

# CALCUTTA HIGH COURT

Queen-Empress

Vs

Jogendra Nath Mukerjee

(Ghose and Gordon, JJ.)

19.01.1897

## JUDGMENT

### **Ghose and Gordon, JJ.**

1. This case comes before us on a reference by the Sessions Judge of Hooghly under Section 438 of the Code of Criminal Procedure, and we have heard the learned Vakil who appeared in support of the reference. It appears that one Upendra Nath Bhattacharjee preferred a complaint of criminal breach of trust under Section 406 of the Penal Code against certain persons, and this complaint was referred to the Police for enquiry by the Magistrate of Howrah. One of the witnesses whom the complainant wished to be examined by the Police in support of his charge was a lady named Monmohini Devi, and the Sub-Inspector of Police who was holding the investigation by an order in writing, required her to attend before him for the purpose of being examined as a witness in the case. She, however, failed to attend in accordance with his order, and accordingly the Sub-Inspector reported the matter to the District Magistrate, who eventually issued a warrant for her arrest and production before the Sub-Inspector in order that she might be examined by him as a witness. The Sub-Inspector, a head constable and some constables, armed with the warrant, proceeded to the lady's residence to execute it, and there having lain hands on one Aghoremoni instead of on Monmohini they were obstructed, and one or other of them was assaulted by certain persons. These persons, five in number, were accordingly prosecuted for committing offences under Sections 143 and 186 of the Penal Code, were convicted by the Deputy Magistrate of Howrah of such offences, and sentenced each to pay a fine of Rs. 30 or in default to undergo one month's rigorous imprisonment.

2. The learned Sessions Judge is of opinion that the District Magistrate had no authority in law to issue a warrant of arrest against Monmohini for her production as a witness before the investigating Police Officer, and that therefore the conviction of the five accused persons under Sections 143 and 186 of the Penal Code is bad in law; and in support of this view lie has referred to *In re Rakhmaji*<sup>1</sup> *Queen-Empress v. Tulsi Ram*<sup>2</sup> *Lilla Sing v. Queen-Empress*<sup>3</sup> and the learned

Vakil has drawn our attention to another case in point, In the matter of Baroda Kant Pramanick 1 Cal. W. N., 74. We have considered the terms of the reference, the explanation of the District Magistrate, the authorities cited, and the arguments advanced by the learned Vakil in support of the reference, and we are of opinion that the Judge has taken a correct view of the law in this case. We are unable to find any provision in the Criminal Procedure Code authorising the issue of such a warrant of (sic) as the District Magistrate issued in this case. Reading Sections 76 and 81 of the Code together it would appear that a Magistrate is only competent to issue a warrant of arrest for production of a person before his own Court and not before a Police Officer.

3. No doubt, as the District Magistrate points out, Section 90 of the Criminal Procedure Code empowers him to issue a warrant in any case in which he is competent to issue a summons, but we observe that the Code makes no provision for the issue of a summons by a Magistrate requiring a person to appear before a Police Officer. The investigation in the present case was being made by the Police under Chapter XIV of the Criminal Procedure Code, and accordingly the Sub-Inspector was empowered under Section 160 Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as go required. by an order in writing to require the attendance of Monmohini before him, and on her failure to comply with the order she might have been prosecuted for disobedience under Section 174 of the Penal Code; but we think that no warrant of arrest could under such circumstances be lawfully issued against her. We are also of opinion that inasmuch as the issue of the warrant was illegal the convictions under Sections 143 and 186 of the Penal Code cannot be sustained, and the authorities above cited support this view. The District Magistrate relies on Section 99 of the Penal Code; but we think that this Section has no application to a case like the present in which the Police officers were acting under a warrant, the issue of which was altogether illegal. For the above reasons we set aside the conviction and sentences, and direct that the fines, if realised, be refunded.

#### Cases Referred.

11.L.R. 9 Bom., 558

21.L.R. 13 Bom. 168

31.L.R. 22 Cal. 286