

Before Mr. Justice Norris.

SHAMSONNESSA BEGUM (JUDGMENT-CREDITOR) v. ANNE LOVE
(JUDGMENT-DEBTOR.)

1885
May, 7.

Warrant of arrest—Imprisonment in jail not named in warrant—Release—
Civil Procedure Code—Act XIV of 1882, ss. 336, 337.

A Sheriff's officer, of his own motion, delivered over to the officer in charge of the Alipore Jail, a judgment-debtor who had been duly committed to the Presidency Jail.

Held, that the imprisonment was unlawful; that the delivery over to the officer in charge of the Alipore Jail amounted to a release; and that the prisoner was entitled therefore to be discharged.

IN this case one Anne Love was arrested on the 2nd May 1885 in execution of a decree obtained by one Shamsounessa Begum against her as the executrix of her late husband.

The 2nd of May being a day on which the Original Side of the Court was closed, the Sheriff's officer took the judgment-debtor at once to the Presidency Jail; the warder, however, refused to receive the judgment-debtor (his reason being that female prisoners were not admitted to the Presidency Jail) and she was thereupon taken to the Russa Jail for females; but it being found on arrival that that institution was closed, she was taken to and placed in the Alipore Jail in the 24-Pergunnahs.

The judgment-debtor remained in custody in the Alipore Jail until the 4th May, when she was brought up before the Court for committal in accordance with s. 336 of the Code of Civil Procedure. Mr. Justice *Norris* directed she should be discharged from custody on finding security to the satisfaction of the Registrar; this, however, she was unable to do, and she was therefore committed to the Presidency Jail. The warrant as drawn was in the usual form, and was addressed to the Sheriff of the town of Calcutta and to the Superintendent of the Presidency Jail, directing the former personage to take and convey the judgment-debtor to the Presidency Jail, and the latter to receive and keep her there in safe custody until satisfaction of the decree.

The Sheriff's officer then took the judgment-debtor back to the Alipore Jail, delivered her over to the jail authorities, and deposited diet money with the jailor. On the 6th May Mr. *Handley*

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applied to the Court for a writ of *habeas corpus*, directed to the Superintendent of the Presidency Jail. The Superintendent of the Jail, in accordance with this writ, produced the judgment-debtor on the 7th May before Mr. Justice *Norris*.

He was then examined and stated that for the purposes of the above order he had obtained the person of the judgment-debtor from the Superintendent of the Alipore Jail; that under a direction received from Government in the form of a circular order, females were never received at the Presidency Jail, but were taken to the Russa Jail; that this latter Jail had lately been abolished; that no diet money had been received at the Presidency Jail on account of Anne Love.

Mr. *Handley* submitted that the judgment-debtor was entitled to be discharged from custody, as she had been illegally detained in a Jail outside the jurisdiction of the Court in direct contravention to the terms of the warrant, and as no diet money had been deposited with the Jailor of the Presidency Jail.

Baboo *Nemje Churn Bose* for the judgment-creditor.

NORRIS, J.—In this case *W. N. Love*, also called Anne Love, was arrested on Saturday last by Brown, the Sheriff's officer, under a warrant issued out of this Court, dated the 2nd of May 1885. She was arrested on Saturday, the 2nd of May, and in consequence of the Court not sitting at the time of the arrest, she was, according to Brown's statement, taken to the Presidency Jail. Brown says he showed the warrant to the warder, and the warder refused to receive the prisoner; that he then went to the Russa Jail; that he found that the Russa Jail had ceased to exist, and he then took the prisoner to the Alipore Jail where she remained till Monday.

The warder says the warrant was not shown to him, and that there was no refusal on his part, or on the part of any other person, to receive the prisoner.

Anno Love was produced here on Monday, the 4th instant, and under s. 336 I directed that on her giving security for the sum of Rs. 1,800 to the satisfaction of the Registrar to appear when called upon, and to apply within one month to be declared an insolvent, she should be released from arrest, and

failing her giving security I directed, as I was bound to do, that she should be taken to the Presidency Jail.

She went before the Registrar and was unable to furnish security for the sum of 1,800 to his satisfaction. Thereupon a warrant under the seal of the Court was made out and signed by him.

It is directed to the Sheriff and to the Superintendent of the Presidency Jail and is as follows: "Whereas W. N. Love, also called Anne Love, has been brought before Her Majesty's High Court of Judicature at Fort William in Bengal this 4th day of May one thousand eight hundred and eighty-five, under a warrant in execution of a decree which was made and pronounced by the said Court on the eighteenth day of September one thousand eight hundred and eighty-four in a suit wherein Shamsonnessa Begum is plaintiff, and Anne Love, the widow and heiress and executrix of the last will and testament of William Nicholas Love, deceased, is defendant, and by which decree it was ordered that the said defendant should pay to the plaintiff the sum of Rs. 1,606-6 for certain taxed costs, and also the sum of Rs. 91 for costs of execution, besides Sheriff's fees and charges; and whereas the said W. N. Love, also called Anne Love, has not obeyed the decree, nor has satisfied the said Court that she is entitled to discharge from custody under the provisions in that behalf of Act XIV of 1882. These are therefore to will and require you the said Sheriff to take the said W. N. Love, also called Anne Love, and to carry and convey her forthwith to the said 'Jail' (that is, the Presidency Jail) under safe and secure conduct. And you, the said Superintendent aforesaid, are hereby in Her Majesty's name commanded and required to take and receive the said W. N. Love, also called Anne Love, into the jail, and keep her imprisoned therein until the said decree shall be fully satisfied, or the said W. N. Love, also called Anne Love, shall be otherwise entitled to be released according to the terms and provisions of the said Act relating to the execution of decrees by imprisonment. And the said Court does hereby fix four annas per diem as the rate of the monthly allowance for the subsistence of the said W. N. Love, also called Anne Love, during her confinement under this warrant of commitment. Witness Sir Richard

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Garth, Knight, Chief Justice, at Fort William aforesaid, the 4th day of May in the year of our Lord one thousand eight hundred and eighty-five."

Now the Sheriff's officer, instead of taking the prisoner to the Presidency Jail as he was commanded to do, of his own motion, because the officer in charge of the Presidency Jail had on the previous Saturday refused to receive her for intermediate custody, took her to the Alipore Jail, and there delivered her with the warrant to the officer in charge of the Alipore Jail. I am of opinion that his duty was to take her to the Presidency Jail and leave her there. The Superintendent of the Presidency Jail may, under the orders of Government, have taken such course as he may have been authorized to take with reference to her custody, but the Sheriff's officer's duty was to do as he was commanded to do. He had no authority to take her out of the jurisdiction, and leave her in the custody of the Superintendent of the Alipore Jail. She was in unlawful imprisonment from the time she was delivered to the Alipore Jail, and I am of opinion that when the Sheriff's officer delivered her to the Superintendent of the Alipore Jail, she was in fact released, and I direct her to be discharged.

Attorney for applicant: Mr. H. H. Remfry.

CRIMINAL APPELLATE.

Before Mr. Justice Prinsep and Mr. Justice Pigot.

1885
 April 29,

MEHTEER ALI AND OTHERS (APPELLANTS) v. QUEEN EMPRESS
 (RESPONDENT.)^o

Enhancement of sentence on appeal—Criminal Procedure Code—Act X of 1882, ss. 423, 430—Penal Code's s. 330.

A head constable was convicted under s. 330 of the Penal Code, and at a trial before a Sessions Judge sentenced to four months' simple imprisonment; the prisoner appealed. The High Court, in dismissing the appeal, directed, as a Court of Revision, that the sentence passed should be enhanced.

* Criminal Appeal No. 220 of 1885, against the order passed by J. Pratt, Esq., Officiating Sessions Judge of Purneah, dated the 11th March 1885.