

REVISIONAL CRIMINAL.*Before Ross and Kulwant Sahay, J.J*

KISHUN MANDAR

v.

KING-EMPEROR.*

1926.

*March, 24,
29.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 54 and 56—police constable, arrest by—command certificate, failure to give substance of, effect of—Statutory power to arrest.

Section 54 of the Code of Criminal Procedure, 1898, empowers any police officer, without an order from a magistrate and without a warrant, to arrest, inter alia, "any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned". Under section 56, when an officer in charge of a police-station, or an officer making an investigation, requires a subordinate officer to arrest without a warrant any person who may lawfully be arrested without a warrant, "he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order, and, if so required by such a person, shall show him the order". *Held*, that the issue of a written order under section 56 does not limit the power conferred by section 54.

Three persons were charged before the police with the theft of a bullock, and the sub-inspector directed a constable to arrest the accused persons. The constable, without explaining the substance of the order as required by section 56, arrested one of them. The petitioners assaulted the constable and rescued the person arrested. They were convicted under section 147, Penal Code. It was contended that the provisions of section 56 not having been complied with the conviction was

*Criminal Revision no. 156 of 1926, from an order of J. H. Reid, Esq., I.C.S., Sessions Judge of Bhagalpur, dated the 20th of January, 1926, modifying an order of Maulavi Muhammad Chaudhry Nazir Alum, Subdivisional Magistrate of Bhagalpur, dated the 5th December, 1925.

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illegal. *Held*, upholding the convictions, that the arrest was legally effected under section 54 of the Code of Criminal Procedure.

The facts of the case material to this report are stated in the judgment of Ross, J.

S. P. Varma, for the petitioners.

Sultan Ahmed, Government Advocate, for the Crown.

March, 29.

Ross, J.—The first petitioner has been sentenced to six months' rigorous imprisonment under section 147 of the Indian Penal Code and to four months' rigorous imprisonment under section 332. Petitioners nos. 2, 3 and 4 have been sentenced to six months' rigorous imprisonment under section 147 and petitioner no. 5 has been dealt with under section 562 of the Code of Criminal Procedure on conviction under section 147 of the Penal Code.

It appears that three persons, Dipu, Kishun and Bawan had been charged before the police with the theft of a bullock. On the 3rd of June, 1925, the Sub-Inspector deputed a constable Harihar Singh to arrest them. Harihar Singh, accompanied by the complainant in that case, went to the house of Dipu in the early morning and found him asleep and arrested him and took him away. He had gone some distance when he was attacked by the petitioners and Dipu was rescued, injuries being inflicted upon the constable.

The ground upon which the conviction is attacked is that the constable did not comply with the provisions of section 56 of the Code of Criminal Procedure in making the arrest inasmuch as he did not, before making the arrest, notify to the person to be arrested the substance of the order. This provision has been added to section 56 by the recent amendment of the Code of Criminal Procedure; and it is contended that the effect of that amendment is to bring in the decisions on section 80 of the Code to the effect that if the police officer executing a warrant of arrest does

not notify the substance thereof to the person to be arrested, he is not acting in the discharge of his public functions in the manner authorized by law.

The learned Government Advocate who appeared in support of the conviction did not contend that the provisions of section 56 had been complied with; but he argued that independently of section 56 the constable was entitled to arrest Dipu without a warrant under section 54. The terms of section 54 are very wide and authorize any police officer without an order from a Magistrate and without a warrant to arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. Now there can be no doubt in the present case that Dipu was such a person. The fact that he was eventually acquitted is of no consequence. A complaint had been made which the police believed to be true and his arrest had been ordered. The fact that a command certificate had been given to the constable under section 56 is immaterial, as the constable, independently of any such command certificate, was entitled to make the arrest.

It was contended on behalf of the petitioners that section 56 lays down the procedure to be followed in the cases to which it applies and that that procedure has not been followed in the present case; and that the section applies to constables equally with chaukidars. But the fact that section 56 applies to constables does not deprive them of their statutory powers conferred independently of that section.

In my opinion, therefore, this arrest was perfectly legal and the petitioners were rightly convicted. The application must be dismissed and the petitioners will surrender to their bail to undergo the rest of their sentences.

KULWANT SAHAY, J.—I agree.

Rule discharged.

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