

REVISIONAL CRIMINAL.*Before Varma and Madan, JJ.*

JIOO MIAN

v.

KING-EMPEROR.*

1937.

September,
24.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 54 and 56—issue of written order under section 56, whether limits the power of arrest under section 54.

The issue of a written order under section 56 of the Code of Criminal Procedure, 1898, does not limit the power of arrest conferred by section 54 of the Code.

Kishun Mandar v. King-Emperor(1) and *Emperor v. Keshavlal Harilal*(2), followed.

Application in revision.

The facts of the case material to this report are set out in the judgment of Varma, J.

D. N. Varma, for the petitioners.

K. K. Banerji, for the Crown.

VARMA, J.—Originally there were nine petitioners who moved this Court but the application of three of them was rejected at the time of admission. The remaining petitioners, in whose favour the rule was issued, were convicted under section 147 of the Indian Penal Code and sentenced by the lower appellate Court to six months' rigorous imprisonment. There were charges under sections 353 and 225, I. P. C. against all the accused, and although no sentence was passed under any of these sections, the learned Sessions Judge on appeal set aside their conviction under these two sections.

*Criminal Revision no. 370 of 1937, against an order of Rai Bahadur Sandagar Singh, Sessions Judge of Shahabad, dated the 1st June, 1937, modifying a decision of Babu P. C. Roy Choudhury, Magistrate, First Class, Sasaram, dated the 26th February, 1937.

(1) (1926) I. L. R. 5 Pat. 533.

(2) (1936) 38 Bom. L. R. 971.

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The case for the prosecution was that the Sub-Inspector of Nasriganj thana went to Barnadihri the village of the accused Manrakhan, on the 16th October, 1936, in connection with a police case under section 148 of the Indian Penal Code against Manrakhan, and with him went a constable named Nathuni Khan. Nathuni Khan was given a command certificate to arrest Manrakhan Mian. The constable Nathuni Khan went with a number of dafadars and chaukidars to arrest Manrakhan and when he reached near the Baithak of Manrakhan he saw a man moving away. Nathuni Khan enquired who the man was and when the man gave his name as Manrakhan the constable asked him to go to the Sub-Inspector. Manrakhan tried to escape but Nathuni caught hold of him. Thereupon Manrakhan raised a cry upon which the other accused rushed to the place variously armed and rescued Manrakhan. Two of them, whose petition has already been refused, are said to have assaulted with lathis, and the rest took part in the scuffle which took place in rescuing Manrakhan from the constable. The defence advanced was a denial of the whole occurrence and they came out with a counter version, which has not been accepted by the Courts below, that the constable and his party wanted to enter the zanana of Manrakhan and that they beat the tiles and thatch of his house.

Now, so far as the occurrence is concerned, there can be no doubt on the evidence that the occurrence took place as alleged by the prosecution. In revision it has been urged before us that the arrest of Manrakhan was illegal because the provisions of section 56 of the Criminal Procedure Code were not complied with inasmuch as the substance of the command certificate was not given out to the accused before they were arrested. This line of argument was advanced before the lower appellate Court also and it seems that the lower appellate Court was impressed by the argument and accepted it with the result that it set

aside the conviction under sections 353 and 225, I. P. C. The lower appellate Court relied on the decision in *Kartik Chandra Maity v. The King-Emperor*(¹). That was a case in which a warrant was given to the constable to be executed, and it was held by one of the Judges constituting the Bench that that warrant was illegal and therefore the constable could not rely on his powers under section 54 to make the arrest. There reference was made to the provisions of section 54(1) of the Code of Criminal Procedure, and one of the learned Judges held that as the constable was acting under the warrant, and as the question of the powers given under section 54(1) was not gone into by the lower Courts, the case relied upon on behalf of the Crown, i.e. the case of *Kishun Mandar v. King-Emperor*(²) was distinguishable. We find no mention of clause (9) of section 54 of the Criminal Procedure Code in that judgment. Clause (9) of sub-section 1, runs as follows :

“ Any police-officer may, without an order from a Magistrate and without a warrant, arrest any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made, and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.”

In the present case the facts are very similar to the case reported in *Kishun Mandar v. King-Emperor*(²), where it was held that the issue of a written order under section 56 does not limit the power conferred by section 54. I may mention that that decision has been relied upon in the Bombay High Court in *Emperor v. Keshavlal Harilal*(³). In my opinion the lower appellate Court was not justified in holding that the arrest of Manrakhan was illegal. The lower appellate Court, even after holding that the arrest of Manrakhan was illegal, came to the conclusion that the conviction of the petitioners under section 147 of the Indian Penal Code was correct inasmuch as the

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(1) (1930) 13 Pat. L. T. 135.

(2) (1926) I. L. R. 5 Pat. 533.

(3) (1936) 38 Bom. L. R. 971.

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other common object mentioned in the charge did not fail, and all that the lower appellate Court did was to reduce the sentence of the present petitioners. This was the only law point urged and it has failed. I am of opinion that there is nothing illegal in the conviction of the present petitioners under section 147, Indian Penal Code.

The next question is the question of sentence. The present petitioners are not said to have assaulted the constable, but it cannot be doubted that they were members of an unlawful assembly. Most of the petitioners before us are members of the same family, and three of them are sons of Manrakan whose petition has already been rejected. As they did not take a very prominent part in the assault on the constable, I think the ends of justice will be served if the sentence on the petitioners now before us, other than Zahoor Mian, is reduced to three months' rigorous imprisonment in each case. Petitioner Zahoor Mian is a boy of 17 and in his case I would reduce the sentence to the period already undergone.

MADAN, J.—I agree.

Conviction upheld.

Sentence reduced.

S. A. K.

FULL BENCH.

Before Courtney Terrell, C.J., James and Manohar Lal, JJ.

1937.

RAMKHELAWAN SAHU

v.

BIR SURENDRA SAHI.*

Court-fees Act, 1870 (Act VII of 1870), section 7, clause (iv)(c) and clause (v)—suit for declaration and consequential relief—suit for possession, wrong decision as to

*Civil Revision no. 106 of 1937 with Civil Revision no. 123 of 1937, from an order of Mr. A. N. Banerji, Subordinate Judge of Muzaffarpur, dated the 4th January, 1937.

November,
8, 9, 10,
23.