
(1894) 07 CAL CK 0015
In the Calcutta High Court

Ramjeevan Koormi

APPELLANT

Vs

Durga Charan Sadhu Khan

RESPONDENT

Date of Decision : 04-07-1894

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 560

Citation : (1894) ILR (Cal) 979

Hon'ble Judges : Beverly, J; Banerjee, J

Bench : Division Bench

Judgement

Beverly and Banerjee, JJ.—One Durga Charan Sadhu Khan was arrested without warrant by constable Ramjeevan for an offence under Clause 3 of Section 34 of Act V of 1861. The Deputy Magistrate, who tried the case, acquitted Durga Charan, and under the provisions of Section 560 of the Code of Criminal Procedure ordered ? the constable "to pay Rs. 20 as compensation to the accused, or undergo simple imprisonment for a fortnight."

2. The District Magistrate has asked us to exercise our powers of revision in the case on four grounds: (1) That Section 560 of the Code is not applicable to a police officer arresting an accused person for a cognizable offence; (2) that the order imposing imprisonment in default of payment is illegal; (3) that Sub-section (1), proviso (a), has not been complied with; (4) that the compensation awarded is excessive and out of proportion to the circumstances of the parties, to any inconvenience suffered by the accused, or to any wrong-doing committed by the constable.

3. On the first ground, we think it is quite clear that the order complained of is illegal. Section 191 of the Code authorises certain Magistrates to take cognizance of an offence--(a) upon receiving a complaint of facts which constitute such offence; (b) upon a Police report of such facts; (c) upon information received from any person, other than a police officer, or upon his own knowledge or suspicion that such offence has been committed.

4. "Complaint" is defined in Section 4, Clause (a), and that definition in express terms excludes the report of a police officer. The operation of Section 560 is restricted to cases instituted "by complaint as defined by this Code or upon information given to a police officer or to a Magistrate." It is clear that it will not apply to a case instituted on a police report or on information given by a police officer. The Deputy Magistrate therefore had no jurisdiction to make any order under that section in this case, and the order is for that reason illegal.

5. As regards the order for imprisonment in default of payment of the compensation, it is to be observed that the section itself does not expressly authorise the Magistrate to award such imprisonment. All that the section says on this point is contained in Sub-section (2) which runs as follows:

6. "Compensation, of which a Magistrate has ordered payment under Sub-section (1), shall be recoverable as if it were a fine.

7. "Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs."

8. By Section 209 of the Code (Act X) of 1872 authority was expressly given to award imprisonment if the compensation could not be realised. The third clause of that section runs as follows:

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant which may be found within the jurisdiction of the Magistrate of the district, and such order shall authorise the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the district, when the order has been endorsed by the Magistrate of the district in which such property is situated, and if the sum awarded cannot be realized by means of such distress by imprisonment of the complainant in the civil jail for any time not exceeding thirty days unless such sum is sooner paid.

9. In the Code of 1882, the wording of the corresponding section, viz, Section 250, now repealed, was altered, and the words expressly authorising the levy of the fine by imprisonment were for some reason omitted, nor have they been reproduced in Section 560 of the Code, which now takes the place of Section 250. Mr. Leith, whom we have heard on this point, suggests that imprisonment is to be regarded as one of the ordinary modes of recovery of a fine, but we are not aware of any provision of the law under which a fine is recoverable by imprisonment. Section 386 prescribes that a fine, if not paid, may be levied by distress and sale of any moveable property belonging to the offender, but is silent in respect of any other mode of recovering the fine. *The power to award imprisonment, in default of payment of a fine, in the case of an offence, is contained in Section 64 of the Penal Code, but that section only refers to cases in which a person is sentenced to pay a fine for an offence and will not apply to * an order to pay compensation. Similarly, Section 33 of the Code of Criminal

Procedure only relates to cases in which imprisonment, in default of payment of a fine, is authorised by law in case of default. *

10. As Section 560 of the Code stands, therefore, we think it extremely doubtful whether the Deputy Magistrate had any jurisdiction at all to make an order for imprisonment in default of payment of the compensation. But, however that may be, we think it clear that such an order could not be made in the terms in which it has been made in this case. u/s 209 of the Code of 1872, the order for imprisonment could only be made if the compensation could not be realised by distress, and the words of Section 560 of the present Code are to the same effect- "If it cannot be recovered." See also the cases of Bisheswar Shahav. Bishwambhur Sircar 23 W.R. Cr. 64 and Queen Gopai, 2 N.W.P. (All.) H.C. 430. See the case of Queen-Empress v. Kutrapa ILR 18 Bom. 440.-Ed.

11. Therefore, even if the Deputy Magistrate had jurisdiction to make an order for imprisonment, it was illegal to make such an order until some attempt had been made to levy the amount.

12. For these reasons, we think that the order of the Deputy Magistrate is bad in law, and we set it aside accordingly. We think it unnecessary to consider the other grounds urged by the District Magistrate.