

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

DORASAMY PILLAI (ACCUSED), PETITIONER,

v.

EMPEROR (COMPLAINANT), RESPONDENT.*

Penal Code—Act XLV of 1860, s. 353—Using criminal force to deter a public servant—Entry by police on premises of suspected person at night—Assault on police.

A police constable, at midnight, entered upon the premises of a person who was regarded by the police as a suspicious character, and knocked at his door to ascertain if he was there, whereupon he came out and abused and pushed the constable and lifted a stick as if he were about to hit the constable with it. On a complaint being preferred under section 353 of using criminal force to deter a public servant in the execution of his duty :

Held, that the offence had not been committed. The constable was not engaged in the execution of his duty as a public servant and was technically guilty of house trespass, and his action was calculated to cause annoyance to the inmates of the house, and was insulting to the accused, who was justified in causing the slight harm which he had inflicted on the constable. The latter could not be regarded, under section 99, as acting in good faith under colour of his office as his action was not authorized by any police circular or order.

CHARGE of using criminal force to deter a public servant from discharging his duty, under section 353, Indian Penal Code. It appeared that the accused was registered in the books of the police as a person of suspicious character, and that the complainant, a police constable, was ordered to check the presence of the accused. In order to comply with this direction, the constable went at midnight, in uniform, with another constable, entered upon the premises of the accused and knocked at his door, to see if he was there. The accused thereupon came out, abused the constable and pushed him, and lifted a stick as if he were going to beat him.

* Criminal Revision Petition No. 589 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of K. Rustam Sing, First-class Deputy Magistrate of Chidambaram, in Criminal Appeal No. 63 of 1902, confirming the finding and sentence of C. P. Doraswami Chettiar, Stationary Second-class Magistrate of Chidambaram, in Criminal Case No. 416 of 1902,

The constable's turban fell to the ground. The Stationary Second-class Magistrate convicted the accused and sentenced him to three months' rigorous imprisonment. The conviction and sentence were upheld, on appeal, by the Deputy First-class Magistrate.

The accused filed this criminal revision petition.

T. Rangachariar for petitioner.

The Public Prosecutor in support of the conviction.

JUDGMENT.—It is clear that the conviction of the accused in this case under section 353, Indian Penal Code, is illegal, and cannot be upheld. It is impossible to regard the constable as engaged in the execution of his duty as a public servant when he entered upon the premises of the accused about midnight with another constable and stood knocking at the door of the accused's house to see if he was present. The fact that the accused is a person who is regarded by the police as a suspicious character (K.D.) and as one whose movements ought to be watched does not authorize the complainant to enter upon his premises or knock at his door with a view to ascertaining whether he is present in his house or not. The Police Circular Orders referred to by the Magistrate have not the force of law, but in justice to them I may observe that there is nothing whatever in any of them which warrants the course adopted by the complainant. It is perfectly lawful for officers of the police to watch the movements of suspected characters, and they are properly required to do so by Police Circular Orders. But they can do so only by lawful means and not by trespassing upon their premises or by having recourse to other unlawful means. It is found that the accused came out, abused and pushed the complainant and afterwards brought a stick from inside and lifted it up as if he was going to beat him with it and that the complainant's turban fell on the ground when he was pushed. Under these circumstances, the accused would no doubt be guilty of assault or of using criminal force unless his act could be regarded as done in the exercise of the right of private defence of property. The constable in entering upon the accused's dwelling-house and knocking at his door at midnight with the intention of finding out whether the accused, who is regarded as a suspected character by the police, was in his house, was technically guilty of house trespass under section 442 of the Indian Penal Code. The course adopted by the constable was certainly one which would cause annoyance to the inmates of the house and is also insulting

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to the accused, and under section 104 the accused was justified in voluntarily causing to the complainant the slight harm which he inflicted on him, and the constable cannot be regarded under section 99, Indian Penal Code, as acting in good faith (*vide* section 52, Indian Penal Code) under colour of his office though his act may not be strictly justifiable by law. No Police Circular Order or any other order has been pointed out which, though not strictly justifiable in law, he can *bonâ fide* plead in support of the course pursued by him of entering upon the premises of the accused at midnight and knocking at the door. I may also remark that the sentence of three months' rigorous imprisonment which was passed upon the accused is unduly severe under the circumstances of the case even if he were guilty of any offence. I reverse the conviction and sentence and acquit the accused and direct that he be set at liberty, the bail bond being cancelled.

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

IN THE MATTER OF KALAGAVA BAPIAH (ACCUSED).*

1903.
March.

*Criminal Procedure Code—Act V of 1908, ss. 195, 196, 197, 215, 436—Sanction—
Notice to accused—Reference to High Court—Revisional powers.*

Section 215 of the Code of Criminal Procedure is not applicable to a case in which a commitment in question has not been made under any one of the four sections therein specified, but has been made under the directions of the High Court under section 526 (1) IV. An order of a Sessions Judge or District Magistrate passed under section 436, directing commitment, may be quashed by the High Court in the exercise of its revisional powers, though not under section 215. But an order passed by the High Court itself under section 526 cannot be so revised.

Sanction accorded by Government under section 197 is not null and void for the reason that no notice was given to the accused to show cause why it should not be given. It is a matter left to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution.

* Criminal Miscellaneous Petition No. 11 of 1903 submitting to the High Court for orders the order of commitment of the accused in Sessions Case No. 41 of 1902 on the file of the Sessions Court of Godavari.