Mumtaz Vs Chhutwa and Another

Court: Allahabad High Court

Date of Decision: March 20, 1940

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 383
Penal Code, 1860 (IPC) â€" Section 297

Citation: AIR 1940 All 386 : (1940) 10 AWR 334

Hon'ble Judges: Bennet, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Bennet, J.
This is a complaint of contempt of Court made by one Mumtaz against Chhutwa and Nasira. Mumtaz was the complainant in a

case u/s 297, Penal Code, against the accused for having ploughed up the graves of his relations and the accused were convicted of that offence

on 7th August 1939 and sentenced by a Magistrate to three months rigorous imprisonment and Rs. 50 fine. The accused were released on bail by

order of the Sessions Judge on the same date. On 22nd December 1939 the Sessions Judge upheld the sentence of three months"""" rigorous

imprisonment but remitted the sentence of fine. Warrants were issued by the Sessions Judge presumably on that date but the accused were never

arrested on those warrants. On 9th January 1940 an application was made by Mr. David in this Court for revision of the order of the Sessions

Judge and that application states: ""It is therefore prayed that the applicants be released on bail pending the disposal of this application."" On 2nd

February 1940 a learned Judge of this Court passed the following order:

I have perused the judgment of the learned, Judge of the lower Appellate Court. I think that the sentence in the case may be reduced. The accused

have been rightly convicted u/s 297, Penal Code. I confirm their convictions but reduce the sentence of imprisonment to the term for which the two

applicants have already been in jail. They will now be set at liberty unless required in connexion with some other charge.

2. It now transpires that the accused have never been in jail at all except possibly for a part of the day on which the Magistrate, sentenced them

and even this is doubtful. There is no doubt that the learned Judge of this Court was led to believe that the accused had served a period in jail at

least from the date of the order of the Sessions Judge, that is 22nd December 1939, up to the date of the order of the High Court, 2nd February

1940. The complainant complains, that there was contempt of Court by the accused evading services of the warrants and making an application in

revision while they were in contempt of Court and further that there was contempt of Court of the learned Judge of this Court being misled and

induced to believe that the accused were still in jail. Today two depositions have been made by the accused and they set out firstly that they were

not informed that there was any warrant of the Sessions Court against them, and secondly, that they did not know it was necessary for them to

surrender unless asked by their sureties to surrender. The procedure on the Sessions Court upholding a sentence of imprisonment is to issue a

warrant to the jail u/s 383, Criminal P.C., and where the accused is on bail and is not present the Court issues a warrant for his arrest to a police

officer u/s 77, Criminal P.C. There is no procedure laid down by the Code that the Court should ask the sureties to ask the accused to surrender.

There is no doubt that the accused were aware that the Sessions Court had upheld the sentence of imprisonment and in the depositions of the

accused they do not allege that they were not aware. Moreover, this is shown by the fact that on 9th January 1940 an application for revision to

the High Court was made on their behalf.

3. The facts therefore are clear. In our opinion, the accused did commit contempt of Court in the first instance by evading the warrants of the

Sessions Court and in the second place the accused did commit contempt of Court by having the misrepresentation made in their application of

revision to this Court that they were in jail and should be released on bail. We therefore find that the accused are guilty of contempt of Court. The

sentence which we impose on the accused is three months'' simple imprisonment each for contempt of Court. The accused will now be taken into

custody.