

In Re: Mammed Beary

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Court : Chennai

Decided On : Jul-16-1954

Reported in : AIR1955Mad157; 1955CriLJ569

Judge : Somasundaram, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 225B; Code of Civil Procedure (CPC) - Order 21, Rule 24(2)

Appeal No. : Criminal Revn. Case No. 1230 of 1953 and Criminal Revn. Petn. No. 1162 of 1953

Appellant : In Re: Mammed Beary

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : M. Santosh, Adv.

Judgement :

ORDER

Somasundaram, J.

1. The petitioner in this case has been convicted by the first Class Magistrate, Kasargod for an offence under Section 225-B, I. P. C., and sentenced to three months rigorous imprisonment. In appeal the conviction and sentence were confirmed by the Sessions Judge.

2. The facts of the case are not seriously disputed. On 13-2-1953, the complainant a process server of the Court of the District Munsif, Kasar-god went to the house of the first accused to execute a warrant for his arrest. The contents of Ex. P. 1, the warrant, were duly read over and explained to the petitioner and the process server touched him in token of arrest and further told him that he has been arrested. The first accused took up a defiant attitude and he called his brothers accused 2 to 4. All the accused are said to have beaten the process server till P. Ws. 3, 4 and 5 came and got him released. They prevailed upon him to obey the law and sign the warrant and finally the accused signed the warrant. He thereupon refused to accompany P. W. 1 to Kasargod in spite of his being told that he was under arrest and being asked to accompany P. W. 1. P. W. 3 is said to have suffered injuries caused by the accused and on return to Kasargod laid a complaint against the accused and three others. The trial court found that the case against three others had not been made out and found the petitioner guilty under Section 225-B for having escaped from lawful custody. The same was upheld by the appellate court.

3. Two points have been taken before me by Mr. Santosh appearing for the petitioner. The first point is that the warrant in this case has not been signed by the District Munsif in accordance with the provisions of Order 21, Rule 24, Clause (2), C. P. C., as it was signed only by the Head-clerk and that no evidence has been let in to show that the Head-clerk is authorised to sign the warrants as under Clause (2) of Order 21, Rule 24, a warrant may be signed by any officer authorised by the District Munsif.

On this point, I called for a report as to whether the Head-clerk has been authorised to sign the warrant. The District Munsif has sent a report stating that in view of the High Court's circular, P. Dis 534 of 1943 dated 20-10-43 he had authorised the Deputy Nazir to sign all the processes other than the arrest warrants and the Head-clerk to sign the arrest warrants under Order 21, Rule 24 (2), C. P. C., respectively, in all cases where such processes have been ordered to be issued.

It is true that when the Head-clerk gave evidence, he did not produce this authorisation in court. Technically speaking Mr. Santosh is certainly right in saying that evidence ought to be given in court. But in my opinion the failure to produce this authorisation is not a lacuna in the prosecution case so as to warrant this case being sent back for the purpose of letting in that evidence. In any event, the report having come from the District Munsif, this can be filed herein in this revisional court as part of the records. The contention therefore, that it has not been shown that the Head-clerk has been authorised does not have any force, after the receipt of this report.

4. The warrant having been duly signed on authorisation of the District Munsif, the only other question is whether on the facts as contended by the learned Counsel for the petitioner, the offence under Section 225-B, I. P. C., has been made out or not. The facts, as already stated, are that after arrest, the petitioner refused to accompany the process server. The process server afterwards went away to court. Whether mere refusal to accompany the process server will amount to escape or attempt to escape from lawful custody is the question -- 'Santa Singh v. Emperor', AIR 1933 Lah 128 (A) is relied on by the learned counsel for the petitioner where it has been held that refusal to accompany would not amount to escape or attempt to escape.

With respect to the learned Judges, I am unable to agree with their opinion giving the natural meaning to the word 'escape' which means getting free, getting clear away from prison or person, the act of the petitioner would undoubtedly, in my opinion, fall within the clause 'attempt to escape'. His refusal to accompany him necessarily means that he will not go with him and that the process server will have to leave him and go unless force is used. It is, in my opinion, an attempt to escape within the meaning of Section 225-B. Though the charge is only for escape, I find him guilty of attempt to escape. But this alteration in the conviction does not in any way affect the conviction of the petitioner under Section 225-B, I. P. C. In the result, the petitioner will be convicted for the offence under Section 225-B not for escape, but for attempt to escape.

5. It has been represented that the petitioner has been in jail for nearly over a month. In the circumstances I do not think that the interests of justice require that he should be sent back to jail. The sentence is therefore reduced to the period already undergone with this modification, the revision is dismissed.

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