

1913
October, 25.

Before Mr. Justice Muhammad Rafiq.

EMPEROR v. GOPAL SINGH AND ANOTHER.*

Criminal Procedure Code, section 54(1)—"Credible information"—*Attempted arrest by police constable upon knowledge that a warrant of arrest for a cognizable offence was extant—Act No. XLV of 1860 (Indian Penal Code), section 352.*

A police constable having knowledge that a warrant of arrest in respect of a cognizable offence was outstanding against a certain person attempted to arrest such person and in so doing was assaulted and prevented from effecting the arrest.

Held that the existence of the warrant was equivalent to "credible information" that the person in question had been concerned in a cognizable offence, within the meaning of section 54 (1) of the Code of Criminal Procedure, and that the persons preventing the arrest were properly convicted under section 353 of the Indian Penal Code. *Queen Empress v. Dalip (1) distinguished.*

THE facts of this case were as follows:—

One Raghunandan Singh was wanted on a charge of cheating by the Bombay Police and a warrant for his arrest was issued to the Sub-Inspector, Baragaon, in whose circle the village of Raghunandan Singh was situate. The Sub-Inspector ordered his subordinate constables to be on the look-out for Raghunandan Singh and to arrest him wherever found. Sarju Singh constable, with a chaukidar, came across Raghunandan Singh and proceeded to arrest him, informing him at the same time that a warrant had been issued by the Bombay Police under which he (Raghunandan Singh) was wanted. Raghunandan Singh called for help when Sarju Singh attempted to arrest him. The two applicants came up, interfered with and assaulted Sarju Singh and the chaukidar, and managed to prevent the arrest of Raghunandan Singh. On the report of the constable both the applicants were sent up for trial on a charge under section 353 of the Indian Penal Code and were convicted. They preferred an appeal to the Sessions Judge of Benares and their appeal was dismissed. They then applied in revision to the High Court.

Mr. A. H. C. Hamilton, for the applicants.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

* Criminal Revision No. 949 of 1913, from an order of B. J. Dalal, Sessions Judge of Benares, dated the 6th of August, 1913.

MUHAMMAD RAFIQ, J.—The two applicants Gopal Singh and Sukhnandan Singh were convicted under section 353 of the Indian Penal Code of the offence of obstructing two public servants in the discharge of their duties. The applicants challenge their conviction and deny their guilt. It appears that one Raghunandan Singh was wanted on a charge of cheating by the Bombay Police and a warrant for his arrest was issued to the Sub-Inspector, Baragaon, in whose circle the village of Raghunandan Singh was situate. The Sub-Inspector ordered his subordinate constables to be on the look-out for Raghunandan Singh and to arrest him wherever found. Sarju Singh constable, with a chaukidar, came across Raghunandan Singh and proceeded to arrest him, informing him at the same time that a warrant had been issued by the Bombay Police under which he (Raghunandan Singh) was wanted. Raghunandan Singh called for help when Sarju Singh attempted to arrest him. The two applicants came up, interfered with and assaulted Sarju Singh and the chaukidar, and managed to prevent the arrest of Raghunandan Singh. On the report of the constable both the applicants were sent up for trial on a charge under section 353 of the Indian Penal Code and were convicted. They preferred an appeal to the Sessions Judge of Benares and their appeal was dismissed. They have come up in revision to this Court. It is contended on their behalf that the constable and the chaukidar were not doing their duty when attempting to arrest Raghunandan Singh because neither the constable nor the chaukidar had the warrant of arrest with him. The ruling in *Queen Empress v. Dalip* (1) was cited in support of this contention. The second contention is that the conviction under section 353 of the Indian Penal Code is not maintainable, inasmuch as the interference was made when the constable and the chaukidar were not occupied in the discharge of their duty. Both contentions are in my opinion unsound. The second contention depends on the first. Under section 54, clause (1), of the Code of Criminal Procedure every police officer is empowered to arrest, without a warrant, a person who has committed a cognizable offence on suspicion or credible information of the commission of the offence. The constable had information of the offence

1918

 EMPEROR
 v.
 GOPAL
 SINGH.

1913

EMPEROR
v.
GOPAL
SINGH.

committed by Raghunandan Singh through the warrant issued by the Bombay Police, and such information may well be described as credible information. The case relied on by the learned counsel for the applicants does not apply, as the offence in the case was not a cognizable offence. I think that the constable and the chaukidar were within their rights and were discharging their duty in their attempt to arrest Raghunandan Singh, and if in the discharge of their duties they were obstructed by the applicants, the offence of the latter falls under section 353 of the Indian Penal Code. The application fails and is rejected.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Piggott.

1913
November, 7.

MUL CHAND (PLAINTIFF) v. MURARI LAL AND OTHERS (DEFENDANTS)*
Act No. III of 1907 (Provincial Insolvency Act), sections 20, 22, 46—Civil Procedure Code (1908), order XXI, rule 58—Insolvency—Property taken by receiver as property of insolvent—Objection by third party claiming to be owner—Procedure—Appeal.

A receiver appointed under the Provincial Insolvency Act, 1907, took possession, at the instance of one of the creditors, of certain property which was believed to be that of the insolvent. A third party came into court and applied under order XXI, rule 58, of the Code of Civil Procedure, claiming the property as his, and, when his application was rejected, appealed to the High Court.

Held that the applicant's proper remedy was under section 22 of the Provincial Insolvency Act, and that an appeal did not lie as of right, but only by leave of the District Court or of the High Court.

Quære whether an Additional District Judge to whom a matter under the Provincial Insolvency Act had been made over by the District Judge was a "District Court" within the meaning of the Act?

In this case two persons, Nathu Mal and Fakir Chand, had applied in the court of the District Judge of Meerut to be declared insolvents. The District Judge made over the proceeding for disposal to the Second Additional Judge, who proceeded to adjudicate the applicants insolvents and to appoint a receiver. The receiver, at the instance of one of the creditors, proceeded to annex certain movable property consisting of cash and cloth, as being that of the insolvents, acting in this respect under section 20 of the

* First Appeal No. 115 of 1913 from an order of Mubarak Husain, Second Additional Judge of Meerut, dated the 14th of February, 1913.