REVISIONAL CRIMINAL

Before Mr. Justice Pullan and Mr. Justice Thom

EMPEROR *v.* FATTU AND OTHERS*

1932
August, 30

Indian Penal Code, section 225B—Rescuing arrested person —Warrant of arrest not addressed to any person by name or designation—Arrest illegal—Civil Procedure Code, order XXI, rule 37—Simultaneous issue of notice and warrant—Warrant illegal.

A warrant must be issued to some person for execution; where no name or designation of that person is given in the warrant, the warrant is defective and the arrest unlawful. The rescue of the person arrested under such warrant is no offence under section 225B of the Indian Penal Code.

Where a notice is issued under order XXI, rule 37 of the Civil Procedure Code a simultaneous issue of a warrant is illegal and an arrest thereunder is unlawful; in such a case the warrant can be issued, under clause (2) of the rule, only upon failure of the judgment-debtor to comply with the notice.

Mr. *Masud Hasan*, for the applicants.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

PULLAN and THOM, JJ. :—This is an application in revision from an order of the Sessions Judge of Meerut, who confirmed the conviction and sentences passed upon the seven applicants for an offence under section 225B of the Indian Penal Code. A warrant was issued by a revenue court for the arrest of one Sarup Singh. Sarup Singh was arrested, but he was rescued from the peons who arrested him. These facts may be taken as admitted.

This application in revision challenges the legality of the warrant. This objection is twofold. In the first place, the warrant does not disclose the name or official designation of the person to whom the warrant

*Criminal Revision No. 95 of 1932, from an order of Tirloki Nath, Sessions Judge of Meerut, dated the 11th of January, 1932.

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was issued for execution, and secondly the warrant was served simultaneously with a notice under order XXI, rule 37, of the Civil Procedure Code.

In our opinion the warrant was defective for both the reasons stated by the learned counsel. A warrant must be issued to some person for execution; and where no name or description of that person is given in the warrant, the person arrested can have no knowledge that the persons who present the warrant are legally authorised to do so. It may be that the person who is arrested is unable to read the warrant and has no knowledge as to whether the warrant is or is not properly filled up; but it is the duty of the court to issue a warrant in proper form, and where a warrant is incomplete, it has been held by more than one High Court that the subsequent release of a person arrested under such a warrant is not an offence under section 225B of the Indian Penal Code. There is a very recent decision on this point by a learned Judge of this Court reported in *Jagannath* v. *King-Emperor* (1). In that case a warrant had been issued to the Nazir, and the Nazir without any endorsement made it over to a subordinate official. It was held that the warrant was defective and did not authorise the person who directed the peons to make the arrest, and that accordingly an escape from custody in such a case was no offence. In our opinion the learned Judge decided that case on correct principles, and the present case is a stronger one, for in this case the column which should contain the name of the person to whom the warrant was issued for execution is blank. There is a parallel case recently decided by the Patna High Court, *Badri Gope* v. *King-Emperor* (2), in which a warrant, otherwise complete, was defective, as it was afterwards found that the seal of the court was missing. Although this fact was not known to the persons who rescued the person arrested,

(1) [1932] A.L.J., 179.

(2) A.I.R., 1926 Pat., 237.

the court held that, as the warrant was defective, they had committed no offence under section 225B.

The second objection to this warrant raises a point which, as far as we are aware, has not previously been before any High Court. Under rule 37, order XXI of the Civil Procedure Code a court may, instead of issuing a warrant for arrest, issue a notice calling upon the judgment-debtor to appear before the court on a date specified in the notice and show cause why he should not be committed to the civil prison. The second clause of this rule reads as follows: "Where appearance is not made in obedience to the notice, the court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor." In the present case the court adopted what is, in our opinion, a most improper procedure. It issued simultaneously a notice calling upon the judgment-debtor to appear before the court on the 30th of April, and a warrant for his arrest. Both the notice and the warrant were served on the 19th of April. In our opinion this rule is clear. There were two courses open to the court; either it could issue a warrant of arrest, or it could issue a notice giving the judgment-debtor a date on which to appear in court. If the court follows the second mode of procedure, the question of arrest could only arise when the judgment-debtor fails to comply with the notice. On the 19th of April the judgment-debtor had still eleven days within which to comply with the notice, and his arrest within that period was illegal, for the court by adopting this procedure had taken away its own right to issue a warrant of arrest before the 30th of April.

We cannot emphasize too strongly our feeling that in all these matters of the arrest of a judgment-debtor the procedure laid down in the Code must be carefully observed by the courts. The liberty of the subject cannot be trifled with, and every judgment-debtor can require by right that the court ordering his arrest shall

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observe to the letter the law as laid down in the Code. In the present case we consider that the warrant was defective in itself, and its issue was illegal. Consequently we have no hesitation in finding that the persons who released this judgment-debtor from custody were not rescuing a person who was under a lawful arrest, and therefore, they committed no offence under section 225B of the Indian Penal Code. We accordingly accept this application in revision, set aside the judgments of the courts below and quash the conviction and sentences.

Before Mr. Justice Pullan and Mr. Justice Thom

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EMPEROR *v.* KAUL AHIR*

Arms Act (XI of 1878), section 19(f)—"Possession"—Two loaded cartridges found in a corn bin—Whether the head of the family can be convicted thereupon.

A house was searched and two loaded cartridges were found in a corn bin among ghee, butter and other articles. The Magistrate convicted the head of the family on the ground that as such he should be held responsible for the ammunition recovered from his house. It was *held* that in such a case it could not be said that the head of the house or any individual male member of the family was aware of the presence of these cartridges, and that in all such cases it was necessary to prove not only the presence of the article in the house but the possession of some particular person over that article in order to justify a conviction.

Emperor v. *Sikhdar*, I. L. R., 54 All., 411, dissented from.

This case was referred to a Bench of two Judges on the following referring order :—

IQBAL AHMAD, J. :—I find it difficult to reconcile the decision of this Court in *Emperor* v. *Ram Autar* (1), with the decision of this Court reported as *Emperor* v. *Sikhdar* (2). The question that arises for consideration in the present reference is of sufficient importance to merit a discussion before two Judges. Accordingly I refer this case to a Bench of two Judges.

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*Criminal Reference No. 266 of 1932.

(25) I.L.R., 47 All., 511. (2) (1931) I.L.R., 54 All., 411.