

Emperor Vs. Madho Dhobi

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Court : Kolkata

Decided On : May-15-1903

Reported in : (1904)ILR31Cal557

Judge : Rampini and; Handley, JJ.

Appellant : Emperor

Respondent : Madho Dhobi

Judgement :

Rampini and Handley, JJ.

1. This is an appeal at the instance of Government against an order of discharge, dated the 14th February 1903, of one Madho Dhobi, who had been arrested by Inspector Hamilton of the Colootollah thanah under the provisions of Section 55(b) of the Code of Criminal Procedure, on a charge under Section 109(c), that is, of having no ostensible means of subsistence or being unable to give a satisfactory account of himself.

2. The accused was discharged by Bench of Honorary Magistrates on the ground that Inspector Hamilton had no authority to arrest him, as he was not an officer in charge of a police-station within the meaning of paragraphs (p) and (s) Section 4 of the Code of Criminal Procedure, there being no declaration by Government declaring a thanah or police-station in Calcutta to be a police-station within the

meaning of the Code. The Honorary Magistrates accordingly held that the accused was not properly before them.

3. Mr. O'Kinealy, who appears on behalf of Government, argues that paragraphs (p) and (s) of Section 4 of the Code of Criminal Procedure do not apply to the Police of Calcutta, whereas Section 55 expressly applies to them, and further that, whether the accused was properly before the Bench of Honorary Magistrates or not, their duty under Section 109 was to go on with the case, leaving the accused to take such steps to obtain redress for his wrongful arrest, if it were wrongful, as advised.

4. We consider these contentions are well founded. From Section 1(2)(a) of the Code of Criminal Procedure, it is clear that the Code does not apply to the police of Calcutta, unless expressly made applicable to them. Paragraphs (p) and (s) of Section 4 have not been expressly made applicable, and hence they do not apply to the Calcutta police. Section 55 of the Code is, however, expressly applicable; so the arrest of Madho Dhobi by Inspector Hamilton, who says he is in charge of a police-station in Calcutta, appears to have been quite legal.

5. Further, the Honorary Magistrates were, it seems to us, empowered to put in force the provisions of Section 109 of the Code, whenever they had credible information that the accused had no ostensible means of livelihood or was unable to give a satisfactory account of himself and was within the limits of their jurisdiction. How he came before them was immaterial. In support of this view we need only cite the case of *Emperor v. Ravalu Kesigadu* (1902) I.L.R. 26 Mad. 124 in which a Magistrate had acquitted an accused, because he was of opinion that the accused had been illegally arrested. It was held that whether the officer who effected the arrest was within or beyond his powers in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged.

6. For these reasons we make this Rule absolute. We set aside the order of discharge of the accused Madho Dhobi, and direct that he be re-arrested and that the Bench of Honorary Magistrates do proceed with the case against him under the provisions of Section 109 of the Code of Criminal Procedure.

