

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS.

against

POTADU.*

1888.
Sept. 4.

Penal Code, s. 224—Criminal Procedure Code, s. 59—Escape from legal custody.

The accused was arrested in the act of stealing and was handed over to the village magistrate, who forwarded him in custody of the village servants to a police station. The accused escaped on the way. He was convicted under s. 224 of the Penal Code. On appeal the conviction was reversed on the ground that the custody was not legal:

Held, that the conviction was right. Section 59 of the Code of Criminal Procedure which requires a private person who arrests a thief in the act to take the thief to the nearest police station, is sufficiently complied by sending the offender in custody of a servant.

REFERENCE under s. 438 of the Code of Criminal Procedure by G. T. Mackenzie, Sessions Judge of Kistna.

The case was stated as follows:—

“The accused was caught in the act of stealing cattle from a yard. He was arrested and was handed over to the village magistrate. The karnam wrote a report and the village magistrate ordered two village servants to take accused with the report to the police station. On his way the accused escaped from the custody of the village servants. The Repalle Taluk Magistrate convicted the accused under s. 379 and under s. 224 of the Penal Code. The joint magistrate confirmed the conviction of theft, but has reversed the conviction of escape from lawful custody. The joint magistrate relies on the decision of the High Court in *The Queen v. Bojjigan*(1), where village servants had arrested a man on suspicion of his being a thief. The present case can be distinguished as the arrest was legal under s. 59 and as the prisoner was made over to the village magistrate, but the joint magistrate does not distinguish, and says: ‘This ruling seems

* Criminal Revision Case No. 144 of 1888.

(1) I.L.R., 5 Mad., 22.

to me to apply exactly to the present case.' The arrest was legal under s. 59, and I submit that the custody of the village servants conducting the prisoner to the police station was legal custody. It must be admitted that s. 59 empowers only the person who saw the offence and made the arrest to take the prisoner to the police station, and that s. 42 does not justify any other person in assisting him, but to construe the Code thus strictly would lead to strange results. In this case the age of the witness who saw accused stealing the calf is not given, but possibly he is a mere boy. When he called for help three men came to his assistance and that is usually what happens, although the Code does not expressly permit such assistance. I therefore submit that after a private person has made an arrest under s. 59, other private persons may lawfully conduct the prisoner to the police station.

"Moreover, in this case, the person who made the arrest carried the prisoner before the village magistrate. The Code saves the powers of a village magistrate and he has power to try cases of petty theft. In this case the village magistrate decided to send the case for trial before the taluk second-class magistrate, and the accused was despatched with a report in custody of the village servants. This is the usual course, and if the joint magistrate is right in holding that it was illegal, the decision will much impair the utility of village magistrates.

"The High Court have held that a village magistrate, being a magistrate, has inherent powers, such as that of sending a summons, although no specific mention of such powers is made in the regulation. I submit that a village magistrate in a case such as this is, where a thief has been legally arrested and has been made over to him, has power to send the prisoner to the police station in custody."

Counsel did not appear.

The Court (Muttusami Ayyar and Parker, JJ.) delivered the following

JUDGMENT:—We agree with the Session Judge that the custody from which the accused made his escape was lawful. The accused was arrested by a person in whose view the offence of theft was committed, and the arrest was therefore legal under s. 59 of the Code of Criminal Procedure. The direction that

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he shall make over the person arrested to a police officer without unreasonable delay is sufficiently complied with by his being forwarded in the custody of a servant or of the village servant in this case. The intention is to prevent arrest by a private person on mere suspicion or information, and *not* to impose on him the obligation of taking the party arrested in person to a police station. The original custody continued and did not terminate. This case is distinguishable from *The Queen v. Bojjigan*(1). We set aside the order of discharge made by the joint magistrate in Revision Case No. 144 of 1888, but having regard to the lapse of time, we will not direct any further proceedings.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

YACOOB (PLAINTIFF), APPELLANT,

and

MOHAN SINGH (DEFENDANT No. 2), RESPONDENT.*

Civil Procedure Code, s. 57—Return of plaint when Court has no jurisdiction.

An Appellate Court is not bound to return the plaint under all circumstances where defect of jurisdiction appears.

APPEAL from the decree of C. S. Crole, District Judge of North Arcot, modifying the decree of V. Subramanya Sastri, District Munsif of Vellore, in suit No. 417 of 1886.

The facts necessary for the purpose of this report appear from the judgments of the Court (Muttusami Ayyar & Wilkinson, JJ.).

Bhashyam Ayyangar, Sadagopacharyar, and Subramanya Ayyar for appellant.

The Acting Advocate-General (Mr. Spring Branson) and *Seshagiri Ayyar* for respondent.

WILKINSON, J.—In his plaint plaintiff prayed for a decree declaring his right to grant pattaz to, and to collect rent from,

(1) I.L.R., 5 Mad., 22.

* Second Appeal No. 1072 of 1887.