

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

In re PASUVATHIA PILLAI (ACCUSED), PETITIONER.*

1927,
December 1.

Criminal Procedure Code (V of 1908), sec. 79—Applicability of, to Forest officers—Forest officer entrusted with warrant of arrest endorsing it to forest watcher—If legal.

A Magistrate cannot issue a warrant to a Forest officer, unless the conditions specified in section 77 of the Code of Criminal Procedure have been fulfilled. Nor can such officer endorse it to a forest watcher, as section 79 of the Code applies to Forest officers.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Dindigul in Criminal Appeal No. 28 of 1927 preferred against the judgment of the Court of the Stationary Second-class Magistrate of Palni in Calendar Case No. 463 of 1927.

V. L. Ethiraj (with A. Rangaswami Ayyangar) for the petitioner.

Public Prosecutor for the Crown.

Section 51 of the Madras Forest Act reads thus:—

“ Any Forest officer or Police officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest offence punishable with imprisonment for one month or upwards if such person refuses to give his name and residence or gives a name or residence which there is reason to believe to be false, or if there is reason to believe he will abscond.”

JUDGMENT.

This is an application to revise the order of the Subdivisional Magistrate declining to interfere with the

* Criminal Revision Case No 547 of 1927.

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conviction of the petitioner under section 353, I.P.C., by the Second-class Magistrate of Palni. The only point for consideration in this case is whether a warrant drawn up in the name of a forester could be validly endorsed by him to a forest watcher. The warrant was made out in the name of a forester for the arrest of two persons. The forester endorsed the warrant to a forest watcher for execution. The watcher along with a forest guard went and arrested two persons for an alleged forest offence. When they were being taken along the road the petitioner is said to have come and told the watcher "What extraordinary warrants are these: Do you still possess the nerve to enter the paracheri" and gave a slap on the cheek and told the warrantees to run away. If the watcher was justified in arresting the warrantees under the warrant no doubt he was discharging his duty as a public servant and the assault would be an attack on a public servant in the discharge of his duty. If under the law the forester had no power to endorse the warrant made out in his name in favour of a watcher for execution, then the watcher who acts upon it cannot be said to be executing a lawful warrant and therefore the offence, if at all, is not one which would come under section 353. The only section in the Madras Forest Act that has been brought to my notice as being relevant is section 51.

In order to justify the act of a Police officer or a Forest officer in arresting without warrant a person suspected of a forest offence, he must either have refused to give his name or must have given a false name and residence or there must have been reason to believe that he would abscond. In the absence of any of these conditions, no Police officer or Forest officer could lawfully arrest a person without a warrant. In this case it is not suggested that the persons, who are said to have

been arrested, refused to give their name and residence or they gave any false name and false residence, or there was a reason to believe that they would run away. Therefore section 51 does not apply to the case, granting for argument's sake that a watcher would be considered a Forest officer under section 51.

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The entrustment of a warrant of arrest is regulated by section 77, Criminal Procedure Code, the second portion of clause (1) is as follows:— “the Court issuing such a warrant” (that is a warrant of arrest) “may, if its immediate execution is necessary and no Police officer is immediately available, direct it to any other person or persons.” First of all there must be the necessity to arrest and then there must be the necessity for immediate arrest and then there must be the third condition, that no Police officer is immediately available. In the absence of these three conditions a Court is not justified in entrusting a warrant to a Forest officer for execution. That being so, the entrustment of the warrant to the forester itself is not legal and the endorsement of the warrant in favour of the watcher could not empower the watcher to arrest any person. Moreover, section 79, Criminal Procedure Code, has no application to Forest officers and the endorsement of the warrant, even if it be legal, by the forester in favour of the watcher, could confer no power upon the watcher to arrest the person named in the warrant. The offence is not one coming under section 353. The learned Public Prosecutor contends that the offence would come under section 352 and therefore the conviction should be altered to one under that section. No doubt an unprovoked assault on a person would constitute an offence under section 352, but the circumstances of this case are peculiar. Two persons were improperly arrested on an illegal warrant by a watcher and they

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were marched from the place of arrest along a public road evidently to the police station. The accused came on the scene and from the evidence it appears he asked "What is the meaning of this extraordinary warrant?" or "What is this extraordinary procedure?" or words to that effect and seeing two of the men under actual arrest, that is under wrongful confinement, he seems to have given a slap on the cheek. At best it is a trivial offence and I do not think that in the circumstances of the case there should be a conviction under section 352 especially when it is brought to my notice that the petitioner was in jail for three weeks. I allow this petition and quash the conviction under section 353 and direct that the fine if paid be refunded.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

1927,
December 15.

CHAIRMAN, MUNICIPAL COUNCIL, CHIDAMBARAM
(COMPLAINANT), PETITIONER,

v.

TIRUNARAYANA IYENGAR (RESPONDENT), ACCUSED.*

District Municipalities Act (V of 1920) (Madras), ss. 338 (b), 249 and 321—Licence granted by a municipality under sec. 249 to keep a coffee hotel—Licence cancelled before termination of period—Coffee hotel continued to be kept after cancellation—Prosecution by municipality before a Magistrate for keeping hotel without licence—Plea by accused that licence has been illegally cancelled—Magistrate if competent to decide the question.

Where a person was granted a licence by a municipality to keep a coffee hotel under section 249 of the District Municipalities Act and the licence was cancelled before the termination

* Criminal Revision Case No. 612 of 1927.