
(1916) 05 AHC CK 0003
In the Allahabad High Court

Aijaz Husain

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 26-05-1916

Acts Referred:

Penal Code, 1860 (IPC) — Section 225B

Citation : AIR 1916 All 58 : 35 Ind. Cas. 973

Hon'ble Judges : Sundar Lal, J

Bench : Single Bench

Judgement

Sundar Lal, J.—This is a reference made by the Sessions Judge of Moradabad. The facts of the case are as follows: One Barkat Hasan was the lambardar of a village. He made default in payment of the Government revenue. He had transferred his own share to a near relative. The accused Aijaz Husain was one of the biggest co-sharers in the village. The Tahsildar called upon him to pay the Government revenue but he objected. Thereupon the matter was reported to the Collector. The Collector passed an order directing realization of the revenue by the arrest of the applicant. A warrant of arrest was issued signed by the Naib Tahsildar on the 24th of February 1916 returnable by the 29th. The peons were unable to execute this warrant. Time for execution was extended up to the 6th of March. In the meantime one of the other co-sharers who had been arrested for nonpayment of Government revenue was released and he was asked to trace out Aijaz Husain, for whose arrest the warrant was issued. This co-sharer took the chaprasi to the place where the accused was. According to the report of the chaprasi endorsed on the warrant the accused declined to be arrested, was ready to quarrel and said: "Take me if you can to the Tahsil, I won't go." The chaprasi report is no evidence. But I understand that the report of the Naib Tahsildar was admitted in evidence though the Naib Tahsildar was not examined, nor did he personally know what had actually happened when the chaprasi went to arrest the accused. Four chaprasis had been entrusted with the execution of the warrant. Upon these facts the accused has been convicted of an offence u/s 225B of the Indian Penal Code. The case was tried summarily. No evidence has been

recorded. The learned Magistrate sets out in detail the case for the prosecution and concludes by saying: "I find the charge against him proved." He has not found what exactly was the evidence in this particular case. The accused appears to be an influential zemindar. For some reason or other the chaprasis were unable to find him out before the 29th of November and another co-sharer who had already been under arrest was asked to trace him out. It was in his company that the chaprasis went to arrest the accused. I think an officer armed with a warrant of arrest should have produced the warrant before the person sought to be arrested and made an attempt to arrest him, and if he had in fact been resisted then he certainly would have been guilty of an offence u/s 225B of the Indian Penal Code. I suspect that the chaprasis were more or less friendly with the accused. They did not perform their duty by proceeding to arrest him. I do not understand what the expressions *amadah fujdari hue* or "arrest me if you can, I won't go" were actually meant to convey. To constitute an offence u/s 225B, something more than evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest, is required. The learned Magistrate in his explanation says that the accused bears the reputation of a pugnacious man. That may be so. There is apparently no evidence on the point. I think the four chaprasis entrusted with the execution of the warrant, for some reason best known to themselves, failed to arrest the accused formally and reported what is endorsed on the warrant. I think in a serious case like this, if the facts mentioned were true, a charge ought to have been framed against the accused and the accused tried in the ordinary way and not summarily. I am not satisfied (and I agree with the learned Sessions Judge in this matter) that there was any resistance or obstruction offered in fact to the arrest of the accused. The fact is that the chaprasis did not attempt to arrest him. I, therefore, accept the reference, set aside the conviction and sentence of the accused and direct his immediate release.