

State Vs. Heer Singh

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Court : Rajasthan

Decided On : Nov-09-1960

Reported in : 1961CriLJ151

Judge : J.S. Ranawat and; D.S. Dave, JJ.

Appellant : State

Respondent : Heer Singh

Judgement :

J.S. Ranawat, J.

1. This is an appeal by the State under Section 417 of the Code of Criminal Procedure from the judgment of the Magistrate First Class Sanchore, dated 13-2-58, acquitting the accused Heer Singh, of the offence under Section 225B of the Indian Penal Code.

2. Pukhraj and Chunnilal obtained a decree for money against Heer Singh from the court of the Munsif, Sanchore. In execution of the said decree, a warrant was issued by the Munsif for the arrest of the judgment-debtor on his failure to satisfy the decree. Magraj Amin of the court was ordered to execute the said warrant. He went to village Isrol, P. S. Bhawatra, along with the decree-holder Chunnilal. It is alleged that he demanded the decretal amount of Rs. 543/- together with the expenses of the execution amounting to Rs. 6/4/-and the judgment-debtor

expressed his inability to pay the said amounts. Magraj thereupon, it is stated, asked Heer Singh to accompany him to the court of the Munsif and Heer Singh and Magraj left Isrol for Sanchore.

It is further stated that while Magraj and his party was going to Sanchore, the judgment-- debtor Heer Singh ran away and did not care to accompany Magraj to the court of the Munsif. On a report by Magraj a case under Section 225B I.P.C. was registered against Heer Singh. The learned Magistrate First Class, Sanchore, after holding a trial, recorded an order of acquittal in favour of Heer Singh for the reason that there was no evidence to show that in fact Magraj arrested Heer Singh and that he escaped from his legal custody.

3. In this appeal, it is urged on behalf of the State that the Court below was in error in holding that Heer Singh was not arrested, The learned Counsel for the State has referred to the statement of Magraj and that of Chunnilal in order to show that Heer Singh was arrested by Magraj and he ran away while he was being taken from Isrol to Sanchore. We have read the statements of the prosecution witnesses, Amin, Magraj and Chunnilal. The evidence of Magraj is to the effect that he showed the warrant of arrest to Heer Singh and demanded payment of the decretal amount and the judgment -- debtor Heersingh expressed his inability to pay the amount and the witness then requested Heer Singh to accompany him to Sanchore and he left Isrol with Heer Singh, but, on the way, Heer Singh managed to run away.

Magraj has also stated that he arrested Heer Singh, but the manner of arrest, it appears, was none other than the description which he gave and which has been referred to above. The question is whether by showing the warrant to the judgment-debtor and by requesting him to accompany to the Court, an arrest can be deemed to have been effected so as to hold the judgment-debtor liable for an offence under Section 225B I.P.C. on his trying to refuse to accompany the Amin. It may be observed that an arrest under a civil process is not effected unless either the person to be arrested submits to the arrest or the officer making the arrest actually touches or confines the body of the person to be arrested. In the instant case, the evidence of the Amin shows that he did not inform the accused that he

was being arrested by him and there is no evidence that' the accused submitted to the arrest by the Amin. There is also no evidence to show that the Amin in fact touched the body of the judgment-- debtor to evidence the fact of his arrest.

The Amin in fact requested the judgment-debtor Heer Singh to accompany him to the court and Heer Singh, agreed to do so. After Heer Singh had gone with the Amin for some distance, he changed his mind and ran away. The facts mentioned above do not show that an arrest as required by law was effected in this case. In this view of the matter, the finding of the Magistrate does not appear to be wrong that as there was no arrest, Heer Singh could not be held liable for an offence under Section 225B I.P.C.

We may in support of our view refer to the decision in *Rajani Kanto Pal v. Emperor*, 5 Cal WN 843. In that case, the bailiff did not touch the body of the person to be arrested and the judgment-debtor also did not submit to the arrest being made by the bailiff. It was held that no arrest in the eye of law was effected and the judgment-debtor could not be held liable for an offence under Section 225 I. P. C

4. The appeal fails and it is dismissed. EE/A, Appeal dismissed.

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