on account of resistance by the defaulters. The Naib Tehsildar took assistance from police & attached certain cattle but as they were being taken away, there was a fight between officials on the one side & the persons trying to recover the cattle on the other. The persons who rescued the cattle were prosecuted & convicted by the Mag but on revn, Bennett J. held that although the Naib Tehsildar may have acted with the best of intentions, he would have seen at once on examination of the warrant that it was the Kurk Amin & not himself who was authorised to execute it &, therefore, he had no lawful authority to attach the cattle & the accused were acquitted on the plea of the right of private defence of property. The learned Ses J. in dealing with this aspect of the case has observed that the warrant was. perfectly valid as all

warrants are addressed to the officer & he passes them on to process-server & so the execution of warrant by process-server, although his name is not mentioned, is not illegal. He relied on 'Thakasingh v. Emperor', AIR (14) 1927 Lah 851: (28 Cr LJ 972). This decision is, however, a very short one. In the opening part of the judgment it is mentioned that no argument was addressed that the warrant was illegal & that it was further observed that even if the warrant was defective, the accused had no justification for beating the process-server Ramlal who was acting in good faith under colour of his office. Reference was made to Section 99, I. P. C. The learned Ses J. in the present case has also observed that the omission to mention the name of the process-server is at the most an irregularity. In the present case, not only the name of the process-server is not mentioned but the name of the Nazir whether personally or by virtue of his office is also not mentioned. As held in the Patna, Allahabad and Oudh cases referred to above, such a warrant is illegal.

5. It was argued by Govt Advocate that even if the warrant was illegal, the plea of right of private defence of property mentioned in Section 97, I. P. C. is subject to the restrictions contained in Section 99 & Section 99 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 a public servant acting in good faith under colour of his office though that act may not be strictly justifiable by law. The important words in the para are however, 'in good faith' & 'act may not be strictly justifiable by law'. According to the definition of 'good faith' mentioned in Section 52, 'Nothing is said to be done in good faith which is done without due care & attention'. Now, it is obvious that if the process-server or the officer through whom he may have got the process had perused the warrant, it would have been quite clear that it was not addressed to any person &, therefore, the act of executing the warrant clearly lacked due care & attention. In my opinion, the last words, 'though that act may not be strictly justifiable by law', only protect defect in minor particulars but do not cover cases like the present one where the person executing the warrant was not authorized to act. The resistance to the execution of the warrant was in the present case thus covered by the plea of right of private defence of property. The conviction & sentence passed on the accused are, therefore, set aside, & the fine if paid will be refunded. The bail

bonds of the two accused Nandsingh & Gurudeosingh are hereby cancelled. Revision is allowed.

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