

SalimaddIn and ors. Vs. Emperor

SalimaddIn and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/887910

Court : Kolkata

Decided On : Dec-04-1925

Reported in : AIR1926Cal605

Appellant : SalimaddIn and ors.

Respondent : Emperor

Judgement :

1. In this case the petitioners have been convicted under Section 225(b) Indian Penal Code and have each been sentenced to undergo rigorous imprisonment for three months.

2. The facts are as follows: The petitioners were charged for having rescued one Danu Mian from lawful custody and for having assaulted a Collectorate peon who had been deputed to execute a warrant which had been issued under the Public Demands Recovery Act. It appears that a certificate had been issued against Danu Mian for the recovery of a certain sum due from him under the Public Demands Recovery Act. On the 15th December 1924, one Purna, who is a Collectorate peon, went accompanied by some other persons to the house of the judgment-debtor, Danu Mian with a warrant of attachment of his property and a warrant of arrest of his person. The judgment-debtor was found by the Collectorate peon near the bank of a tank and on his being informed that a warrant was about to be executed for his arrest, the judgment-debtor proceeded to shout for assistance and thereupon the petitioners came out, assaulted the Collectorate

peon and rescued the judgment-debtor from the custody of the peon who had already seized him.

3. Three points have been taken at the hearing of this Rule before us by Mr. Probodh Chandra Chatterjee, who appeared on behalf of the petitioners. The first point taken is that the arrest of the judgment-debtor was not lawful, inasmuch as the warrant of arrest was itself illegal. Now, in order to understand this point, it is necessary to look into what was really done. It appears that the warrant was addressed to the bailiff of the Court and was dated the 26th July 1924. It was made returnable by the 26th August 1924.... The warrant for arrest could not be executed within the last mentioned date and by two orders made respectively on the 26th August and the 27th November 1924, the returnable date of the warrant was extended. It is argued that, inasmuch as the original returnable date of the warrant had expired, the date could not be further extended by means of an endorsement by the Certificate Officer in the manner in which it was done in the present instance and that in order that there might be a legal warrant a fresh warrant ought to have been made out, signed and sealed in manner provided by law. In our opinion, there is absolutely no substance whatsoever in this contention. The returnable date of the warrant was extended by the Certificate Officer himself and it is absurd to suggest that in order to extend the returnable date of the warrant, it was necessary to have a fresh warrant made out. There was nothing illegal in what the Certificate Officer did. It was not a case of an extension of the returnable date by the Nazir of the Court. Our attention has been called to a case decided by Chatterjea and B.B. Ghose, JJ., where it was held that the Nazir of the Court was incompetent to extend the time for the execution of a warrant. That case has no bearing whatsoever on the facts of the present case. As stated above, the extension was endorsed by the same Certificate Officer who had originally issued the warrant and the endorsement appears on the warrant itself. There is further sufficient indication in the record that it was addressed to a particular peon, namely, Purna, for execution. It was Purna who went to execute the warrant. He was obstructed and assaulted in the execution of his duty and in our opinion the petitioners were properly convicted under Section 225 for rescuing the judgment-debtor from lawful custody.

4. The second point that has been taken is this. It is said that the learned trying Magistrate was debarred from trying the petitioners, inasmuch as he in his capacity as a Certificate Officer had issued the warrant in question. The Certificate Officer after issuing the warrant had made it over to the Nazarat for execution. He, as Certificate Officer, had no interest personal or otherwise whatsoever in the prosecution of the petitioners, nor was he in charge of the Nazarat which was entrusted with the duty of executing the warrant. We think that this contention has no force whatsoever and we accordingly negative the same.

5. The third point that was taken was that there is no finding as to the part taken by each of the petitioners individually in the occurrence in question and that therefore the conviction is not sustainable. We have perused carefully the judgments of the Deputy Magistrate who tried the case originally and of the Magistrate, 1st Class, who heard the appeal and we think there is sufficient indication in the two judgments as to the part taken by each individual petitioner. The judgment of the Court of appeal was a judgment affirming the judgment of the Court of first instance and it was not necessary to go into the cases of the individual petitioners at greater length than what has been done.

6. The result, therefore, is that the Rule is discharged and the petitioners who are on bail must surrender and serve out the remainder of the sentence passed on them.