

Sheikh Nasur Vs. Emperor

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Court : Kolkata

Decided On : Nov-30-1909

Reported in : (1910)ILR37Cal122

Judge : Harington and ;Chatterjee, JJ.

Appellant : Sheikh Nasur

Respondent : Emperor

Judgement :

Harington and Chatterjee, JJ.

1. This is a Rule calling upon the District Magistrate to show cause why the conviction and sentence mentioned in the petition should not be set aside or such other order passed, as the circumstances may require, on the ground that the resistance was after the date specified in the first process, and on the further ground that the resistance, if any, in respect of the second process, was not to the person named therein as charged with the execution of the process.

2. The petitioners have been convicted under Section 186 of the Indian Penal Code. They appealed to the District Magistrate, and the sentence passed on them was reduced to one month's rigorous imprisonment. They now ask that the conviction may be set aside on the grounds upon which the Rule was granted.

3. Now, the resistance was made to the execution of two different warrants, one under the Public Demands Recovery Act and the other under the Chaukidari Act. With respect to the former warrant, the ground taken by the petitioners is that, whereas it appears on the face of it that the returnable date of the warrant was July 26th, the resistance was not in fact offered by the prisoners until August 2nd. It is urged on behalf of the petitioners that, as the warrant could only be executed on or before the 26th July, there was nothing illegal in resisting its execution when the time during which it could lawfully be executed had expired. The reply made by the Crown is that in fact the warrant had been extended until August 8th. Therefore the resistance was unlawful, because the warrant could be lawfully executed on August 2nd. Order XXI, Rule 24, contains the provision as to what must appear on the process for execution, and, amongst other things, it is provided that in every such process the day shall be specified on or before which it shall be executed. It was, therefore, material that the warrant should bear a date on or before which it could be executed. Now, assuming that this warrant had been extended to August 8th, that date did not appear on the warrant. Therefore the warrant failed in an essential particular and was at the time of the resistance, on the face of it, not a good warrant. That being so, we think the prisoners could not be convicted of voluntarily obstructing a public servant in the discharge of his public functions, because the discharge of the public function was the execution of a warrant, and the warrant at the time failed to show that it could be executed at the time when the resistance was offered to the public servant.

4. Further, in our view, the persons against whom the warrant was sought to be executed were entitled to see the warrant not only for the purpose of satisfying themselves as to the amount, but also for the purpose of satisfying themselves that the person who sought to execute the warrant against them was legally authorized so to do. When the warrant on the face of it did not confer that authority to the person who sought to execute it, we cannot see how the persons who resisted the execution can be convicted under Section 186.

5. Then with regard to the second point the question is perhaps one of greater nicety. The warrant was issued under Section 45 of the Chaukidari Act. The point taken is that under that section the person who is to execute a warrant must be

named in it, and the warrant could only be executed by the person so named. In this case the warrant did not specify the name of the person who was to execute it, and it was not executed by the person to whom it was directed. In answer it is contended for the Crown that the warrant was directed to the naib-nazir, and he, by the practice, which has obtained for many years in this country, had general power to delegate the execution of processes to his subordinates. Therefore the warrant which was executed by a peon subordinate to the naib-nazir was being lawfully executed when the petitioner resisted the execution.

6. The words of Section 45 of the Chaukidari Act run as follows, with regard to the particular issue of the warrant: 'The District Magistrate may issue his warrant for the realization of the chaukidar's pay from the members of the panchayat by distress and sale of their moveable property, and shall therein charge some person, therein named, with the execution thereof; and upon such warrant such proceedings shall be had as hereinbefore directed to be had on any writing issued for the recovery of any arrears of the tax by this Act directed to be levied.'

7. Now, on the best consideration that we can give to the words of that section, we are of opinion that the warrant issued under that section must contain the name of the person who is to execute it, and that only the person who is named in the warrant as charged with execution can lawfully execute the warrant. The words in our view are sufficiently stringent to override any general power of delegation which a naib-nazir might have in cases in which his power has not been specifically limited by statute.

8. For these reasons, we think the petitioners could not be convicted under Section 186 of resisting a peon in the execution of the warrant issued under Section 45 of the Chaukidari Act. The result is, that the Rule must be made absolute, the conviction and sentence set aside, and the petitioners, if on bail, must be directed to be released from their recognizances.