

Prankhang and ors. Vs. Emperor

Prankhang and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/879401

Court : Kolkata

Decided On : Jan-17-1912

Reported in : 17Ind.Cas.76

Judge : Holmwood and ;Sharfuddin, JJ.

Appellant : Prankhang and ors.

Respondent : Emperor

Judgement :

1. This was a Rule calling upon the Deputy Commissioner of Dibrugarh to show cause why the order directing further inquiry into this case should not be set aside on the ground that the order of discharge was correct in law and could not be impugned in view of the ruling in Bajrangi Gope v. King-Emperor 15 C.W.N. 343 : 38 C. 304; 13 C.L.J. 639 : 9 Ind. Cas. 64 ; 12 Cr. L.J. 8.

2. The learned Counsel who appears to show cause does not attempt to support the order on the ground taken by the learned Magistrate, that the point of law laid down in that ruling should be reconsidered. He takes a new point the whatever right of private defence the petitioner Prankhang may have had, his neighbours could have had no right to assemble and attack the Police, and he bases his contention on some remarks in this very judgment in the case of Bajrangi Gope v. The King-Emperor 15 C.W.N. 343 : 38 C. 304 : 13 C.L.J. 639 : 9 Ind. Cas. 64 : 12 Cr. L.J. 8. There we said: 'The search was, therefore, not a legal search and two,

at any rate, of the petitioners who were the part owners and occupiers of the house had the right of private defence. The common object of the riot, therefore, failed and the conviction under Section 147 was also bad. But we see no reason to disturb the conviction under Section 323. There was no justification for calling in the neighbours to beat the Police after they had gone out of the hut, and we uphold that part of the conviction.' These remarks are no warrant whatever for holding that the neighbours in this case had not a right of private defence as laid down in Section 97. Every person has a right, subject to the restrictions contained in Section 99, to defend property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling within the definition of criminal trespass. Now, what was found in the evidence here is that Prank hang, in the exercise of his right of private defence, pushed the Sub-Inspector, thereupon the Sub-Inspector ordered two constables to climb on his roof and break into the house; whereupon the villagers assumed a threatening attitude and threatened to cut them to pieces if they entered the house. They were; therefore, engaged in defending the property of another from an act which amounted to criminal trespass. Of course, if they had executed their threat and had cut the constables to pieces, they would not have been able to plead that they were not exceeding that right. But, as a matter of fact, the empty threat appears to have been quite sufficient and no further damage was done. We, therefore, think, on the ground urged by the learned Counsel, which is, of course, a ground on the merits, that there is no case for further inquiry.

3. As regards the ground of law upon which farther inquiry appears to have been ordered, we find that the learned Magistrate acted upon an erroneous opinion tendered to him by the Legal Remembrancer of the Eastern Province. That was the sole ground for ordering further proceedings except that he also claims absolute right to order farther proceedings in any case under Section 437, Criminal Procedure Code. The learned Legal Remembrancer apparently was of opinion that the ruling in *Bajrangi Gope v. King-Emperor* 15 C.W.N. 343 : 38 C. 304 : 13 C.L.J. 639 : 9 Ind. Cas. 64 : 12 Cr. L.J. 8 if it intended to lay down that a Police officer is not empowered to search an accused's house for stolen property relevant to the case, is not a correct statement of the law and the learned Magistrate in His explanation refers to the ruling in the well known case of *The Nizam of Hyderabad*

v. Jacob 19 C. 52 as supporting this contention. We need hardly point out, as the learned Counsel for the Crown has frankly admitted, that that case has nothing whatever to do with the question now before us, and we desire again to point out that the law does not empower a Police officer to search an accused's house for any thing but the specific article which has been or can be made the subject of summons or warrant to produce. A general search for stolen property is not authorized and the law cannot be got over by using such an expression as stolen property relevant to the case. Such expressions are vague and misleading and the terms of the law are extremely specific. As long as that law is not amended, the Police cannot be said to be empowered to make any search not authorized by that law.

4. We further wish to point out, with reference to the Magistrate's opinion that it is open to him to order further proceedings in any case under Section 437, that that section is limited by the words 'on examining any record under Section 435' and that Section 435 lays down that a Court may call for and examine any record for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court. It cannot, therefore, be said that, if a Magistrate finds no illegality, or impropriety or irregularity and nothing incorrect in the proceeding, that he is empowered to set aside an order of discharge upon other grounds, or upon no ground at all.

5. The Rule is made absolute. The order of the lower Court must be discharged and further proceedings against the petitioners dropped.