

CRIMINAL REVISION.*Before Jenkins C.J., and Teumon J.*

1914

Oct 13.

MAHAJAN SHEIKH

v.

EMPEROR.*

Warrant, validity of—Warrant, signed but not sealed,—Arrest under such warrant—Rescue and escape from lawful custody—Criminal Procedure Code (Act V of 1898), s. 75 (1)—Penal Code (Act XLV of 1860), s. 225 B.

Under s. 75 of the Criminal Procedure Code, the affixing of the seal of the Court is essential to the validity of a warrant. An arrest under a warrant duly signed but not sealed is, therefore, illegal: and a conviction under s. 225B of the Penal Code is bad in law.

THE facts of the case are as follows. During the hearing of the case of *Kafiluddi v. Madar Sheik* in respect of an offence under s. 312 of the Penal Code, in the Court of the Sub-Deputy Magistrate of Satkhira, the defence cited certain witnesses, including Ibrahim Ahmed and Gopal, and summonses were issued on them. On the 30th April 1914, the date fixed for the hearing, the witnesses failed to appear, whereupon the trying Magistrate ordered the issue of warrants against them with bail. The warrants were duly signed by him but did not bear the seal of the Court. On the 9th May two constables took the warrants to the village where the witnesses resided and arrested Ibrahim and Ahmed. Madar, who was present, stated that he had not applied for the warrants and fetched the petitioner Mahajan to read them. As bail was not

* Criminal Revision No. 1414 of 1914, against the order of H. A. Street, Sessions Judge of Khulna, dated July 22, 1914

furnished, the police officers were about to take the arrested persons to the thana, when Mahajan pushed one of them aside, and the prisoners escaped.

Mahajan and Ibrahim were placed on trial before Babu A. G. Roy, Deputy Magistrate of Satkhira. They denied the whole occurrence and contended that the warrant had been illegally endorsed and executed. They were, however, convicted on the 30th June, under s. 225B. of the Penal Code, and sentenced to three months' rigorous imprisonment each.

An appeal was filed against the order before the Sessions Judge of Khulna and objection taken that the warrant, not having been sealed, was invalid. The learned Judge held that s. 537 covered the defect and dismissed the appeal. The petitioners then moved the High Court and obtained the present Rule.

Babu Manmatha Nath Mukerjee, for the petitioners, contended that, as s. 75 of the Code of Criminal Procedure required the warrant to be sealed, the arrest was illegal and the conviction bad.

JENKINS C.J. AND TEUNON J. Under section 75 of the Code of Criminal Procedure the seal of the Court is essential to the validity of a warrant. The absence of a seal in this case made the warrant void and there, consequently, was no legal arrest. We, therefore, make the Rule absolute. If the petitioners are on bail, the bail will be discharged; if in custody, they will be released.

E. H. M.

Rule absolute.

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