

Magna and ors. Vs. the State

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Court : Himachal Pradesh

Decided On : May-05-1954

Reported in : AIR1954HP68

Judge : Ramabhadran, J.C.

Acts : Punjab Village Panchayat Act, 1939 - Section 33; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 99, 225, and 353; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 225, 233 and 537

Appeal No. : Criminal Revn. No. 14 of 1953

Appellant : Magna and ors.

Respondent : The State

Advocate for Def. : L.N. Sethi, Govt. Adv.

Advocate for Pet/Ap. : Ved Vyas Mahajan, Adv.

Judgement :

Ramabhadran, J.C.

1. Magna, petitioner 1, was prosecuted of offences punishable under Sections 224 and 353, I. P. C., and the remaining petitioners of offences under Sections 225 and 353, I. P. C., in the Court of the Magistrate second class, Churah. The trial Magistrate convicted petitioners 1 to 4 of the offences with which they had been

charged. Petitioners 5 to 7 were acquitted of the charge under Section 353, I. P. C., but convicted under Section 225, I. P. C. They preferred an appeal to the learned District Magistrate of Chamba, who, however, rejected it. They have now come up in revision to this Court.

2. The prosecution case was that in pursuance of a warrant, Ex. P. A, issued by Sri Devendra Nath, Magistrate first class, Chamba, constables, Gulabu and Chuhru, proceeded to village Galwa and attempted to apprehend petitioner Magna. The petitioners, however, used criminal force against the constables and obstructed the lawful apprehension of Magna with the result that he could not be apprehended. The petitioners pleaded guilty to the trial Magistrate and produced no defence. Thus, as far as facts go, the prosecution story cannot be assailed.

3. Certain legal points have, however, been argued by the learned counsel for the petitioners.

4. Learned counsel first argued that the warrant, Ex. P. A, was illegal and, consequently, no offence was committed by the petitioners. He elaborated this argument by reference to Section 33 of the Punjab Village Panchayat Act (as applied to Himachal Pradesh), whereby, when an accused person fails to appear before the Panchayat, the latter can report to the nearest Magistrate, who is then to issue a warrant for the arrest of the accused person and also provide, by endorsement on the warrant, for the release of the arrested person on a bond with sureties. There was a case pending against Magna in the Panchayat of Behra and, apparently, he did not appear before the Panchayat with the result that the Magistrate was requested by the Panchayat to compel his attendance.

It is true that in the warrant, Ex. P. A, issued by the Magistrate, the lower half of the warrant which provides for the release of the arrested person on bail, has not been filled in. Would this omission 'ipso facto' make the warrant illegal? This point was not taken before the trial Magistrate. The learned District Magistrate, relying upon 'In re, Peer Masthan Rowther', AIR 1938 Mad 659 (A) (to which I shall refer subsequently), came to the conclusion that in a conviction under Sections 225 and 353, I. P. C., the question of the legality or otherwise of a warrant, was irrelevant.

Learned counsel for that petitioners cited the following rulings. (a) --'King Emperor v. Lachhu Kumara', AIR 1950 Orissa 62 (B). There, the facts were that in a case under Section 447, I. P. C., in which summons had to be issued, in the first instance, the Magistrate wrongly issued a warrant of arrest, to start with. It was, accordingly, held by their Lordships of the Orissa High Court that the apprehension of the accused in pursuance of that warrant was not a lawful one, as contemplated in Section 224, I. P. C., and resistance to it would not be an offence. This ruling, obviously, is not applicable to the facts of the case.

As already pointed out, under Section 33 of the Punjab Village Panchayat Act, the Magistrate was empowered to issue a warrant of arrest, only he had to make an endorsement providing for the release of the arrested person on bail. Due, apparently, to oversight, the endorsement at the foot of the warrant was not filled in. In my view, this omission would not make the apprehension unlawful. Learned Government Advocate rightly pointed out that according to the statement of Gulabu constable, the petitioner, Magna, did not submit to arrest and with the support of other petitioners, he resisted arrest. Therefore, this ruling will not help the petitioners.

5. (b) 'Showkat Un-nisa Begum v. State of Hyderabad', AIR 1950 Hyd 20 (C). There, it was held that if a person, who is not under lawful custody or detention, escapes from such detention, he commits no offence. This ruling can help the petitioners only if it is shown that Magna could not have been lawfully arrested in pursuance of the warrant, Ex. P. A. As I have stated earlier, the omission on the part of the Magistrate to fill in the endorsement respecting the release of the arrested person on bail, would not invalidate the warrant.

6. (c) 'Muneshwar Bux v. Emperor', AIR 1939 Oudh 81 (D). That case arose out of a disturbance at Paikarma fair in district Sitapur. The convicted person was arrested at the instance of a Mela Magistrate, who, it turned out, had no power to arrest him. It was, therefore, held by the Oudh Chief Court that the conviction under Section 224, I. P. C., was improper.

7. (d) 'Kartic Chandra v. Emperor', AIR 1932 Pat 171 (E). There, the decision was:

'It is essential for convictions under sections 224, 225 and 353 that prosecution should show that the apprehension or arrest is lawful in every way.

If a constable in effecting an arrest specifies a certain power which proves to be wanting, resistance to him or escape from his custody constitutes no offences. Where the constable purports to act under a warrant which is found to be invalid, and where there is no allegation by the constable in his deposition that he proceeded under Section 54(1), Section 54(1) does not apply.'

At the risk of repetition, I may point out that this ruling would be applicable here only if it can be shown that warrant, Ex. P. A, was invalid.

8. (e) 'Jograj Matho v. Emperor', AIR 1940 Pat 696 (F). There, the facts were that certain persons rescued a suspected dacoit from the custody of a village chaukidar and in the course of the rescue, they attacked the chaukidar with lathis. The suspected dacoit was not a proclaimed offender, nor was there any written order of the Sub-Inspector directing the chaukidar to arrest him. Under those circumstances, it was held by the Patna High Court that the custody of the chaukidar was illegal and the persons who rescued the suspect were not guilty under Section 225, I. P. C. The whole question turns upon whether the warrant, Ex. P. A, directing the arrest of Magna was prima facie a legal one or not.

9. Learned Government Advocate invited my attention to the following authorities. (a) --'AIR 1938 Mad 659 (A)'. There, the facts were that in pursuance of a warrant issued by a Panchayat Board, a bill collector went to attach certain properties. He was obstructed and injury was caused to his foot. It was argued before the Madras High Court that the warrant was illegal. Horwill, J., observed that even assuming that the property attached belonged to the convicted persons and not to the warrantee, still the accused would be guilty under Section 353, I. P. C. His Lordship expressed himself in the following terms:

'It is clear that P. W. 1 was a public servant and I do not think it can be doubted that he was discharging his public functions. He was armed with what appeared to be a legal warrant; and it was his duty to carry out the directions in the warrant and not to question it. There is no duty laid upon the bill collectors and other persons

executing warrants to make independent inquiries regarding the validity of the warrant; . nor would it be possible for him to do so. To a charge under section 353, a defence based on the illegality of the warrant would be even weaker; for Section 99, I. P. C., does not give the right of private defence against a public servant acting in good faith under colour of his office though that act may not be strictly justifiable by law.'

10. (b) 'Ramjit v. Emperor', AIR 1938 All 120 (G). There, it was held that even if an irregularity is committed in effecting arrest, it would not take the case outside the scope of section 99 and give the accused a right of private defence.

11. (c) A similar view was taken in--'Ghuia v. Emperor', AIR 1936 Lah 851 (H). There, Skemp, J., observed:

'Where a bailiff's party enters the hut or house of a judgment-debtor to effect attachment of grain, and breaks open the lock of the kothi, although that act may not be justifiable by law, it being an act done by a public servant or under the direction of the public servant, acting in good faith under colour of his office, the party of the judgment-debtor or people on his behalf have no right of private defence under section 99.'

To sum up, I am of the view that the warrant, Ex. P. A, was not illegal and the case would fall within Section 99, I. P. C., in spite of the fact that the endorsement regarding release on bail had been left blank.

12. In the second place, it was argued that the trial Magistrate has not complied with the provisions of section 233, Cr. P. C., which prescribes a separate charge for every offence with which any person is accused. The trial Magistrate has framed only a single charge-sheet against the petitioners, although therein he has referred to the gist of the offences and to the sections of the law involved. It was, therefore, argued that the petitioners have been prejudiced. Learned Government Advocate cited--'Babulal Chaukhani v. Emperor', AIR 1938 PC 130 (I), where their Lordships held:

'Where offences which ought to have been separately charged are joined together but the specific offences are satisfactorily proved by competent evidence corroborated in all necessary respects and no miscarriage of justice is caused, the Irregularity is cured under sections 225 and 537.'

This was followed in--'Chandra Narain Jha v. Emperor', AIR 1940 Pat 603 (J), where a Division Bench of that High Court observed that:

'Where an accused is prosecuted for several cases of cheating and all those cases are lumped together in one charge and even the sums of money advanced by the victims of the offences of cheating have been lumped together, the irregularity is cured under Sections 225 and 537 by the finding that no prejudice has been caused to the accused thereby.'

The petitioners pleaded guilty to the facts and adduced no defence. For these reasons, this contention also fails.

13. Lastly, learned counsel for the petitioners argued on the point of sentence. Magna, petitioner 1, was sentenced to undergo two month's S. I. under section 224, I. P. C., and two months' R. I. under section 353, I. P. C.; the two sentences running consecutively. Bharna, Ram Dass and Baz were sentenced to pay a fine of Rs. 50/- each under section 225, I. P. C.; in default 15 days' S. I. and to undergo one month's R. I. under section 353, I. P. C. Petitioners 5 to 7 were fined Rs. 20/- each under section 225, I. P. C. (14) Magna is not a previous convict. The Panchayat case in connection with which, the warrant was issued was a trifling one under section 504, I. P. C. He has already undergone about two months and six days imprisonment. I trust this case will be a lesson to him. I think he has been sufficiently punished. I, therefore, reduce the sentences to the period already undergone. Magna is on bail. His bail bonds are discharged. Coming to Bharna, Ram Dass and Baz, I understand they have paid the fines and undergone the sentence of one month's R. I. each.

I do not understand why the Magistrate thought that an offence under section 225, I. P. C., should be punished with mere fine while that under section 353 had to merit rigorous imprisonment. In case the Magistrate felt that a sentence of

imprisonment was necessary the proper course for him would have been to inflict a sentence of imprisonment for each offence and to direct that the two sentences run concurrently; bearing in mind that the offences were committed in the course of the same transaction. These petitioners are poor agriculturists and it will be hard on them to pay a fine of Rs. 50/- each after having undergone one month's imprisonment.

Under the circumstances, I reduce the fine inflicted on Bharna, Ram Dass and Baz from Rs. 50/- to Rs. 5/- each; in default a week's S. I. Fines in excess of Rs. 5/-, if realized from these persons, must be refunded without delay. Similarly, for reasons already stated, the fines inflicted on Mts. Hiri, Durgi and Sini are reduced from Rs. 20/- to Rs. 5/- each; in default one week's S. I. Fines in excess of Rs. 5/-, if realized from these persons, must also be refunded to them without delay.

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