CRIMINAL REVISION.

Be,ore Harington and Coxe JJ.

SUBED ALI
v.
EMPEROR.*

1913
April 10.

Attachment—Warrant—Penal Code (Act XLV of 1860), s. 147—Nazir's power of Delegation—"Bailiff"—Civil Procedure Code (Act V of 1908), O. XXI, r. 25.

Where a nazir directed a peon to attach property and fixed a time within which the attachment was to take place and the peon executed the warrant of attachment after the expiration of the time so fixed :—

Held, that the peon, deriving his authority from the Court to make the seizure, could lawfully make the seizure even after the time fixed by the nazir for the execution had expired.

The nazir and bailiff are not the same person. The officer to whom O. XXI, r. 25 of the Civil Procedure Code refers is not the nazir, but the peon.

Dharam Chand Lall v. *Queen-Empress* (1) *distinguished.*

THE facts of the case are these. One Ambica Singh lodged a complaint in the Court of the Subdivisional Officer of Naraingani to the effect that the petitioners and several others rescued the cattle of one Rameshwar Dutt which had been attached by a Civil Court peon in execution of a decree obtained against Ramsunder Dutt by a certain Moti Lall Singh. Thereupon the petitioners were charged with rioting and causing hurt to the attaching party and were subsequently convicted and sentenced to various terms of imprisonment by the Subdivisional Magistrate of Naraingani.

* Criminal Revision No. 315 of 1913, against the order of G. B. Mumford, Sessions Judge of Dacca, dated Jan. 13, 1913.

(1) (1895) I. L. R. 22 Calc. 596.

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The warrant was addressed to the bailiff. The nazir endorsed it to a peon with instructions to execute it by the 25th of August 1912, but the warrant itself could be enforced till the 30th of August—the date originally fixed for its execution by the issuing Court. The peon executed it, however, on the 26th of August 1912.

Against the order of the Subdivisional Officer the petitioners appealed to the District Judge of Dacca, who dismissed their appeal. Against this order of dismissal the petitioners moved the High Court and obtained this Rule.

Babu Harendra Narain Mitter (with him *Babu Bhudeb Chunder Roy*), for the petitioners, contended that the warrant was delegated to the nazir and as such nobody except the person to whom the Court delegated the warrant, was competent to execute it. The nazir, as a matter of fact, was not empowered by law to delegate his authority and therefore he could not delegate it to the peon. Further, he submitted, that even if he had the power to make the warrant over to the peon for execution the peon was bound by the terms of his delegation, *i.e.*, he was bound to execute the warrant according to the direction of the nazir, on or before the 25th of August, and not beyond that date. Inasmuch as he executed the warrant on the 26th of August it was not a lawful execution and the petitioners therefore were well within their rights in resisting the execution. The attachment, therefore, being illegal the petitioners committed no offence in resisting it: *Dharam Chand Lall* v. *Queen-Empress* (1) and *Sheo Progash Tewari* v. *Bhoop Narain Prosad Pathak* (2).

(1) (1895) I. L. R. 22 Calc. 596. (2) (1895) I. L. R. 22 Calc. 759.

Babu Srish Chandra Chowdhury, for the Crown, was not called upon.

HARINGTON J. This is a Rule calling on the District Magistrate to show cause why the conviction should not be set aside on the first ground mentioned in the petition. That ground runs in these terms—that the conviction is bad in law, in that the attachment of the cattle, by the peon whose power to act under the warrant had expired, was illegal.

The whole question raised by this rule was: Was the peon's act in attaching the cattle illegal under these circumstances?

The warrant was a warrant addressed to the bailiff, the English word "bailiff" appearing on the face of it in Bengali character. The nazir of the Court, who appears to have superintendence over the persons who execute the warrants, endorsed it with a direction to the particular bailiff in question to execute it within a particular day; but the warrant itself was a good warrant for some days beyond that date. The bailiff should have executed it, according to the direction of the nazir, on or before the 25th August, but the warrant issued by the Court could be legally enforced up to the 30th August. The question is, whether the execution by the peon between the 25th and 30th is a lawful execution? In my opinion it is.

The point that strikes me is that the warrant was addressed to the bailiff. Now "bailiff" is a very well-known English word and is used to describe the officer who actually conducts executions. When an execution is put into a house, it is the bailiff who goes and seizes the furniture, it is the bailiff who takes actual physical possession of the furniture and becomes the man in possession who prevents it from being carried away. In my view, the fact that the

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warrant is addressed to the bailiff shows that it is the person who actually makes the seizure who is authorised by it, namely, the peon. If the warrant had been intended to go to the nazir, it would have been so addressed, but as it was addressed to the bailiff, it must have been addressed to a person who in this country follows the description of a bailiff, that is, a peon.

For that reason, the peon who made the seizure derived his authority from the Court that issued the warrant and not from the nazir who endorsed it. That authority was not lessened by the circumstance that the officer who has general charge of the "bailiff" or peon, namely, the nazir, directed him to do his duty within a particular time. He did not do it within the time; he still had authority from the Court to make the seizure though, as far as his duty to the nazir was concerned, he ought to have made it at an earlier date.

For these reasons, I think that the Rule should be discharged.

The case of *Dharam Chand Lall* v. *Queen-Empress* (1) was cited by the learned vakil who argued in support of the Rule. But that case was entirely different; because in that case the warrant was directed to the nazir, and not only was it directed to the nazir, but to a particular nazir by name, and the question which the learned Judges discussed in that case was how far the nazir, who by name was authorised to execute the warrant, could delegate his authority to another officer. That case has nothing to do with the present, in which the warrant was directed to the bailiff, and not to any particular person by name.

The Rule must be discharged.

(1) (1895) I. L. R. 22 Calc. 596

COXE J. I agree that the Rule should be discharged.

It does not appear that any question of delegation arises in this case at all. The argument of the learned vakil for the petitioners, that this warrant was delegated by the nazir to the peon, was founded on the assumption that the word "bailiff" used in the form means and only means the nazir. There is no reason, so far as I can see, why the term "bailiff" should be confined to the nazir. There are several reasons why it should not.

On a reference to Order XXI. rule 25, it will be seen that the warrant is referred to the officer entrusted with the execution of the process, and it is clear from the terms of that section that that officer is not the nazir, but is the peon. That officer has to endorse on it the day on, and the manner in, which it is executed. This is done by the peon. If the process is not executed, the Court has to examine the officer touching his alleged inability to execute it. It is only the peon who can give evidence on this point. The nazir's evidence would be purely hearsay. It seems to me that the officer to whom Order XXI, rule 25, refers can only be the peon.

On referring to the form itself, the process is addressed to the bailiff of the Court, and on the back we find space allowed for the date on which the order is made over to the nazir, the date on which it is returned by the serving officer, and so on. If the nazir and bailiff are the same person, it is difficult to understand why the same word should not be used throughout.

No doubt, the process does pass through the hands of the nazir on its way from the Court to the executing officer, who, in my opinion, is the bailiff. The Court has perhaps fifty peons attached to it, and it is impossible for the Court to entrust the execution to

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individual peons, and, consequently, it is the nazir's duty, not to delegate his authority, but to distribute the processes which are received by his department among the various officers entrusted with their execution. That, in my opinion, does not amount in any way to delegation.

I think, therefore, that the officer who was entrusted with the execution of the process was the peon, or the bailiff, as he is described in it. He was the attaching peon and consequently his custody of the property was lawful, and the accused were guilty of an offence in rescuing that property from him.

S. K. B. *Rule discharged.*

CRIMINAL REVISION.

Before Imam and Chapman JJ.

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April 16.

ABDULLAH MANDAL

v.

EMPEROR.*

Cognizance—Police report—Case made over to another Magistrate for enquiry and report—Criminal Procedure Code (Act V of 1898) ss. 173, 190 (1) (b)—Practice.

Where a Magistrate, upon receiving a police report under s. 173, does not take cognizance of the case under s. 190 (*1*) (*b*), which he is perfectly competent to do, but makes it over for enquiry andr eport to an Honorary Magistrate, he acts contrary to the provisions of the Law.

THE facts are briefly these. One Nasirul Huq laid a charge of theft of a bullock belonging to his brother-in-law, Panchcowrie Shaikh, at the thana of Dadpur, against the petitioners. The police enquired

* Criminal Revision No. 347 of 1913, against the order of A. B. De, Subdivisional Officer of Hooghly, dated Jan. 18, 1913.