CRIMINAL REVISION.

Before Rankin C. J. and Mallik J.

RAJANIKANTA SAHA

v.

EMPEROR.*

1930

Nov. 28.

Execution—Warrant for arrest of judgment-debtor—Code of Civil Procedure (Act V of 1908), O. XXI, r. 22.

The mere omission to record reasons for issuing warrant under Order XXI, rule 22, sub-rule (2), does not make the warrant bad.

Government of Assam v. *Sahebulla* (1) relied on.

The fact that a notice to show cause why the judgment-debtor should not be arrested is issued simultaneously with a warrant issued under Order XXI, rule 22 (2), does not make the warrant illegal.

CIVIL RULE.

In this case the accused Rajani was sentenced to three months' rigorous imprisonment on a charge under section 225B of the Indian Penal Code. The other two accused, namely Madan and Nagen, were convicted under sections 225B and 353 of the Indian Penal Code. Madan was also convicted under section 379 of the Indian Penal Code for having snatched away the processes from the peon.

On these and other facts set out in the judgment, a Rule was issued at the instance of the accused.

Sureshchandra Talukdar for the petitioners. The warrant of arrest was entirely *ultra vires* and so the accused were entitled to resist execution. *Sukheswar Phukan* v. *Emperor* (2), *Debi Singh* v *Queen-Empress* (3), *Durga Charan Jemadar* v. *Queen-Empress* (4), *Jogendra Nath Laskar* v. *Hiralal Chandra Poddar* (5).

*Criminal Revision, No. 698 of 1930, against the order of A. F. M. Rahman, Sessions Judge of Dacca, dated June 18, 1930, affirming an order of B. B. Bhaumik, Deputy Magistrate of Narainganj, dated May 9th, 1930.

(1) (1923) I. L. R. 51 Calc. 1.
(2) (1911) I. L. R. 38 Calc. 789.
(3) (1901) I. L. R. 28 Calc. 399.
(4) (1900) I. L. R. 27 Calc. 457.
(5) (1924) I. L. R. 51 Calc. 902.

The Munsif made a mess of the whole thing. The three notices that he issued simultaneously are contradictory and repugnant to one another. If the power given in sub-rule (*2*) of rule 22 of Order XXI of the Civil Procedure Code was meant to be acted upon at all, then no notice under sub-rule (*1*) of it would have issued. If again, you issue a notice to show cause why the judgment-debtor should not be arrested, you cannot in the same breath issue a warrant of arrest.

The Full Bench case of *Government of Assam* v. *Sahebulla* (1) does not hit the present petitioners, since the whole proceedings in the case were without jurisdiction.

Anilchandra Ray Chaudhuri for the Crown. The Munsif had undoubtedly power to issue warrant under sub-rule (*2*) of rule 22 of Order XXI, without issuing any notice under sub-rule (*1*) thereof, at all. That he was purporting to do so is clear from the petition before him. The other two notices were superfluous and were issued in terms of the prayers in the petition.

There is a clear distinction between cases where the court, issuing the warrant, has no jurisdiction at all and those in which the court has a general jurisdiction, although there may be some irregularity or illegality attached to it. In the latter class it is an offence to resist execution and very dire consequences follow, as pointed out in *Government of Assam* v. *Sahebulla* (1). The present case belongs to the second class. The failure to record reasons for issuing the warrant is a mere irregularity.

Talukdar, in reply.

RANKIN C. J. In this case, it appears that there was a certain judgment-debtor and the decree-holder was minded to have execution against his person in enforcement of her decree. The decree-holder applied

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to the Munsif by a petition which was of a thoroughly muddled character. What she really wanted was that the Munsif should make an order under sub-rule (2) of rule 22 of Order XXI of the Code of Civil Procedure to the effect that a warrant for the arrest of the judgment-debtor should issue at once notwithstanding that more than a year had elapsed since the date of the decree; and, if the procedure of the Munsif had not been in accordance with this muddle-headed petition, the form of the order which he would have made would have been to record his reasons under sub-rule (2) of rule 22 and direct that a warrant of arrest do issue under rule 37. In effect, what he did was this: He directed simultaneous issue of three things—(1) a notice under rule 22, (2) a notice to show cause why the judgment-debtor should not be arrested, and (3) a warrant for the arrest of the judgment-debtor. He issued all these abreast and the court peon proceeded to carry out these processes. The peon got to a place in a certain road where he saw the judgment-debtor whose name is Rajanikanta Saha. The judgment-debtor was identified by some one on behalf of the decree-holder. The peon read over the notices and the warrant of arrest to Rajani, demanded the decretal amount and, on his refusal to pay, arrested him. Thereupon, Rajani shouted for help and he and his co-accused between them forcibly effected Rajani's rescue from the hands of the peon. It does not appear that very much violence was used on the peon—certainly nothing that exceeded simple hurt. In these circumstances, the accused have been found guilty.

I omit the question of conviction of theft under section 379, Indian Penal Code. The contention on behalf of the petitioners is that the warrant of arrest was entirely illegal, that they were entitled to resist its execution, that in executing it the peon was not discharging a legal duty but was really committing trespass and that consequently no charge under

section 225B or 353 will lie. Of course it is admitted that, if an assault had been made upon the peon which could not be justified by the principle of private defence, then no doubt a case would lie under section 353; but no such case as that is made against these people.

There can be no doubt that this warrant for the arrest of Rajani must be either good or bad in the sense that it either authorizes the peon to effect the arrest in which case he is entitled to the protection given by sections 225B and 353 Indian Penal Code, or it is a document notwithstanding which the peon himself was merely committing trespass when he proceeded to execute the warrant. That matter is put very clearly in the judgment of the Full Bench in the case of the *Government of Assam* v. *Sahebulla* (1) where reference is made to what was said in an English case by Abbot C. J.: "It is obvious that if "the act of the Justice issuing a warrant be invalid "on the ground of such an objection as the present, "all persons who act in the execution of the warrant "will act without any authority; a constable who "arrests, and a gaoler who receives a felon will each "be a trespasser; resistance to them will be lawful; "everything done by either of them will be unlawful; "and a constable, or persons aiding him, may, in some "possible instance, become amenable even to a charge "of murder for acting under an authority which they "reasonably considered themselves bound to obey, "and of the invalidity whereof they are wholly "ignorant."

If the warrant is illegal, these must be the consequences. On the other hand, if the warrant is a legal warrant within the jurisdiction of the Munsif to make, then it is clear enough that the civil court peon must be entitled to the special protection given by section 225B and section 353, Indian Penal Code.

Now, *prima facie*, it will be observed that there was no obstruction to the peon doing anything except

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arresting Rajani. So, the matter which we have to consider is the validity of the warrant of arrest. It cannot be disputed that in this case the Munsif had jurisdiction, notwithstanding that the case came under rule 22 of Order XXI, Civil Procedure Code, to issue a warrant for Rajani's arrest forthwith and it appears to me to be settled law now, by the case to which I have already referred, that the mere fact that the Munsif is directed to record his reasons cannot make his act entirely invalid solely because of his omission so to record. In the present case, as a matter of fact, there was what the Munsif in his order calls a "special petition" giving special grounds for holding that the processes would be useless if the judgment-debtor got any notice of the intention to arrest him before the actual arrest took place; and, if the substance of the matter alone is looked at, it would certainly seem clear enough that the Munsif was acting on the reasons given in the petition. However, if the question be, whether the mere absence to record reasons makes the warrant bad, speaking for myself, I should answer that question confidently in the negative, and I think the Full Bench case to which I have referred is an authority in support of that view. However, the application made by the accused before us is not grounded upon that circumstance. What Mr. Talukdar contends is that, if the power given in sub-rule (*2*) of rule 22, Civil Procedure Code, was meant to be acted on at all, then no notice under rule 22 would have issued to the judgment-debtor. In the same way he says that, if you issue a notice to show cause why the judgment-debtor should not be arrested, you cannot in the same breath issue a warrant of arrest and that the issuing of the notice to show cause makes bad the issue of the warrant. In my judgment, neither of these contentions, although they are deserving of careful consideration is correct. I think it quite obvious that the Munsif here did intend to exercise his powers under sub-rule (*2*) of

rule 22. He might have a muddled idea that, while he could arrest this man without giving him notice under rule 22, he might not be minded to take any further steps in execution without giving him such a formal notice. Again, he might have thought that, when the man came before him, a notice to show cause why he should not be arrested would be in effect a notice to show cause why he should not be further detained. I think, on the facts, the probability is that the Munsif simply accepted the muddled suggestion of the decree-holder's pleader in the petition that it would do no harm to issue all the three processes straightway, but one thing is reasonably clear to me, *viz.*, that it was drawn to his attention that he had the right to issue the warrant at once—a right which was to his knowledge based upon his power to dispense, for the time being, at all events, with the ordinary provisions of Order XXI, rule 22. In these circumstances, I am not prepared to hold that this warrant was an illegal warrant; and, that being so, I am of opinion that it cannot be maintained that the peon in executing it was committing trespass or that he was disentitled to rely upon the sections under which these petitioners have been convicted.

For these reasons, I think this Rule should be discharged.

The petitioners must now surrender to their bail and serve out the remainder of the sentence imposed upon them.

MALLIK J. I agree.

Rule discharged.

S. M.