1936

GURUSHIDDAPPA
v.
PARWATEWWA

Wassoodew J.

maintenance is fixed. It seems to me that the learned trial Judge has exercised a wise judicial discretion in fixing the amount of arrears of maintenance as well as the rate of future maintenance. I am satisfied that no case has been made out either for increasing or reducing the same. I, therefore, agree with my learned brother that the decree should be maintained and the appeal and the cross-objections dismissed with costs.

PER CURIAM. For the reasons given in *Maharana Shri Ranmalsangji* v. *Bai Shri Kundankuwar*,[1] the decree is modified by inserting a provision giving liberty to either party, plaintiff or defendant, to apply in execution proceedings for increase or reduction of the amount of maintenance in case of change of circumstances.

Decree confirmed.

J. G. R.

[1] (1902) 26 Bom. 707.

APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice Wassoodew.

KESHAVLAL HARILAL (ORIGINAL ACCUSED NO. 1), APPLICANT *v.* EMPEROR.*

1936
July 23

Criminal Procedure Code (Act V of 1898), sections 54 and 56—Complaint of cognisable offence to police officer—Officer sending two of his constables to bring to him offender concerned—No written order given—Intervention by applicant—Applicant preventing policemen from taking offender—If applicant's act was justified—Section 54 not controlled by section 56—Criminal force to prevent arrest—Indian Penal Code (Act XLV of 1860), section 353.

A child having been injured by a cart on a public road, a Police Sub-Inspector, while recording a complaint of the child's father, learnt that the cartman had refused to stop the cart though told to do so. He accordingly sent two of his constables, who were present when the complaint was given, to go and bring the cartman to him. No written order was given to them. They overtook the cart and on

*Criminal Application for Revision No. 141 of 1936.

1936

KESHAVLAL HARILAL v. EMPEROR

the cartman's refusal to stop it, attempted to effect his arrest when the petitioner intervened telling the cartman to proceed and not submit to the orders of the policemen.

The petitioner having been prosecuted for an offence under section 353, Indian Penal Code, it was contended for the accused that there being no written order as required by section 56 of the Criminal Procedure Code, 1898, the act of the police constables in apprehending or seizing the cartman was illegal :—

Held, (1) that the act of the police constables was legal and the interference on the part of the petitioner constituted an offence under section 353, Indian Penal Code ;

(2) that the provisions of section 54 of the Criminal Procedure Code were not controlled by section 56 of the Code;

(3) that the police constables were justified in acting under the powers given to them under section 54 (*1*) of the Code.

Kishun Mandar v. *King-Emperor*,[1] followed.

Mohamed Ismail v. *King-Emperor*,[2] dissented from.

Ratna Mudali v. *King-Emperor*,[3] referred to.

CRIMINAL REVISIONAL APPLICATION against an order made by R. M. Bhise, Additional Sessions Judge, Ahmedabad, confirming an order of conviction and sentence passed by Manilal M. Mehta, Magistrate, First Class, Dhandhuka.

The material facts appear sufficiently from the judgment of Wassoodew J.

J. C. Shah, for the accused.

No appearance for the complainant.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown.

WASSOODEW J. The petitioner Keshavlal Harilal was convicted by the First Class Magistrate of Dhandhuka of the offence under section 353 of the Indian Penal Code, in that he assaulted and used criminal force to certain police constables whilst they were arresting in the discharge of their duty a cartman, who was charged with driving his cart in a rash and negligent manner and had caused hurt thereby to a child. The petitioner was sentenced to

(1) (1926) 5 Pat. 533.

(2) (1935) 13 Ran. 754.

(3) (1917) 40 Mad. 1028.

pay a fine of Rs. 150. He appealed to the Court of Session, and the learned Additional Sessions Judge, who heard that appeal, confirmed the conviction and sentence, holding that the police constables in question were lawfully discharging their duty as public servants at the material time.

It is clear from the record that a Mahomedan child aged three years was injured by a cart on a public road, and on that account was taken to the dispensary. The Police Sub-Inspector, who had got information about that occurrence, went to the dispensary, and whilst recording the complaint of the child's father, one Sardarmia interposed and informed the Sub-Inspector that the cartman concerned in the offence had refused to stop his cart when told to do so. Thereupon the Police Sub-Inspector ordered two of his police constables to go and bring the cartman to him. According to the evidence of one of the constables, when the cartman refused to stop his cart, they attempted to effect his arrest, and whilst so doing, the accused Keshavlal intervened and told the cartman to proceed, and not to submit to the orders of the policemen. It was alleged that Keshavlal physically prevented the policemen from taking the cartman with them, and that this resulted in a scuffle in which both parties received injuries. Upon those facts, the Magistrate held that the policemen were acting legally in effecting arrest, and that the act of Keshavlal was tantamount to preventing them from discharging their duty.

It is argued that inasmuch as the police constables were acting under the authority of the order of their superior officer under section 56 of the Criminal Procedure Code, their act in apprehending or seizing the cartman,—whether he was directly responsible for the alleged rash act or not,—was illegal, there being no written order of the superior officer as required by that section. That section provides :—

"When any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest

1936

KESHAVLAL HARILAL v. EMPEROR

Wassoodew J.

without a warrant (otherwise than in his presence) 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."

It is common ground that no such order in writing was given to the police-officers deputed to bring the cartman to the Sub-Inspector in the dispensary. The question is whether on that account the action of the police-officers was necessarily illegal justifying the petitioner in preventing them from carrying out the arrest of the cartman.

The argument of the learned advocate is that although the offence complained of against the cartman was a cognizable offence, the police-officers could not act under section 54 in the matter of his arrest, as the provisions of that section do not give them an unqualified power of arrest and are controlled by the provisions of section 56 of the Code. We were referred to *Mohamed Ismail* v. *King-Emperor*[1] as authority for that proposition. That was a decision of a single Judge, who was constrained to observe that there was no previous decision bearing on the subject, except *Queen* v. *Shaikh Emoo*[2] when he expressed the view that the provisions of section 54 were limited by those of section 56 of the Criminal Procedure Code. In that case the investigating officer had given verbal orders to the arresting constable, and not an order in writing, to arrest a person, who was wanted on a report of theft made against him. The question arose whether the arrest made of the wanted man by the constable was in order. Mr. Justice Mosely held that inasmuch as section 56 (*1*) required that when any officer in charge of a police-station intended that any officer subordinate to him should arrest any person, who may lawfully be arrested, he should deliver to the officer required to make that arrest an order in writing, and that as the police-officer was acting under section 56 of the Code, which limited the provisions of section 54, the arrest was not in order. With

(1) (1935) 13 Ran. 754.

(2) (1869) 11 W. R. (Cr. R.) 20.

extreme respect, no good reasons seem to have been given for restricting the operation of section 54.

There is an authority bearing directly on the point, which was decided in 1926, namely, *Kishun Mandar* v. *King-Emperor*,[1] and which was available when *Mohamed Ismail* v. *King-Emperor*[2] was decided, but was not cited before Mr. Justice Mosely. In that case, three persons were charged before the police with theft of a bullock. 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 offenders interfered and assaulted the constable, and rescued the person arrested. They were convicted under section 147 of the Indian Penal Code. The contention in that case was that as the provisions of section 56, which required the officer effecting arrest to notify to the person arrested the substance of the order, were not complied with, the conviction was illegal. That part of the judgment which deals with the effect of the failure to comply with the provisions of clause (*1*) of section 56 in regard to the notification of the order to the person concerned, has no direct bearing on the question before us. But the Court also considered the argument for the Crown that independently of section 56, a constable was entitled to arrest under section 54 the person required. In dealing with that aspect of the case, the judgment proceeds thus (p. 535) :—

"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 . . .

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."

[1] (1926) 5 Pat. 533. [2] (1935) 13 Ran. 754.

1936

KESHAVLAL HARILAL v. EMPEROR

Wassoodew J.

There can be no doubt in the present case that there was a complaint before the Police Sub-Inspector of a cognizable offence. The Sub-Inspector apparently acting upon that complaint had directed his subordinate police-officers to bring the cartman to him. Presumably, the effect of that order was that if the cartman did not submit, he should be brought under arrest. It seems to me that whether that cartman was guilty of an offence under section 338 of the Indian Penal Code is of no consequence. What is of consequence is that the complaint had been made, and the Sub-Inspector had ordered the cartman's arrest. If, therefore, the police constables being present, according to the evidence, when the complaint was actually made to the Sub-Inspector, were cognisant of the circumstances, it seems clear that they were justified in acting under their powers without a warrant under section 54 (*1*) when effecting the arrest of the cartman. There is no force in the argument that the provisions of section 56 would be rendered nugatory if they did not control the power of the police constables to act independently in the matter of arrest. Perhaps that argument was founded upon the observation in *Charu Chandra Mazumdar, In re,*[1] referred to in *Santabir Lama* v. *Emperor,*[2] to the effect that it is apparent from the terms of section 54 that it was intended to cover those cases where the police-officer acts on his own responsibility, that is to say, on suspicion or information as based on facts which the police-officer has considered for himself, and that where the arrest is made in pursuance of an order of a Magistrate, it is that order which must determine the legality or otherwise of the arrest. With extreme respect the qualifying meaning is not apparent from the terms of section 54 nor is it apparent that section 56 in any way limits the statutory powers of a police constable to arrest without a warrant in a cognizable case. In the case of *Santabir Lama* v. *Emperor*[2] the Court was dealing

(1) (1916) 44 Cal. 76. (2) (1934) 62 Cal. 399.

with the question of the legality of an arrest under clause (7) of section 54 by reference to the provisions as to arrest under the Indian Extradition Act. There is in fact no analogy in the reasoning which influenced the conclusion in that case which could serve as a guide. Here we are dealing with a complaint made to the superior officer of a cognizable offence and not directly to the subordinate officers, and the question is whether the latter could act independently upon that complaint under the powers vested in them under section 54, notwithstanding the fact that they were informally ordered to effect the arrest. I am prepared to concede that where two police-officers of superior and inferior rank have heard a complaint of a cognizable crime, and they choose to act independently, there is a likelihood of their actions overlapping. But there is no reason why a limitation should be imposed on the power of the police-officer to arrest a person when the plain language of the section does not justify it. There is no reason to disbelieve the testimony of the police constable read over to us that, although in the initial stage they were merely concerned in procuring the appearance of the cartman before the Sub-Inspector, having regard to the change of circumstances they were constrained to use force in effecting arrest. It cannot be said that by reason of their superior's orders the constables were deprived of the initiative to act within their own powers under section 54. The word " complaint " in the first clause of that section does not admit of a restricted meaning that the complaint should be made to the arresting constables for action. And, in my opinion, it is immaterial whether the police constables were then conscious of the specific provisions of the Code to which their acts were referable. I am satisfied that the act of the police-officers was legal, and, therefore, the interference on the part of the petitioner constituted an offence under section 353, Indian Penal Code. Accordingly, he was rightly convicted. We, therefore, discharge the rule.

1936

KESHAVLAL HARILAL *v.* EMPEROR

BROOMFIELD J. The only point of substance in this application is whether the two constables had lawful authority to arrest a cartman alleged to have run over a child. They were ordered by their superior officer to go and arrest the man or bring him to the police-station. They were not given any written order. The learned counsel for the applicant says that in the absence of such an order, which is required by section 56 of the Criminal Procedure Code, the attempt to arrest was not legal, and the applicant was justified in obstructing the constables. The view taken by the lower Courts is that the constables had power to arrest under section 54 of the Code. In my opinion, this is right. It seems to me to be in accordance with the plain language of section 54, clause (*1*), which says that any police-officer may, without a warrant, 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. The cartman was concerned in a cognizable offence, a reasonable complaint had been made against him, and this was so to the knowledge of the constables, who were present when the complaint was made. I cannot see any reason why the operation of this provision should be restricted, as suggested by the learned counsel, to cases where the police-officer is acting entirely on his own initiative and without orders.

In *Mohamed Ismail* v. *King-Emperor*[1] it was held by Mosely J. as follows (p. 756) :—

" . . . where a subordinate police officer is not acting independently, but is merely deputed by a superior officer to arrest someone concerned in a cognizable offence, a further formality is prescribed, presumably to prevent abuse of the powers of the police, or to allow the person arrested to know the reason for his arrest and the office of the person arresting him.

The provisions of section 54 are limited by those of section 56 of the Code of Criminal Procedure."

[1] (1935) 13 Ran. 754.

This is a decision of a single Judge, and with deference I do not agree with it.

In *Santabir Lama* v. *Emperor*,[1] it is observed as follows (p. 402) :—

"Section 54 is intended to cover those cases where the police officer acts on his own responsibility, that is to say, on suspicion or information as based on facts which the police officer has considered for himself. This was pointed out by Chaudhari J. in the case of *Charu Chandra Mazumdar, In re*,[2] and indeed it is apparent from the terms of section 54 itself. On the other hand, where the arrest is made in pursuance of an order of a magistrate, it is that order which must determine the legality or otherwise of the arrest."

No reasons are given in the judgment for these conclusions. *Charu Chandra Mazumdar, In re*,[2] which is referred to, was a case on rather a different point. It was not a case where there was any order of a Magistrate or superior police-officer to arrest. A police-officer there took action on the strength of a letter received from an officer in the C. I. D. in another province stating that he had information upon which he thought there was *prima facie* evidence. With reference to those facts it was held that "reasonable suspicion" or "credible information" upon which an arrest could be made by a police officer under section 54 must be based upon definite facts and materials placed before him which the officer must consider for himself before he could take any action under that section. I doubt whether this case can be regarded as an authority for holding that a police-officer cannot act under section 54 if a regular complaint has been made to his personal knowledge. Here, as I have mentioned, the two constables were present when the complaint was made.

Kishun Mandar v. *King-Emperor*,[3] which my learned brother has discussed, is a clear authority for the view that section 54 is not controlled by section 56, and with respect I think that that is the proper view. I may refer also to *Ratna Mudali* v. *King-Emperor*.[4] It has been

[1] (1934) 62 Cal. 399, at p. 402.
[2] (1916) 44 Cal. 76.
[3] (1926) 5 Pat. 533.
[4] (1917) 40 Mad. 1028.

1936

KESHAVLAL HARILAL v. EMPEROR

Broomfield J.

argued that this view makes section 56 superfluous. But I do not think so. No doubt, there may be some overlapping. But section 56 is not superfluous. It applies to subordinates other than police-officers, for instance *chaukidars*; and, moreover, there may be cases where it is necessary to give orders to police-officers, who could not act under section 54, not having the requisite knowledge as to the existence of credible information or reasonable suspicion.

For these reasons, I agree that the rule should be discharged.

Rule discharged.

Y. V. D.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

1936
July 24

RATAN JAYAKISAN SHUKLA (ORIGINAL PLAINTIFF), APPLICANT *v.* BAPU HIRAJI KUNBI (ORIGINAL DEFENDANT), OPPONENT.*

Civil Procedure Code (Act V of 1908), Order IV, rule 1—Plaint—Presentation to Clerk of Court outside office hours and Court buildings—Validity—Bombay Civil Courts Act (XIV of 1869), section 40.

There is nothing in Order IV, rule 1, of the Civil Procedure Code, 1908, to suggest that the plaint must be presented during Court hours, or within the precincts of the Court.

When the Clerk of the Court is authorised to accept plaints under section 40 of the Bombay Civil Courts Act, 1869, he may, but he is not bound to, accept the plaint outside office hours and outside the Court buildings.

Thakur Din Ram v. *Hari Das*[1] and *Sattayya Padayachi* v. *Soundarathachi*,[2] applied.

If he is doubtful whether a plaint should be received or not, it is open to him to refuse to receive it, and refer the matter to the Judge.

* Civil Revision Application No. 217 of 1935.

[1] (1912) 34 All. 482, F. B.

[2] (1923) 47 Mad. 312.