

APPELLATE CRIMINAL.

Before Lord-Williams and Jack J.J.

SUPERINTENDENT AND REMEMBRANCER OF
LEGAL AFFAIRS, BENGAL

1935
June 28;

v.

JAHIR ALI.*

*Arrest—Person arrested under s. 55, Cr. P. C., if must be released on bail—
Code of Criminal Procedure (Act V of 1898), s. 55.*

The police making an arrest under section 55 of the Code of Criminal Procedure is neither bound to release the persons arrested on bail immediately after the arrest nor to inform them that they are entitled to be released on bail.

In the Matter of the Petition of *Daulat Singh* (1) referred to.

CRIMINAL APPEAL.

In this case, on the 12th July, 1934, the officer-in-charge of Karimganj police station, organised a raid for the purpose of arresting certain persons implicated in a contemplated proceeding under section 110 of the Code of Criminal Procedure. The respondent Wahid was arrested in this connection at his house and as he was being led away from there, the rest of the accused in a party fell upon the police with axes, *daos* and other implements, assaulted and injured the constable, who was holding the arrested man and rescued the latter. The officer-in-charge fired some shots in the air and the rioters fled, but some of them were arrested on the spot. The defence of the accused mainly was a denial of the occurrence and several of them pleaded alibi. The trial court held that the arrest without warrant was illegal and in any case the Sub-Inspector should have offered bail to the arrested person then and there, and consequently the detention was illegal. The accused were thereupon acquitted and the Local Government preferred this appeal against the said order.

*Government Appeal, No. 1 of 1935, against the order of A. C. Dam, Magistrate, First Class, of Karimganj, dated Oct. 9, 1934.

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The Officiating Deputy Legal Remembrancer, Debendranarayan Bhattacharjya, for the Crown. The magistrate's judgment is vitiated by a serious illegality. It is not denied that the police had authority to arrest Wahid under section 55 of the Code of Criminal Procedure, but the magistrate holds that the custody became subsequently unlawful because the arresting officer did not immediately inform the arrested man that he was entitled to be released on bail. There was no such obligation on him. A comparison of section 55 with section 57 will make it clear. Section 496 is applicable to this case and it is the arrested person who must offer bail. The decision of *In the Matter of the Petition of Daulat Singh* (1) has been wrongly interpreted by the magistrate. It merely lays down what is proper for the arresting officer to do, but does not say that an omission by him to inform the arrested man as to his right to be released on bail renders the custody illegal. The reference to sections 112 and 114 of the Code of Criminal Procedure is irrelevant, inasmuch as they refer to the duties of the magistrate after the proceeding under section 110 has been started. Even if the magistrate were right in his view of the law, the facts clearly show that the arresting officer was given no time to make the offer.

[Evidence discussed.]

Pareshlal Shome for the accused. The case of *Daulat Singh* (1) lays down the procedure to be followed by the arresting officer in a case like the present. If he fails to carry out that duty he has no right to continue to keep the arrested person in custody. If there were no such illegal detention then there would not have been any rioting at all. The whole was the fault of the arresting officer. Moreover sections 112 and 114 of the Code of Criminal Procedure have restricted even the powers of a magistrate to issue warrant in a section 110 proceeding only to exceptional circumstances. It is only reasonable to hold that the legislature could not have intended the police to have wider

powers than the magistrate. So a very limited interpretation must be given to section 55. [Evidence discussed.] The magistrate's order was legal and proper.

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JACK J. This is an appeal by the Superintendent and Remembrancer of Legal Affairs, Bengal, against an order of acquittal of the respondents on charges under sections 147, 225B and 332 of the Indian Penal Code. The respondents were charged with committing riot in order to rescue certain persons arrested under the provisions of section 55 of the Code of Criminal Procedure, the intention of the police being to initiate proceedings against the latter under section 110 of the Code of Criminal Procedure. These persons were rescued by their relations and friends, who assembled together and attacked the police party. One of the respondents Roahid Ali, having injured a constable by a blow on the arm with an axe, was charged under section 332, and the rest were charged under sections 147 and 225B of the Indian Penal Code.

The facts have been found against the respondents and we see no reason to doubt these findings of fact. But the respondents have been acquitted on the ground that the custody of the Sub-Inspector was not lawful, inasmuch as he did not tell them that they were entitled to be released on bail. The learned magistrate held that when the police act under section 55, they are bound to give the persons arrested the option of bail and, not having done so, the custody was illegal and, therefore, the respondents were not liable under sections 147, 225B or under section 332 of the Code. But there does not appear to be any indication in section 55 that the police are bound, after arrest, to inform the persons arrested that they are entitled to be released on bail. Nor is it clear that the police are bound to release them on bail any more than persons who had been arrested under section 54 of the Code of Criminal Procedure. Had the legislature so intended, there would probably

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have been attached to section 55 a clause similar to clause (2) of section 57 directing release on bail. The learned magistrate holds that, inasmuch as, under section 110, the magistrate would ordinarily issue summonses on those who are to be proceeded against, therefore when a man is arrested under section 55, he should be informed by the Sub-Inspector, who arrested him, that he may be released on bail. The learned magistrate also thinks that because proceedings under section 110 of the Code of Criminal Procedure, if successful, would terminate in an order of the magistrate on the accused to furnish bail with sureties, therefore a similar order should be made by the police on arrest. But this procedure would hand over to the police, the magistrate's power under section 122 of the Code of Criminal Procedure, to refuse to accept the surety offered. The arrest under section 55 was quite independent of the proposed proceedings under section 110. In any case, section 114 says that, when persons are to be proceeded against under section 110, the court is to issue a summons requiring them to appear or, when they are in custody, to issue a warrant directing the officer in whose custody they are, to bring them before the court. So that it contemplates that, in certain cases, the accused may already be under arrest presumably under the provisions of section 55.

Even had the learned magistrate been correct in holding under the authority of *In the Matter of the Petition of Daulat Singh* (1) that an option of bail must be given, in this particular case, the attack on the police officers was made almost immediately after the arrest took place, and we think that, in the circumstances, it cannot be said that the custody of the respondents was illegal, merely because up to that time the police had not informed them that they were entitled to be released on bail. In all the circumstances, we do not think that in this case the custody of the respondents was illegal so as to justify the

(1) (1891) I. L. R. 14 All. 45.

assault which was made on the police by the respondents. We, therefore, set aside the order of acquittal and convict all the respondents, except Wahid Ali, under section 147, and all of them under section 225B, and Roahid Ali also under section 332 of the Indian Penal Code.

Roahid Ali is sentenced to 6 months' rigorous imprisonment under section 332 and 3 months' rigorous imprisonment under section 225B, the sentences to run concurrently. All the rest will undergo rigorous imprisonment for three months under section 225B. No separate sentences are passed under section 147.

The respondents will surrender to their bail bonds to serve out the sentences now imposed upon them.

LORT-WILLIAMS J. I agree.

Acquittal set aside.

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