

of the suppression of it; and we think there is no doubt the existence of the lease was the sole reason why the plaintiff did not execute the contract.

We think this appeal should be dismissed with costs.

MORGAN
 v.
 THE GOVERN-
 MENT OF
 HAIDARABAD.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

against

KUTTI AND OTHERS.*

1888.
 July 18.

Penal Code, s. 225—Criminal Procedure Code, ss. 59, 239, 535 and 537—Arrest of thief—Rescue from custody of private person—Irregular procedure.

To support a conviction under s. 225 of the Indian Penal Code, it is not necessary that the custody from which the offender is rescued should be that of a police man: it is enough that the custody is one which is authorised by law:

Held, therefore, that rescue from the custody of a private person who had arrested a thief in the act of stealing was an offence.

A magistrate tried A for theft and B and C for rescuing A from lawful custody and convicted A, B, and C in one trial.

A appealed, and B and C appealed separately. No objection was taken in the petitions of appeal to the procedure of the magistrate:

Held, on revision, that the convictions might stand.

In calendar case No. 6 of 1888 before the Second-class Magistrate of Kodaikanal, Kallamangalam was charged with theft, and in calendar case No. 7 Kutti Chetti and two others were charged with rescuing Kallamangalam from lawful custody. The magistrate tried both cases together and convicted all the accused in one trial. Two appeals were preferred, one by Kallamangalam and the other by the other prisoners. None of the appellants (who appeared by the same pleader) took exception to the procedure of the magistrate in their appeal petitions. The Joint Magistrate of Madura (C. H. Mounsey) dismissed the appeal (25) of Kallamangalam, but reversed the convictions of the other prisoners (appellants in appeal No. 21) on the ground that rescue from legal custody within the meaning of s. 225 of the Penal Code did not include

* Criminal Revision Case No. 211 of 1888.

QUEEN-
EMPRESS
v.
KUTTI.

the case of rescuing a thief from the custody of a private person who had captured the thief in the act of stealing.

The District Magistrate of Madura referred the case to the High Court, being of opinion that the order of acquittal in appeal No. 21 was illegal, and that the procedure of the second-class magistrate was also illegal.

The accused did not appear.

Mr. *Wedderburn* for the Crown.

The custody of the complainant was legal—Weir, p. 125. The procedure was illegal, but s. 537 of the Criminal Procedure Code applies. The case does not fall under s. 530, and the prisoners were not prejudiced. [See also s. 239, but see *Queen-Empress v. Chandī Singh*(1)].

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

JUDGMENT:—The appellant in case No. 25 was properly convicted of theft, and we see no reason to interfere with the order made by the joint magistrate confirming the conviction and the sentence. The order made in appeal No. 21 cannot, however, be supported. When the appellants in case No. 21 rescued the appellant in case No. 25, the latter was, in our opinion, in lawful custody. We do not consider it necessary that the custody from which a person is rescued should be the custody of a police officer to support a conviction under s. 225 of the Indian Penal Code. It is sufficient that the custody is one authorised by law. Although it was irregular to try the prisoners in both cases together, we see no reason to think that they have been prejudiced by the irregularity. We set aside the order made by the joint magistrate in appeal No. 21 and direct that the appeal be re-heard with reference to the foregoing remarks.

We decline to interfere with the order made in appeal No. 25

(1) I.L.R., 14 Cal., 395.