REVISIONAL CRIMINAL.

Before Young C. J. and Rangi Lal J.

1934

June 26.

HANS RAJ (ACCUSED) Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No. 63 of 1934.

Criminal Procedure Code, Act V of 1898, Sections 87, 88, 89: Absconder—Proclamation under Section 87—erroneously not giving absconder full 30 days to appear—whether attachment under Section 88 void—or irregularity curable by Section 537—Inherent jurisdiction of High Court under Section 561-A—whether can be invoked in a case where the ends of justice have been secured.

The Court on 6th June, 1931, ordered that a proclamation should be issued to the petitioner under Section 87, Criminal Procedure Code, requiring his presence in Court by the 14th July, 1931. The office issued the proclamation on 12th June, 1931, and by mistake directed that he should appear in Court within 30 days from 6th June, 1931. The property of Hans Raj was attached at the same time.

Two years later, after arrest of the petitioner, application was made to the Magistrate under Section 89, Criminal Procedure Code, for release of the property attached on the ground that the proclamation was irregular and this, it was contended, rendered the proceedings *void ab initio*. This application was rejected by the lower Court.

Held, that the Magistrate had no jurisdiction to set aside the order of attachment, whether irregular or not, except by virtue of Section 89, Criminal Procedure Code, and if an applicant merely proves that he had no proper notice of the proclamation and does not further prove that he had not absconded or concealed himself for the purpose of avoiding the execution of the warrant, the attachment cannot be set aside.

Held also, that failure to give the necessary notice is a mere irregularity curable under Section 537 of the Code, where the applicant has not been prejudiced by it; nor

should the inherent jurisdiction of the High Court be exercised in a case where the ends of justice have been secured.

SHAMAIR CHAND, for Petitioner.

ABDUL KARIM, for the Government Advocate, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—This is an application in revision from an order of the learned District Magistrate of Sialkot.

Hans Raj was wanted for murder and cheating. He absconded. The learned Magistrate took proceedings under sections 87 and 88 of the Criminal Procedure Code to procure the attendance of Hans Raj before his Court. A proclamation was issued requiring the attendance of Hans Raj. At the same time the property of Hans Raj was attached. Two years later, after the arrest of Hans Raj, an application was made in the Court of a Magistrate of the first class under section 89 of the Criminal Procedure Code for the release of the property attached. It was argued in the Court of the learned Magistrate that the proclamation did not comply with section 87, in that thirty days were not given to Hans Raj to appear as enjoined by that section. The facts are that on the 6th of June, 1931, the learned Magistrate issued an order that a proclamation should be published requiring the presence of Hans Raj on the 14th of July. The proclamation was published on the 12th of June and if the order of the Magistrate had been carried out by the office there would have been no argument in this case at all. Unfortunately the office in their printed form forgot to cross out the word 'to-day.' It therefore appears that on the 12th of June notice

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was given to Hans Raj by the proclamation to appear in Court within thirty days from the 6th of June. This undoubtedly was an error by the office.

The application under consideration was made under section 89, Criminal Procedure Code. Both the lower Courts have found that the applicant has failed to prove " that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant." The application under section 89 was dismissed in both the lower Courts.

It has been argued by Mr. Shamair Chand on behalf of the applicant that, as thirty days were not given in the proclamation for Hans Raj to appear, the whole proceedings of proclamation and attachment are *void ab initio* and, therefore, the order of attachment ought to be set aside and the property returned to Hans Raj.

We cannot assent to this argument. In the first place, the only way the applicant could proceed to obtain the release of his property under the Criminal Procedure Code was by an application under section 89. It is clear the learned Magistrate had no jurisdiction to set aside the order of attachment—whether irregular or not—except by virtue of this section. He had no inherent jurisdiction to set aside an order passed by another Magistrate or even by himself as has been suggested by counsel, even if that order was irregular or illegal. The applicant had to prove under the section two things to entitle him to have the attachment set aside: he has not proved the first, namely, that he had not " absconded or concealed himself for the purpose of avoiding execution of the warrant." He has proved that he had no proper notice of the proclamation. As he has failed to prove

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the first of these essentials he cannot have the attachment set aside.

It is argued, however, that the proclamation being incorrect we should interfere under our inherent jurisdiction. In the first place, we think that the failure to give the necessary notice does not amount to more than an irregularity which can be cured by an application of section 537 of the Criminal Procedure Code. The applicant has not been prejudiced by the error or omission. He could only be prejudiced if in fact he had not absconded and had attended the Court a few days after the expiration of the time given to him by the faulty proclamation and within 30 days from the 12th June. He remained absconding for two years, and therefore an error of six days could not affect him. With regard to the provisions of section 561-A we cannot say for the same reasons that there has been any miscarriage of justice. Section 561-A merely records that the High Court has an inherent power to interfere to prevent abuse of the process of any Court or otherwise to secure the ends of justice. We are satisfied in this case that the ends of justice have been secured. No case has been made out for interference under this section.

The application is dismissed.

C. H. O.

Revision dismissed.