
(1870) 02 CAL CK 0004

Calcutta High Court

Case No: None

Kilaram Maji

APPELLANT

Vs

Narayan Das

RESPONDENT

Date of Decision: Feb. 9, 1870

Judgement

L.S. Jackson, J.

This is a reference of a very singular character. A suit was brought against the defendant for money due upon a bond, and, therefore, the Judge of the Small Cause Court at Burrisaul states, "that plaintiff took out, u/s 75 of Act VIII of 1859 a warrant of arrest before judgment to secure easy execution of decree were he to obtain it. The defendant, from his poor circumstances, failed to furnish the security required by law, and was, therefore, u/s 78, committed to custody in the jail." I hope that the Judge, in this case, has done himself injustice by reason of his inability to express himself clearly in the English language, because section 75 of Act VIII of 1859 does not provide for plaintiff's taking out a warrant of arrest before judgment to secure easy execution of decrees, if such decrees are obtained, nor does section 78 of the Code oblige defendants generally to give security. Section 75 only enables the Court, on application made u/s 74, "if after examining the applicant, and making such further investigation as it may consider necessary, it shall be of opinion that there is probable cause for believing that the defendant is about to leave its jurisdiction, with the intent of avoiding or delaying the plaintiff, or that he has disposed of, or removed from the jurisdiction of the Court, his property, or any part thereof, with the intent to obstruct or delay the execution of any decree to issue a warrant to the proper officer enjoining him to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance;" and u/s 78, "in the event of the defendant neither furnishing security, nor offering a sufficient deposit, he may be committed to custody until the decision of the suit, or if judgment be given against the defendant, until execution of the decree, if the Court shall so order." However, the defendant, accordingly, was lodged in jail. Thereupon, the suit proceeded, and the day for hearing arrived. It seems then to have occurred to the Judge, that the defendant being lodged in jail, might be under some disability as to

defending the suit effectually. He, therefore, determined to have the defendant brought before him which he seems to have considered could only be done under the provisions of Act XV of 1869, and, thereupon, addressed a requisition to the jailor, which he forwarded for counter-signature to the Judge of the district.

2. The Judge, instead of pointing out to the Court of Small Causes what seems to me to have been the proper course to be taken, enters into a discussion as to whether the evidence of the defendant was necessary in this case, and being of opinion that the defendant's evidence was not necessary, he declines to countersign the requisition, and returns it to the Small Cause Court.

3. Thereupon, the Judge of the Small Cause Court, observing that until summons had been served upon the defendant in the manner prescribed by section 15 of the same Act, he could not decide whether it would be impossible for the prisoner to appear, or no, directed a summons to be served upon the defendant under that section, after which, he said, further orders would be given.

4. Thereupon the Head Clerk of the Small Cause Court writes a letter to the Judge, and informs him that the defendant had been served with a summons, u/s 41, Act VIII of 1859, and with a warrant u/s 75 of the same Act, and on failure of giving security, as required by section 78 of the Act, the defendant has been committed to custody. Thereupon the Small Cause Court makes a renewed application to the Zilla Judge, and repeats the request that he will countersign the order for the defendant's appearance. The Judge again refuses in the following words: "There is a distinct power (vide section 111, Act VIII of 1859), in cases in which the defendant neither appears in person, nor by a pleader; section 125 simply says that the Court may examine a party to the suit or his pleader. Such examination is optional. The Circular Orders of 1859 referred to are of date anterior to Act VIII of 1859 coming into operation. There is no material necessity to summon the defendant from jail, and therefore this Court refuses to countersign this order." Apparently, therefore, the Zilla Judge considered that there was no necessity for enabling the defendant to defend himself in a suit, before decree was passed against him; and, thereupon, the Judge of the Small Cause Court, not unnaturally feeling reluctant to pass judgment against the defendant under the circumstances, applies for the orders of this Court.

5. The defendant, in this case, was not a prisoner under sentence, but was merely detained in the Civil Court jail, under a warrant of the Small Cause Court, in order to answer the suit of the plaintiff. It seems to me quite clear that there was no necessity whatever, in such circumstances, for resorting to the provisions of Act XV of 1869; but that the Judge had nothing to do, but direct the jailor to bring the prisoner before him. Why, under such circumstances, such a correspondence should have taken place; why the Judge should have refused either to countersign the requisition of the Small Cause Court, or to point out the true course to be taken, seems quite inexplicable. I think we must answer the letter of the Judge of the Court of Small Causes, by desiring that he

issue his warrant to the jailor to have the prisoner, confined under his previous warrant, brought before him for the purpose of making his defence, or of retaining proper counsel. I think we should also direct that this case should be disposed of as speedily as possible, and looking at the character of the proceedings which have taken place, I think that as soon as the case has been decided the proceedings ought to be sent to this Court for inspection; and I think that a copy of the judgment of this Court should be sent to the Judge of Backergunge.

¹ Act XV of 1869, s. 4.--"Any Civil Court may, in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Civil Court be a High Court, or if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Civil Court, make an order in the form of the said Schedule A., directed to the officer in charge of the said jail."

Section 5--"When such order is made in any civil matter pending in a Court subordinate to the Court of the District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Tort William in Bengal, Madras, and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him until the same shall have been submitted to, and countersigned by, such Judge or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate."