

## APPELLATE CRIMINAL.

*Before Chitty and Smither JJ.*

LEGAL REMEMBRANCER

v.

MOZAM MOLLA.\*

1918

Feb. 20.

*Search-warrant—Search-warrant for production of a person confined—  
Form of warrant—Use of warrant prescribed in Form VIII, Sch. V  
—Legality of warrant—Criminal Procedure Code (Act V of 1898),  
s. 100.*

It is immaterial what form is used for a search-warrant under s. 100 of the Criminal Procedure Code, provided that the substance of it complies with the requirements of the section.

A search-warrant intended to be issued under s. 100 of the Criminal Procedure Code, and drawn up in accordance with Form VIII, Schedule V, relating to search warrants under s. 96, but with alterations adapted to meet the requirements of the former section, is legal

*Gurameah v. King-Emperor* (1) approved.

*Bisu Haldar v. Emperor* (2) distinguished.

ON 8th March, 1917, one Amin Hossein laid an information under s. 366 of the Penal Code before the Sub-Inspector of Mahamadpur thana, to the effect that on the 6th instant, while he was absent from home, Arip Molla, Abdul Rahman and others had forcibly carried away his sister, Sakhina Khatun, from his house. It was alleged that the girl had been married to Abdul Rahman, but that she had on attaining puberty repudiated the marriage and had filed a suit to have it declared void. The Sub-Inspector commenced an enquiry, and went to the house of Arip Molla on

\* Government Appeal No. 2 of 1918, against the order of P. E. Cammiade, Sessions Judge of Jessore, dated Sep. 3, 1917.

(1) (1911) 16 C. W. N. 336.

(2) (1907) 11 C. W. N. 836.

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the 12th instant. He found the girl there, and it was said that she had cried out for help. He then reported the circumstances to the Inspector of Police, stating that she was being kept in Arip's house in wrongful confinement. The Court Inspector, who was then in charge of the office of the Inspector of Police, submitted the aforesaid report with the first information to the Subdivisional Magistrate who issued a search warrant under s. 100 of the Criminal Procedure Code for the production of the girl in Court, in the following terms:—

“Warrant to search after information of a particular offence.

No. VIII, Sch. V, of Act V of 1898.

S. 100 of the Criminal Procedure Code.

To *Parbutty Churn Dutt*, Sub-Inspector of *Mahamadpur*.

Whereas a complaint has been made before me of the offence of *the detention of Sakhina Khatun Bibi, sister of Amin Hossein, of Umedpur*, and whereas it has been made to appear to me that the production of *Sakhina* is essential to the inquiry into the said *case of offence* :

This is to authorize and require you to search for the said *Sakhina Khatun* in all places of the house of *Arip Molla, of Phalsi*, and if found to produce *her* forthwith before the Court, returning this warrant, with endorsement certifying what you have done under it, immediately on its execution. Given under my hand and the seal of the Court this 12th day of March 1917.”

(Sd.) N. K. Sen, S. D. O.

The words italicised above were the alterations made in Form VIII by the Subdivisional Officer.

The Sub-Inspector, Parbutty Churn, proceeded to the house of Arip on the same day accompanied with the president panchayat, the daffadar and some police constables. He read out the warrant to Arip and ultimately entered the premises to take the girl. The accused, Israil and others, thereupon, assaulted the members of the police party.

The accused were sent up by the police, and tried by the Subdivisional Officer on charges under ss. 147 and 353 of the Penal Code. Israil was convicted and

sentenced under s. 353 to eight months' rigorous imprisonment. The others were convicted under both sections, and sentenced, under s. 147 only, to six months.

It appeared that the original case of Amin Hossein under s. 366, Penal Code, terminated in the discharge of the accused, after trial, on the 15th April, 1917.

On appeal by the accused, the Sessions Judge of Jessore acquitted all of them by his order, dated 5th September, 1917, upon the authority of *Bisu Haldar v. Emperor* (1), holding that case to be conclusive and the facts identical.

The Local Government, thereupon, filed the present appeal against the order of acquittal.

*The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown.

*Mr. Khuda Bukhsh and Babu Sailendra Nath Mookerjee*, for the accused.

CHITTY AND SMITHER JJ. In this case the accused persons were convicted by a Deputy Magistrate of offences under sections 353 and 147 of the Indian Penal Code, and sentenced Israil to eight months' and the rest to six months' rigorous imprisonment each. The accused appealed to the Sessions Judge, who acquitted them on a question of law. He held that the ruling in the case of *Bisu Haldar v. Emperor* (1) was conclusive in this case. The facts, he said, were identical. Against that acquittal the Government have appealed. It appears clear that the facts of the two cases are not identical. A perusal of the judgment in the case of *Bisu Haldar v. Emperor* (1), shows that not only was the warrant in that case issued under section 96 of the Code of Criminal Procedure, but that the terms of the warrant indicated that

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it was issued under that section. In this case, there being no prescribed form of warrant under section 100, the Magistrate who issued it adapted a form under section 96 to the provisions of section 100 by altering the figures and also by drawing up the warrant in terms required by section 100. This being so, the warrant would be perfectly legal. For this we find an authority in the case of *Gurameah v. King-Emperor* (1), where the form of a warrant under section 98 was used with the necessary alterations for a warrant under section 100. It is immaterial what form is used provided that the substance of the warrant complies with the requirements of section 100. That it certainly did in the case before us. It has been suggested that the warrant was altered after issue to meet the objections raised in this case. Of that there is no evidence whatever on the record; on the contrary, there is the evidence of P. W. No. 12 who states that he altered it with his own hand before the issue. We, accordingly, set aside the order of acquittal passed by the learned Sessions Judge, and remand the case to the Sessions Court for a hearing of the appeal on the merits. The accused may remain on bail pending the hearing of the appeal.

E. H. M.

*Case remanded.*

(1) (1911) 16 C. W. N. 336.