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Devisingh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-26-1963

Reported in : AIR1964Raj36; 1964CriLJ359

Judge : L.N. Chhangani, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 79, 83, 84, 85 and 86

Appeal No. : Criminal Appeal No. 749 of 1962

Appellant : Devisingh and ors.

Respondent : State of Rajasthan

Advocate for Def. : B.C. Chatterji, Deputy Government Adv.

Advocate for Pet/Ap. : K.C. Gaur, Adv.

Disposition : Appeal allowed

Judgement :

L.N. Chhangani, J.

1. The four appellants before me, Devisingh, Sure, Ramsingh and Bhagi, Gujars, residents of Atraj-ka-pura, Tehsil Bari, District Dholpur, were tried by the Additional Sessions Judge, Dholpur, for offences under Sections 147, 224, 307, 332 read with Section 149, Indian Penal Code. The Additional Sessions Judge convicted

Devisingh and Sure under Section 224 and Ramsingh and Bhogi under Section 225, Indian Penal Code and sentenced each one of them to a fine of Rs. 600/- and, in default, rigorous imprisonment for six months. They were acquitted of all other offences.

2. The prosecution case was that one Chabraj Gujar PW/11 of Nayagaon, Madhya Pradesh, filed a complaint against Devisingh and Sure in the Court of Additional District Magistrate, Gwalior accusing them of an offence under Section 363. Indian Penal Code. According to him, his wife Mst. Gore and daughter were kidnapped or abducted by these persons and were being kept in wrongful confinement. The Additional District Magistrate passed an order on 11-10-60 directing the issue of bailable warrants of arrests in the amount of Rs. 250/- each for the arrest of Devisingh and Sure. He also directed issue of a search warrant under Section 100, Criminal Procedure Code, for the arrest and production of Mst. Gore. These warrants were endorsed to the Police Officer in-charge of the Police Station, Panihar (Madhya Pradesh). According to prosecution, Chabraj took these warrants to the Police Station, Panihar. The Police Station, Panihar endorsed them to the Police Officer, incharge of Police Station, Bari in Rajasthan. After receipt of the warrants at Police Station, Bari, Bhagwansingh PW/8 along with some police constables and certain police officials of the Rajasthan Armed Constabulary left the Police Station for executing the warrants. They reached Atraj-ka-pura at about 12 in the night.

Bhagwansingh, the prosecution further alleged, arrested Devisingh and Sure and also Mst. Gore. It may be mentioned here that the Police Station, Bari had about one year before the incident, received a tehrir from Police Station, Madrail for the arrest of Heera. Heera also happened to be available at that time and he was also arrested. Devisingh, Sure and Gore asked Bhagwansingh and other police officials to release them and failing to secure the release they cried for help when some 20 to 25 villagers of Atraj-ka-pura armed with lathies appeared on the scene and assaulted Bhagwansingh and other police officials. According to prosecution there was some firing also on the side of the villagers and the police had also opened fire in defence of which accused Devisingh is alleged to have been injured during the incident. The two appellants Sure and Devisingh thus managed to secure their

release from the police custody. A report of the incident was made at the Police Station, Bari and after investigation, the four appellants were challenged and eventually committed for trial to the court of Additional Sessions Judge. At the trial, the prosecution examined twelve witnesses. The warrants of arrests as also the warrant for search could not be produced because, according to prosecution, they were taken away by the villagers.

3. The accused pleaded not guilty. The appellant Devisingh admitted his presence in the village at the time of the incident but he came forward with a counter version. According to him, the police officials had gone to the village Atraj-ka-pura to commit a dacoity. He was then sleeping in his room and was awakened and was enquired as to where the house of Roshan Seth was. He replied that he (Roshan Seth) had gone to Bari. Thereupon, he was slapped. He then fled away fearing that he would be killed. There was a cry in the village that dacoits had arrived in the village. Thereafter the dacoits, that is, police officials fired at the villagers. A gun was fired at him and he was injured and fell down. The Police Officials then fled away. He was then taken on a cot to Hospital.

4. The other accused pleaded alibi.

5. The trial Judge partially accepted the prosecution case and rejected the defence story altogether. According to him, there was no evidence to justify a finding that the appellants along with others attempted to kill the police officials or they formed an unlawful assembly. He, however, found that the two appellants Devisingh and Sure having been lawfully apprehended, obstructed arrest and got their release and that the two other appellants helped them in escaping from police custody.

6. Mr. Gaur contended that the Station House Officer, Police Station, Panihar in Madhya Pradesh had no authority to endorse the warrants to the Police Officer-in-charge of the Police Station, Bari, in Rajasthan, and consequently, Bhagwansingh PW/8 Head Constable of the Police Station, Bari had no authority to effect the arrest of the appellants. The apprehension of the appellants was, therefore, not lawful and there could be no question of their obstructing arrest or escaping from custody.

7. The point for determination, therefore, is: whether the warrants were properly and legally endorsed to the Officer-in-charge of the Police Station, Bari?

8. Now, the general provisions relating to execution of warrants directed to police officers are contained in Section 79, which provides that a warrant directed to any police officer may not only be executed by him but may be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed. The further question then emerging for determination is: whether this general provision is controlled or limited by the special provisions relating to the execution of warrants outside the local limits of the jurisdiction of the court issuing the warrant contained in Sections 83 to 86, Code of Criminal Procedure. Section 83 provides two alternatives to be adopted by a court issuing a warrant to be executed outside the local limits of its jurisdiction -- (1) a court may,_ instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a Presidency-town within the local limits of whose jurisdiction it is to be executed. (2) He may direct a warrant to a police-officer exercising: powers within the local limits of his jurisdiction for execution.

9. If the first alternative is adopted, the Magistrate or District Superintendent of Police or the Commissioner of Police, as the case may be, may direct it to a police officer and the warrant may be executed in accordance with the provisions of Section 79, Code of Criminal Procedure.

10. If the other alternative is adopted, then Section 84 comes into operation, which provides as follows:

'(1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant

is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the. Court which issued it.

(4) This section applies also to the police in the town of Calcutta.'

A proper analysis of Section 84, Criminal Procedure Code, will show that the police officer directed to execute a warrant is himself to execute the warrant, but in order to acquire an authority to execute a warrant, he must obtain an endorsement of the Magistrate or police-officer, not below the rank of police-officer incharge of a station within the local limits of whose jurisdiction the warrant is to be executed. Under special circumstances mentioned in Section 84 Sub-section (3) he may directly execute the warrant. Section 85 provides for the production of a person arrested outside the local limits of the court's jurisdiction to be produced before the Magistrate, the District Superintendent of Police or the Commissioner of Police, within the local limits of whose jurisdiction the arrest was made, except when the court issuing the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police.

Under Section 86, the Magistrate or District Superintendent or Commissioner of Police before whom the person is arrested in execution of the warrant shall ascertain whether the person arrest-ed appears to be person intended by the Court which issued the warrant. If it so appears, then the person shall be removed in custody to such Court. The purpose seems to be that if a person is arrested outside the local limits of a court's jurisdiction, then one of the three authorities mentioned in Sections 85 and 86 should be satisfied that the person arrested appears to be the person intended to be arrested. These special provisions, prescribing in detail the procedure to be adopted for execution of warrants outside the local limits of the jurisdiction of the court issuing the same must, in my opinion,

be deemed to limit and control Section 79 and the position appears to be that a police officer to whom warrant is directed for execution outside the local limits of the jurisdiction of the court issuing the same must execute it in accordance with the provisions of Section 84, and, it is not contemplated that he can endorse it to any police officer discharging duties outside the limits of the jurisdiction of the court issuing the same. If the court issuing a warrant desires that the procedure laid down under Section 79 be adopted, it should send the warrant by post or otherwise to one of the authorities indicated in Section 83. This being the position under the law, I am inclined to take the view that the endorsements of warrants by the police officer-incharge of the Police Station, Panihar in Madhya Pradesh to the Police Officer-incharge of Police Station, Bari in Rajasthan were wholly ineffective and the officers of the Police Station, Bari acquired no authority to effect arrest of Devisingh, Sure or Mst. Gore. The apprehension of Devisingh, and Sure by them was thus not lawful.

11. Mr. Gaur also emphasised certain other facts relating to the irregularities committed in effecting the arrest It was pointed out that original warrants had not been produced and that there is no proper legal proof of valid endorsements. It was also contended that the police party reached at Atraj-ka-pura at 12 in the night to effect execution of the bailable warrants. Further, although the warrants were bailable in the! amount of Rs. 250/- only no attempt was made by the police official executing warrants to obtain security from persons sought to be arrested. On the basis of these facts, it was pointed out that the conduct of Bhagwansingh and other police-officials accompanying him was highly suspicious.

12. As the apprehension of Devisingh and Sure has been found to be not lawful on the interpretation of Sections 83 to 86 of the Code of Criminal Procedure, I do not propose to examine these questions. The apprehension of the appellants by the police was not lawful and looking to the odd hour at which these persons were sought to be arrested, the appellant Devisingh and Sure cannot be said to be unjustified in avoiding or even obstructing their arrest. In this view of the matter, their conviction under Section 224, Indian Penal Code, is not sustainable. On the same grounds, the conviction of the other two persons under Section 225, Indian Penal Code cannot be maintained.

13. In the result, the appeal is accepted and the convictions and sentences against the appellants are set aside.

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