payment at the contractual rate mentioned in the mortgage). As the mortgagee has had to appeal here, we think that to this sum should be added the costs of the appeal necessarily incurred in the court below. These sums also should come out of the proceeds of the sale of the mortgaged property. As stated above, the appellants will have their costs in this Court.

1919

JUGAL KISHORE v. BANKIM CHANDRA.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Justice Sir George Knox.

EMPEROR *v.* MAIKU.*

Criminal Procedure Code, sections 55 and 57—Acquittal of accused by Sessions Judge—Re-arrest by police.

1919 *February*, 27.

Section 55 of the Code of Criminal Procedure cannot legally be made use of for the purpose of retaining under arrest a person whom a court, having acquitted him of the offence with which he was charged, has ordered to be set at liberty. *Empress* v. *Madar* (1) referred to.

ONE Maiku was tried by the Sessions Judge of Farrukhabad on a charge of dacoity, and was acquitted, and it was directed that he should be at once released. Instead, however, of his being released, he was at once re-arrested, ostensibly under the provisions of section 55 of the Code of Criminal Procedure. The order of aquittal was dated the 24th of July, 1918, but he was not brought before a Magistrate until the 5th of August, and then all that the Magistrate said was that he could not proceed with the case under section 110 because an application was pending before the District Magistrate. This application was in fact Maiku's application against the order for his detention in the face of his acquittal. Failing to obtain any redress from the district authorities, Maiku applied in revision to the High Court.

Pandit *Uma Shankar Bajpai*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

KNOX, J. :—Maiku was on his trial before the Sessions Court of Farrukhabad on the 24th of July, 1918. He was being tried

* Criminal Revision No. 772 of 1918, from an order of H. Bomford, District Magistrate of Farrukhabad, dated the 14th of September, 1918.

(1) Weekly Notes, 1885, p. 59.

1919

EMPEROR v. MAIKU.

Knox, J.

for the offence of dacoity. He was acquitted, and the order passed by the learned Sessions Judge ran as follows :—" I acquit Maiku of offences charged under section 395 of the Indian Penal Code and direct that he be set as liberty." Instead of being released from custody, as this order directed, he was then and there re-arrested, and as a matter of fact was not released from custody until the 17th of January, 1919. As we shall presently see, the order of re-arrest and subsequent proceedings were entirely illegal and some one is responsible for this very serious act of detaining a person in illegal custody. I examined Syed Ali Abid, Deputy Superintendent of Police, who was stationed at Fatehgarh in July, 1918, and he says that the usual procedure in cases of this kind is that the accused, who are acquitted, in order to be released, are sent back to jail ; the bar fittings are removed and the accused are released. The authority under which the accused Maiku was re-arrested was an order issued by the Superintendent of Police as far back as the 30th of May, 1917. It runs as follows :—" In future arrest all men acquitted in dacoity cases by Sessions under section 55." Section 55 of the Code of Criminal Procedure says that any officer in charge of a police station may arrest or cause to be arrested any person who was by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury. This order was an order issued without any authority and with a contempt for the personal liberty of the subject which is somewhat startling. It has been condemned and the illegality of it pointed out by more than one ruling of this Court. A Full Bench ruling of this Court, see *Empress* v. *Madar* (1), characterizes it as follows :—" It is intolerable that the police should pursue the investigation of crime, by defying all the provisions of the law for the protection of the liberty of the subject, under the colourable pretension that no actual arrest has been made, when, to all intents and purposes a person has been in their custody " and again the Full Bench pointed out that the procedure is illegal and is a gross and

(1) Weekly Notes, 1885, p. 59.

1919

EMPEROR v. MAIKU.

Knox, J.

unwarrantable breach of the powers entrusted to police officers. But the police appear to have gone on further in deliberately breaking the law. When a person is arrested under section 55, section 57 requires that where the true name and residence of the persons re-arrested has been ascertained, he shall be released on his executing a bond, with or without sureties to appear before a Magistrate, if so required. It is idle for the police to say that they did not know the true name and residence of Maiku; they should have taken him at once before a Magistrate within 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Some attempt was made before me to say that this was done, but the evidence of Ram Narain Agarwala, the Magistrate before whom Maiku was eventually taken, is to the effect that Maiku was not placed before him on the 24th of July, 1918, but on 5th of August, 1918. His evidence was taken before the Deputy Commissioner of Sitapur. The very fact that Maiku was detained in this way for 12 days leads to the inference that the police had not at the time of arrest the evidence necessary, if indeed they had any evidence at all, whereby it could be shown that Maiku had the reputation of being an habitual offender. In this connection there is a document on the record which is very suggestive. When he was produced in the police office just after his re-arrest, the report says this man has never been convicted before " (sazayafta sabiq nahin hai)." I am surprised that the Magistrate viewed the detention of this man with such apparent indifference. Here was a man for whose release orders had been issued and who is put up before this Magistrate after what one must term an illegal detention for twelve days. Instead of proceeding to look into the matter, he puts it aside on the ground that the trial under section 110 could not proceed, as an application was pending before the District Magistrate. That application was an application by this wretched prisoner calling attention to the fact that orders for his immediate release were passed and still here he was detained in custody. It augurs ill for the personal liberties of an accused if a Magistrate whose duty it is to protect him shows such indifference to his being detained as though he were a criminal subject. It seems almost

1919

EMPEROR v. MAIKU.

idle to call the attention of the Magistrate to this grave irregularity when this Court has on several previous occasions called attention to it without any effect. I can only again point out that for a police officer or a Magistrate to detain an accused person when orders have been passed by the Sessions Judge for his immediate release, is a most grave irregularity and might expose a Magistrate and police officer to very serious results. The proceedings taken after the orders of the release of the accused are entirely without jurisdiction. I allow the application and set them aside.

I again draw the attention of the District Magistrate of Farrukhabad to the direction that Maiku is to be released forthwith without any bond or recognizance or limitation of any kind until such can be taken under any warrant of law.

Application allowed.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1919

March, 3.

JAGAN NATH (APPELLANT) *v.* GANGA DAT DUBE (RESPONDENT.)*

Act No. III of 1907 *(Provincial Insolvency Act), sections* 5, 6, 15, 16 *and* 43—*Insolvency—Petition by debtor—Debtor's right to order of adjudication—Dismissal of petition on ground of alleged misappropriation of property belonging to a creditor.*

It is no ground for the rejection of a petition to be declared insolvent filed by the debtor that the petitioner may perhaps have been guilty of criminal misappropriation in respect of property belonging to one of his creditors. *Chhatrapat Singh Dugar* v. *Kharag Singh Lachmiram* (1) and *Triloki Nath* v. *Badri Das* (2) referred to.

ONE Jagan Nath, having been arrested in execution of a decree obtained against him by Ganga Dat Dube, applied to be declared an insolvent. In a civil suit brought against him by Ganga Dat it had been alleged that Jagan Nath had misappropriated certain diamonds which had been delivered to him for sale upon commission. That suit was dismissed by the first court; but on appeal a decree for Rs. 800 was passed against Jagan Nath. No

* First Appeal No. 159 of 1918, from an order of W. F. Kirton, District Judge of Benares, dated the 28th of June, 1918.

(1) (1916) I. L. R., 44 Calc., 535. (2) (1914) I. L. R., 36 All., 250.