

MISCELLANEOUS CRIMINAL

Before Justice Sir Edward Bennet and Mr. Justice
Iqbal Ahmad

MUMTAZ v. CHHUTWA AND ANOTHER*

1940
March, 20

Contempt of court—Convicted person, out on bail pending appeal; evading arrest on dismissal of appeal—Misrepresenting, in application for revision, that he was in jail.

Two persons, convicted and sentenced to a term of imprisonment by a Magistrate, were let out on bail the same day by the Sessions Judge pending appeal. The result of the appeal was that the sentence of imprisonment was upheld, and the Sessions Judge issued warrants of arrest for them but they knowingly evaded the warrants and could not be arrested. They caused an application in revision to be filed in the High Court, in which there was a prayer that they be released on bail pending the disposal of the application: *Held*, that they committed contempt of court, in the first instance by evading the warrants of the sessions court, and in the second place by having the misrepresentation made in their application of revision that they were in jail and should be released on bail.

Mr. B. S. Darbari, for the applicant.

Dr. M. H. Faruqi, for the opposite parties.

The Government Advocate (Dr. M. Wali-ullah), for the Crown.

BENNET and IQBAL AHMAD, JJ.:—This is a complaint of contempt of court made by one Mumtaz against Chhutwa and Nasira. Mumtaz was the complainant in a case under section 297 of the Indian Penal Code against the accused for having ploughed up the graves of his relations and the accused were convicted of that offence on the 7th of August, 1939, and sentenced by a Magistrate to three months' rigorous imprisonment and Rs.50 fine. The accused were released on bail by order of the Sessions Judge on the same date. On the 22nd of December, 1939, the Sessions Judge upheld the sentence of three months' rigorous imprisonment but remitted the sentence of fine. Warrants were issued by the Sessions Judge presumably on that date but the accused were never arrested on those warrants.

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On the 9th of January, 1940, an application was made by Mr. *David* in this Court for revision of the order of the Sessions Judge and that application states: "It is therefore prayed that the applicants be released on bail pending the disposal of this application." On the 2nd of February, 1940, a learned Judge of this Court passed the following order: "I have perused the judgment of the learned Judge of the lower appellate court. I think that the sentence in the case may be reduced. The accused have been rightly convicted under section 297 of the Indian Penal Code. I confirm their convictions but reduce the sentence of imprisonment to the term for which the two applicants have already been in jail. They will now be set at liberty unless required in connection with some other charge."

It now transpires that the accused have never been in jail at all except possibly for a part of the day on which the Magistrate sentenced them and even this is doubtful. There is no doubt that the learned Judge of this Court was led to believe that the accused had served a period in jail, at least from the date of the order of the Sessions Judge, that is 22nd December, 1939, up to the date of the order of the High Court, 2nd February, 1940. The complainant complains that there was contempt of court by the accused evading services of the warrants and making an application in revision while they were in contempt of court and further that there was contempt of court by the learned Judge of this Court being misled and induced to believe that the accused were still in jail. Today two depositions have been made by the accused and they set out firstly that they were not informed that there was any warrant of the sessions court against them, and secondly that they did not know it was necessary for them to surrender unless asked by their sureties to surrender. The procedure on the sessions court upholding a sentence of imprisonment is to issue a warrant to the jail under section 383 of the Criminal Procedure Code, and where the accused is on bail and is not present the court issues a warrant for his arrest to 2

police officer under section 77 of the Criminal Procedure Code. There is no procedure laid down by the Code that the court should ask the sureties to ask the accused to surrender. There is no doubt that the accused were aware that the sessions court had upheld the sentence of imprisonment and in the depositions of the accused they do not allege that they were not aware. Moreover this is shown by the fact that on the 9th of January, 1940, an application for revision to the High Court was made on their behalf.

The facts therefore are clear. In our opinion the accused did commit contempt of court in the first instance by evading the warrants of the sessions court and in the second place the accused did commit contempt of court by having the misrepresentation made in their application of revision to this Court that they were in jail and should be released on bail. We therefore find that the accused are guilty of contempt of court.

The sentence which we impose on the accused is three months' simple imprisonment each for contempt of court. The accused will now be taken into custody.

APPELLATE CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

MAHABIR RAI AND OTHERS (DEFENDANTS) *v.* RAJENDRA
RAI AND OTHERS (PLAINTIFFS)*

Agra Pre-emption Act (Local Act XI of 1922), section 12(1), class II—"Sub-division" of a mahal—What constitutes a "sub-division".

The phrase "sub-division of the mahal", in section 12(1), class II, of the Agra Pre-emption Act, connotes the idea of division of some sort between the co-sharers of the mahal. The necessary result of the division or sub-division of a mahal is the allotment of specific areas of the mahal to the co-sharers of a particular division or sub-division. The joint coparcenary interest possessed by all the co-sharers of the mahal is put an end to and in lieu of the joint interest possessed by

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*First Appeal No. 222 of 1936, from a decree of Muhammad Zamir-uddin, Civil Judge of Ghazipur, dated the 18th of August, 1935.