

Uma Charan Singh Vs. Emperor

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Court : Kolkata

Decided On : Nov-14-1901

Reported in : (1902)ILR29Cal244

Judge : Harington and ;Gupta, JJ.

Appellant : Uma Charan Singh

Respondent : Emperor

Judgement :

Harington and Gupta, JJ.

1. In this case a rule has been granted calling upon the District Magistrate to show cause why the conviction and sentence passed on the four petitioners should not be set aside. The petitioners had been convicted of offences under Sections 147 and 325 of the Penal Code. The unlawful assembly of which they are said to have been members was formed for the purpose of resisting the execution of a warrant which had been issued in favour of the decree-holder by a Civil Court. The ground on which the rule was granted was that the warrant was not a legal one, and, therefore, that an assembly for resisting the execution of such a warrant was not an unlawful assembly. The objection to the warrant is that it is general in its terms, and does not on the face of it purport to authorize the seizure of the property of the petitioners nor does it purport to give the peon authority to enter into the house of the petitioners for the purpose of attaching their property. The petitioners' names

are not mentioned in the warrant. In our opinion a warrant which does not on the face of it authorize the seizure of the petitioners' goods by the peon is not a warrant which can be lawfully executed against the petitioners, and we are strengthened in that view by the fact that in the schedule to the Civil Procedure Code a form of warrant is given, which form provides for the insertion of the name of the person against whom the warrant is to be executed. That was not complied with in the present case. It is suggested that the peon would be protected under Clause (2) of Section 141 of the Penal Code, and the petitioners would have no right to resist the peon. But all we need say with regard to that clause is that it would not have the effect of making an assemblage of persons an unlawful assemblage, if the object with which they assembled was a perfectly legal one. We think that this warrant was not a legal warrant, and that the petitioners therefore cannot be convicted under Section 147. But the petitioners were only entitled to resist the execution of this warrant, and it appears from the judgment of the Lower Court that the fourth petitioner, Rakhal Bagdhi, exceeded the right which he had and inflicted a severe injury with a lathie on the decree-holder's gomastha. That he had no right to do. In our opinion, therefore, the conviction of Rakhal Bagdhi of an offence under Section 325 was lawful, and that conviction will stand. The rule, therefore, will be made absolute for setting aside the conviction and sentence which was passed on the three petitioners--Uma Charan Singh Rai, Amulya Charan Singh Rai, and Karuna Singh Rai, but it will be discharged in so far as it relates to the setting aside of the sentence passed on Rakhal Bagdhi.