Subed Ali Vs. Emperor

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Court : Kolkata

Decided On : Apr-10-1913

Reported in : (1913)ILR40Cal849

Judge : Harington and ;Coxe, JJ.

Appellant : Subed Ali

Respondent : Emperor

Judgement :

Harington, J.

1. This is a Rule calling on the District Magistrate to show cause why the conviction should not be set aside on the first ground mentioned in the petition. That ground runs in these terms---that the conviction is had in law, in that the attachment of the cattle, by the peon whose power to act under the warrant had expired, was illegal.

2. The whole question raised by this rule was: Was the peon's act in attaching the cattle illegal under these circumstances?

3. The warrant was a warrant addressed to the bailiff, the English word 'bailiff' appearing on the face of it in Bengali character. The nazir of the Court, who appears to have superintendence over the persons who execute the warrants,

endorsed it with a direction to the particular bailiff in question to execute it within a particular day; but the warrant itself was a good warrant for some days beyond that date, The ^ bailiff should have executed it, according to the direction of the nazir, on or before the 25th August, but the warrant issued by the Court could be legally enforced up to the 30th August. The question is, whether the execution by the peon between the 25th and 30th is a lawful execution? In my opinion it is.

4. The point that strikes me is that the warrant was addressed to the bailiff. Now 'bailiff' is a very well-known English word and is used to describe the officer who actually conducts executions. When an execution is put into a house, it is the bailiff who goes and seizes the furniture, it is the bailiff who takes actual physical possession of the furniture and becomes the man in possession who prevents' it from being carried away. In my view, the fact that the warrant is addressed to the bailiff shows that it is the person who actually makes the seizure who is authorised by it, namely, the peon. If the warrant had been intended to go to the nazir, it would have been so addressed, but as it was addressed to the bailiff, it must have been addressed to a person who in this country follows the description of a bailiff, that is, a peon.

5. For that reason, the peon who made the seizure derived his authority from the Court that issued the warrant and not from the nazir who endorsed it. That authority was not lessened by the circumstance that the officer who has general charge of the 'bailiff' or peon, namely, the nazir, directed him to do his duty within a particular time. He did not do it within the time; he still had authority from the Court to make the seizure though, as far as his duty to the nazir was concerned, he ought to have made it at an earlier date.

6. For these reasons, I think that the Rule should be discharged.

7. The case of Dharam Chand Lall v. Queen-Empress (1895) I. L. R 22 Calc. 596 was cited by the learned vakil who argued in support of the Rule. But that case was entirely different; because in that case the warrant was directed to the nazir, and not only was it directed to the nazir, but to a particular nazir by name, and the question which the learned Judges discussed in that case was how far the nazir, who by name was authorised to execute the warrant, could delegate his authority

to another officer. That case has nothing to do with the present, in which the warrant was directed to the bailiff, and not to-any particular person by name.

8. The Rule must be discharged.

Coxe J.

9. I agree that the Rule should be discharged. It does not appear that any question of delegation arises in this case at all. The argument of the learned vakil for the petitioners, that this warrant was delegated by the nazir to the peon, was founded on the assumption that the word 'bailiff' used in the form means and only means the nazir. There is no reason, so far as I can see, why the term 'bailiff' should be confined to the nazir. There are several reasons why it should not.

10. On a reference to Order XXI. Rule 25, it will be seen that the warrant is referred to the officer entrusted with the execution of the process, and it is clear from the terms of that section that that officer is not the nazir, but is the peon. That officer has to endorse on it the day on, and the manner in, which it is executed. This is done by the peon. If the process is not executed, the Court has to examine the officer touching his alleged inability to execute it. It is only the peon who can give evidence on this point. The nazir's evidence would be purely hearsay. It seems to me that the officer to whom Order XXI Rule 25, refers can only be the peon.

11. On referring to the form itself, the process is addressed to the bailiff of the Court, and on the back we find space allowed for the date on which the order is made over to the nazir, the dace on which is returned by the serving officer, and so on. If the nazir and bailiff are the same person, it is difficult to understand why the same word should not be used' throughout.

12. No doubt, the process does pass through the hands of the nazir on its way from the Court to the executing officer, who, in my opinion, is the bailiff. The Court has perhaps fifty peons attached to it and it is impossible for the Court to entrust the execution to individual peons, and, consequently, it is the nazir's, duty, not to delegate his authority, but to distribute---'the processes which are received by his

department among the various officers entrusted with their execution. That, in my opinion, does not amount in any way to delegation.

13. I think, therefore, that the officer who was entrusted with the execution of the process was the peon, or the bailiff, as he is described in it. He was the attaching peon and consequently his custody of the, property was lawful, and the accused were guilty of an offence in rescuing that property from him.