

The Public Prosecutor Vs. Abdul Razak

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Court : Chennai

Decided On : Feb-17-1938

Reported in : AIR1938Mad536; (1938)1MLJ667

Appellant : The Public Prosecutor

Respondent : Abdul Razak

Judgement :

Burn, J.

1. This is an appeal by the Government from an order of acquittal. The facts are not disputed. The respondent was arrested by a process-server (P.W. 1) of the Court of the District Munsif of Kurnool on 3rd October, 1936. The order for his arrest was passed by the District Munsif in execution of a decree of a Panchayat Court. The respondent signed on the warrant but did not go with the process-server to the Court. He told the process-server that he would pay the money and then went into his house and refused to come thereafter. The next day when the process-server went to his house again, the accused was not to be found.

2. The learned Sub-Magistrate found these facts established but considered that the respondent was not guilty of any offence because the arrest warrant had been signed by the Head Clerk of the District Munsif's Court. He found that the Head Clerk had been authorised to sign arrest warrants in the time of the former District Munsif. But the District Munsif in charge of the Court in September, 1936, had not

authorised his Head Clerk to sign arrest warrants and the learned Sub-Magistrate thought that the issue of warrants with the signature of the Head Clerk in the absence of an authorisation by the existing District Munsif was illegal. On this view, he thought that the act of the accused did not amount to an offence of escaping from lawful custody. He therefore acquitted him.

3. The learned Sub-Magistrate's view is erroneous. It is not necessary that the District Munsiff of the time should authorise a Head Clerk to sign warrants of arrest. It was proved that on the 4th June, 1935, the then District Munsif Mr. C. Rajagopalan passed a general order Ex, C to this effect:

All the warrants of arrest ordered by this Court shall hereafter be signed by the Head Clerk. All the other processes shall be signed by the Deputy Nazir.

4. This order was passed in pursuance of the High Court's order in February, 1935, amending the Civil Rules of Practice and Circular Orders. The High Court's order runs as follows:

Every warrant of arrest under Order 21, Rule 24(2) of the Code of Civil Procedure should be signed by the Judge or such officer as the Court may appoint in this behalf. The officer to whom this power may be delegated should ordinarily be the chief ministerial officer of the Court and not the Nazir or Deputy Nazir and the delegation should be made in writing and kept in Court.

5. The important point to be noticed is that the delegation is made by 'the Court' and not by the District Munsif personally. The delegation is made to the Head Clerk and not to any particular Head Clerk. It is quite clear that the order which was made by Mr. C. Rajagopalan on 4th June, 1935, is perfectly valid, and it remains in force until withdrawn, authorising the Head Clerk, whoever he may be, to sign warrants of arrest. The learned Sub-Magistrate perhaps has been under the impression that the order for arrest of the judgment-debtor was issued by the Head Clerk but that of course is not so. The Head Clerk has no power to issue orders for arrest but he has power to sign warrants of arrest, when the order for arrest has been passed by the Court.

6. The acquittal of the respondent is wrong and I set it aside and convict the respondent of the offence under Section 225(b) of the Indian Penal Code, and sentence him to pay a fine of Rs. 10; in default of payment of fine to suffer rigorous imprisonment for fourteen days. In fixing the fine at this somewhat lenient figure, I am taking into account the fact that the respondent has been acquitted by the Court below and also that he is a police constable who may perhaps lose his appointment as a consequence of this conviction.

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