

Sukheswar Phukan Vs. Emperor

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Court : Kolkata

Decided On : Jun-16-1911

Reported in : (1911)ILR38Cal789

Judge : Caspersz; and Sharfuddin, JJ.

Appellant : Sukheswar Phukan

Respondent : Emperor

Judgement :

Caspersz and Sharfuddin, JJ.

1. The petitioners have been convicted under Section 225B of the Indian Penal Code for resisting the execution of a certain warrant for the arrest of a witness, named Musammat Mahi, whose attendance was desired in the case, No. 610 of 1910. We granted this rule on the ground that the action of the Court issuing the warrant of arrest was illegal, and vitiated the subsequent proceedings including the conviction of the petitioners for resisting an invalid process. The warrant was issued under Section 90 of the Criminal Procedure Code which provides that the Court must record its reasons in writing before adopting that extreme measure. It appears from the order sheet of the case, No. 610 of 1910, that no summons was issued on Musammat Mahi. Warrant was ordered in the first instance. That procedure appears to have been illegal inasmuch as, on the face of the order sheet, no reasons were recorded by the Court issuing the warrant. Nor has the

Magistrate submitted any explanation to elucidate the matter.

2. On the warrant itself there is a printed form, in accordance with Form No. VII of Schedule V of the Code of Criminal Procedure, reciting that 'whereas I have good and sufficient reasons to believe, that he (the witness) will not attend as a witness on the hearing of the said complaint unless compelled to do so,' but the natural meaning of Section 90 is that the Court should record its reasons in writing. The adoption of a stereotyped printed form is, in our opinion, not a sufficient compliance with the imperative language of the section. The printed form may be intended for the information of the person whom it is sought to arrest. But that is a different matter. We think, therefore, that the conviction is unsustainable.

3. We may add, that the incident appears to have been greatly magnified. Musammat Mahi duly appeared in Court and gave her evidence. The convictions and sentences are, therefore, set aside. We direct that the petitioners be discharged from bail. The rule is made absolute.

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