

**Moslem Khalifa Vs. Emperor**

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**Court :** Kolkata

**Decided On :** Mar-08-1940

**Reported in :** AIR1940Cal350

**Appellant :** Moslem Khalifa

**Respondent :** Emperor

**Judgement :**

**Henderson, J.**

1. This is a rule calling upon the District Magistrate of Malda to show cause why the conviction of the petitioner under Section 324, I.P.C., should not be set aside. The prosecution was in connexion with an admitted incident which took place over an attempt to execute a distress warrant. It is not disputed that injuries were caused on both sides. The prosecution case is that the peon was resisted while attempting to seize two bullocks. The Magistrate made convictions under Sections 183, 186 and 324. The learned Sessions Judge set aside the convictions under Section 183 and Section 186, because on his view of the evidence the case was a false one. He found that the peon never went to the place at all but that the execution was being levied by the decree-holder's men. He then proceeded to consider whether the petitioner had the right of private defence. He held that the seizure was done by the direction of the process-server and that in view of the provisions of Section 99, I.P.C., there was no right of private defence.

2. The difficulty in the way of accepting this view is that there is really no evidence to support it. When the prosecution bring a false case it is almost impossible to bring out a new one in the Court of appeal. The peon never says that he directed the decree-holder's men to execute the warrant on his behalf. We do not really know where the peon actually was at the time of the occurrence. If he was not there the question would arise whether the petitioner knew or had reason to believe that the decree-holder's men were acting under the direction of the peon. In ordinary circumstances, it could not possibly be said that if the men of the decree-holder burst into the house and said that they were acting under the orders of the peon, the residents of the house had any reason to believe it. The plain fact of the matter is that the petitioner never had to meet this case at all and has been taken by surprise. We accordingly make the rule absolute and direct that the conviction and sentence be set aside. The petitioner is discharged from his bail.

**Khundkar, J.**

3. I agree.

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