

- APPELLATE CRIMINAL.

Before Mr. Justice Sir George Know and Mr. Justice Karamat Husain.

EMPEROR v. GULAB SINGH AND OTHERS.*

Act No. XLV of 1860 (Indian Penal Code), section 225B—Escape from lawful custody—Defaulting co-sharer arrested under warrant of Tahsildar—Rules of Board of Revenue, Rule 9, clause (2)—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 142, 143, 146.

Where a Tahsildar issued a warrant under section 146 of the United Provinces Land Revenue Act against certain defaulting co-sharers, and they were arrested, but subsequently escaped from detention; held that this was an escape from lawful custody within the meaning of section 225B of the Indian Penal Code. The Tahsildar's warrant was not illegal because the Board had directed that process should 'ordinarily' issue in the first instance against the lambardar.

THE facts of this case were as follows:—

Government revenue was due for the mahal in which Gulab Singh, Bishnath Singh, Chatar Singh and Baldeo Singh were co-sharers. They went to the tahsil and paid some money but in the meantime a subsequent instalment had fallen due. While returning from the Tahsil they were arrested under a warrant of the Tahsildar, but escaped from custody. It was admitted by the parties that revenue had not been paid for the mahal in which they were co-sharers, and that they were arrested, but escaped from the lock-up. The Magistrate of Jaunpur acquitted the accused, holding that the warrant should have, in the first instance, been issued against the lambardar, as provided for by rule 9 (2), Board's Circulars 2-III, and that, inasmuch as in this case the process was issued first against the co-sharers, they were not in lawful custody. The Local Government appealed.

Mr. W. Walluch (Government Advocate), for the Crown, contended that when revenue became due all the co-sharers jointly and severally became liable as defaulters (Land Revenue Act, section 143). Section 143(b) directed that the defaulter might be arrested. The Board's rule referred to could not override the provisions of the law; and even if the process was not issued against the lambardar, the issue of process against the co-sharers did not make it illegal, as under section 142 of the Land Revenue Act all co-sharers were jointly and severally

* Criminal Appeal No. 573 of 1909 from an order of acquittal passed by Maqbul Husain, Magistrate, first class, of Jaunpur, dated 8th of May 1909.

liable. There was no doubt that it was the lambardar who should be looked to for payment of Government revenue, but that did not preclude the revenue authorities from proceeding against the persons liable, even though they were not lambardars. Suppose there was a case in which the Penal Code provided that either a summons or a warrant might issue. In such a case, if a warrant were first issued, it could not be said that the warrant was illegal and the man arrested could escape from custody.

Babu *Satya Chandra Mukerji*, for the accused, submitted that they were returning from the Tahsil only after paying the Government revenue when they were arrested under the orders of the Tahsildar. Under such circumstances, the process was not legal. The Board's Circular was that process should be issued against the lambardar. Before a warrant could be issued, a writ of demand must be issued under section 147 of the Land Revenue Act calling upon the defaulter to pay. The Legislature had advisedly put a writ of demand first, then arrest of the defaulter and then sale of his property.

It was therefore submitted (1) that the process ought to have been issued against the lambardar in the first instance and (2) that as the warrant was an illegal warrant the custody was not legal. Moreover, the case was a petty case and the appeal by Government was unreasonable.

KNOX and KARAMAT HUSAIN, JJ.—Gulab Singh, Bishnath Singh, Chatar Singh and Baldeo Singh are accused of an offence under section 225B of the Indian Penal Code. On the 19th of March these four men were arrested and locked up in the tahsil lock-up. A warrant against them had been issued by the Tahsildar on the ground that they were defaulters and had not paid the Government revenue due from them. On the 20th, these four men escaped whilst still in custody. There is no dispute about the facts. All the necessary ingredients constituting the offence have been admitted by the accused or on their behalf. The learned gentleman who appeared on their behalf in the court below contended that even on the face of the admitted facts the accused were not liable to any punishment. He based his argument upon rule 9, clause (2), of the rules of the Board of Revenue relating to recovery of arrears

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of land revenue under the United Provinces Land Revenue Act, 1901. The learned Magistrate admitted the force of his argument and acquitted the accused. From this order of acquittal a petition of appeal has been filed by the Local Government, and it is contended that the Deputy Magistrate's interpretation of the law is wrong.

Under section 142 of Local Act No. III of 1901 all the proprietors of a *mahal* are jointly and severally responsible to Government for the revenue assessed thereon. When any instalment of such revenue falls in arrears, as is the case in the present instance before us, that arrear of revenue, as section 146 shows, may be recovered by one or more of the processes set out in section 146. One of those processes is the arrest and detention of the defaulter as defined in section 143 of the Act. The rules relating to recovery of arrears of land revenue do indeed lay down that in a *mahal* in which a *lambardar* has been appointed, process shall ordinarily issue against the *lambardar* in the first instance, but it would be straining the proper meaning of the word 'ordinarily' to hold that the intention of the Board was, and the intention of these rules was, that in every case process should issue against the *lambardar* in the first instance. The very use of the word 'ordinarily' shows that occasions may arise when it is found expedient to issue process in the first instance against the defaulter. It is for the Tahsildar to determine whether he shall, in order to recover the arrears, have recourse to the *lambardar* in the first instance or shall proceed against the defaulter direct. Whichever course he may adopt, his warrant is legal, and the arrest under it is legal and the escape from there is an offence.

A further contention is put forward that the intention of the Legislature in enacting section 146 was that the arrest and detention of the defaulter should follow and not precede the serving of writ of demand. We find ourselves unable to follow this contention. The words of section 146 are wide enough to authorise the issue of both processes against the defaulter, and there is nothing to limit the order in which they should issue. In many cases the service of the writ of demand would result in the escape of the defaulter, and in such cases the Tahsildar

would use ordinary prudence if he had resort to arrest instead of serving a writ of demand.

For a defaulter to escape from a custody in which he has been locked and detained is not a very grievous offence; still it is an offence in which the authority of the officer who issued it is set at defiance, and that authority must be maintained. The sentence which we propose to pass is not to be looked upon as a sentence which is generally passed in such cases. We take this more or less to be a test case, and we trust that when it is known that escape from such custody is an offence, the commission of such an offence will be avoided. We direct that, under section 225B of the Indian Penal Code, Gulab Singh, Bishnath Singh, Chatar Singh and Baldeo Singh, suffer, each and all of them, simple imprisonment for seven days from the date of their arrest.

Appeal allowed.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
SHAM DEI AND ANOTHER (PLAINTIFFS) v. BALJIT SINGH AND OTHERS
(DEFENDANTS.)*

Civil Procedure Code (1852), sections 13, 43—Mortgage—Prior and subsequent mortgages—Mortgaged property brought to sale and purchased by each mortgagee separately, the other not being made a party—Suit by prior mortgagee to bring to sale part of the mortgaged property in the hands of the subsequent mortgagee to recover unsatisfied balance of the mortgage debt.

The prior mortgagee of mortgaged property brought the whole of it to sale without impleading the subsequent mortgagee of a portion and purchased the mortgaged property himself. The subsequent mortgagee in turn brought a portion of the mortgaged property to sale without impleading the prior mortgagee and also himself became the purchaser. The prior mortgagee, after an unsuccessful attempt to recover from the subsequent mortgagee possession of the mortgaged property so purchased, sued to bring that property to sale for the realization of the unrecovered balance of the original mortgage money.

Held, that the suit was maintainable and was not barred by either section 13 or section 43 of the Code of Civil Procedure (1852).

THE facts of this case were as follows:—

On the 25th of February, 1874, Baljit Singh, Sarup Singh, Gopal Singh and Chandan Singh, members of a joint Hindu

* First Appeal No. 296 of 1907, from a decree of Pitambar Joshi, Additional Subordinate Judge of Aligarh, dated the 19th August 1907.