

State Vs. Nathmal

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Court : Rajasthan

Decided On : Nov-30-1951

Reported in : 1952CriLJ1259

Judge : Bapna, J.

Appellant : State

Respondent : Nathmal

Judgement :

ORDER

Bapna, J.

1. This is a reference by the learned District Magistrate, Bikaner.
2. On the 4th November 1950, the Sub-Inspector Deshnok detected two bags of rice with one Nathmal while he was travelling in a bus 'unning from Bikaner to Nokha. On the 17th December 1930, an offence was registered against Nathmal for contravening the provisions of Notification No. 51 of 23rd December 1949 and thereby committing an offence under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946. The intimation of the registration of the offence reached the Court of the Sub-Divisional Magistrate on 20th December 1950. On 26th December, the said Nathmal appeared before the Sub-divisional Magistrate Bikaner North and made an application that although the police had registered the

case against him, he had under the law not committed an offence as the law relied upon by the Police had since been repealed. He prayed that he may be allowed to remain on bail as he was prepared to stand the trial but the Police was bent upon disgracing Him by effecting his arrest and harassing him in other ways. The learned Sub-divisional Magistrate allowed Nathmal to remain on bail on executing a personal bond of Rs. 5,000/- and producing a surety for the like amount. On behalf of the Police a revision was filed in the Court of the District Magistrate challenging the validity of the order releasing Nathmal on bail before his arrest. The learned District Magistrate has made a reference that the order of bail passed by the Sub-Divisional Magistrate be cancelled on the ground that he had no jurisdiction to direct the release of an accused on bail before he had been arrested and when no warrant had also been issued for his arrest.

3. Learned Deputy Government Advocate, who appears in support of the reference, relies on *Amirchand v. The Crown* AIR 1950 EP 53 FB. The conclusions arrived at by the Pull Bench in that case are mentioned in para (26) of the judgment and are as follows:

It follows, therefore that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a Court. Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself.

According to the facts of that case, a report alleging offences punishable under Sections 7 and 10 of the Essential Supplies (Temporary Powers) Act had been made to the Police and before the report was recorded, the Police had been making enquiries but no warrants for the arrest of the petitioner had been taken out nor had the Police taken any steps to apprehend him. 'AMIRCHAND'S CASE', is, therefore, distinguishable in so far as no offence had been registered against Amirchand in that case.

4. The relevant portion of Section 497, Criminal P.C. is as follows:

'Section 497(1)' When any person accused of any non-bailable offence is arrested or detailed without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail

5. Here Nathmal had been an accused of a non-bailable offence and he had appeared before a Court. The Court had, therefore, the power to release him on bail. The reference is not correct and is not accepted.

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