

Madho Sonar Vs. Emperor

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Court : Allahabad

Decided On : May-21-1915

Reported in : AIR1915All442; 30Ind.Cas.141

Judge : Piggott, J.

Appellant : Madho Sonar

Respondent : Emperor

Judgement :

Piggott, J.

1. The conviction in this case has been had under Section 353 of the Indian Penal Code. It lay on the prosecution to prove that the public servants assaulted, namely, the Police constables Nazir Husain and Darsan Singh, were in the execution, or in the lawful discharge of their duty as such public servants at the time when the assault was committed.' They were endeavouring to search the house of the applicant Madho Sonar. Not only is it not proved by the evidence on the record that the provisions of Section 166, read with Clause (3), Section 165, of the Code of Criminal Procedure, had been complied with, but, as a matter of fact, a breach of those provisions becomes patent on an examination of the evidence given by Sub-Inspector Taj Dat Pande and constable Darsan Singh. The Sub-Inspector seems to have acted under a belief, and probably quite a bona fide belief, that it was sufficient compliance with the law if he sent intimation to the Sub-

Inspector of Manda Police Station of his intention to conduct a search within the limits of the latter's jurisdiction and secured the presence at the search of a constable belonging to the Manda Police Station, This is not sufficient compliance with law. Apart from the fact that Police constable Darsan Singh had no order in writing from the Sub-Inspector of Manda directing him to make the search, it is obvious enough from his evidence that he had received no order, either written or verbal, from his own Sub-Inspector. He thought he was doing his duty in coming to the assistance of the Sub-Inspector from another circle on receiving an intimation from the latter that his presence was required. It is no doubt of great importance that Police Officers in the discharge of their duty should receive the protection of such Sections 353, 333 and 332 of the Indian Penal Code; but in order to entitle them to the protection of those sections Police Officers must comply scrupulously with the provisions of the law, particularly when they undertake an act such as searching a house against the will of the owner. In the present case the conviction under Section 353 cannot be maintained. No doubt on the evidence some lesser offence was probably committed by the applicant, Madhe Sonar; but it would seem that he has been undergoing sentence of imprisonment for more than a month, so that I do not think it necessary to go further into the question with a view to deciding whether he can be convicted of some lesser offence. In so far as he may have been guilty of any breach of the law in opposing the Police Officers, I have no doubt that he has been quite sufficiently punished by the imprisonment which he has already undergone. I set aside the conviction and the sentence in this case and direct that the applicant, Madho Sonar, be released.

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