CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Handley.

EMPEROR

v.

MADHO DHOBI.*

1903 *May* 13, 15.

Arrest—Arrest by police in Calcutta—Legality—Security for good behaviour—Information—Duty of Magistrate to proceed with case—Criminal Procedure Code (Act V of 1898), s. 1 (2) (a), s. 4 (p) (s.), s. 55(b), s. 109(b).

The accused was arrested in Calcutta by the Inspector in charge of the Colootollah thanah under the provisions of s. 55 (*b*) of the Criminal Procedure Code, and placed on his trial before a Bench of Honorary Magistrates on a charge under s. 109 (*b*) of the Code.

The Magistrates discharged the accused on the ground that he was not properly before them, as the Inspector had no authority to arrest him.

Held, that the order of discharge should be set aside and the case be proceeded with against the accused. That the arrest of the accused by the Inspector was quite legal. That the Magistrates were also empowered to put in force the provisions of s. 109 of the Code, whenever they had credible information that the accused had no ostensible means of livelihood or was unable to give a satisfactory account of himself and was within the limits of their jurisdiction. How he came before them was immaterial.

Emperor v. *Ravalu Kesigadu* (1) followed.

RULE granted to the petitioner, the Solicitor to the Government of India.

This was a Rule calling upon the Chief Presidency Magistrate of Calcutta to show cause, why the order of the Bench of Honorary Magistrates, dated the 14th February 1903, discharging the accused person Madho Dhobi should not be set aside on the ground that the reasons given in the judgment of the Bench of Honorary Magistrates did not in law warrant the making of such an

* Criminal Revision No. 249 of 1903, against the order of N. N. Mitter and J. Zemin, Honorary Presidency Magistrates, Calcutta, dated the 14th February 1903.

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order of discharge, and why the Magistrates should not be directed to dispose of the case according to law.

The accused, Madho Dhobi, was arrested by Inspector Hamilton of the Colootollah thanah under the provisions of s. 55 (*b*) of the Criminal Procedure Code and was, on the 22nd December 1902, placed before a Bench of Honorary Magistrates of Calcutta charged under s. 109 (*b*) of the Code with having no ostensible means of subsistence or being unable to give a satisfactory account of himself. At the trial a preliminary objection was raised on behalf of the accused that his arrest was illegal, as there was no police-station in Calcutta within the meaning of s. 4 of the Code. On the 14th February, 1903 the Magistrates, after recording some evidence in the case, discharged the accused on the ground that he was not properly before them, that Inspector Hamilton had no authority to arrest him, as he, the Inspector, was not an officer in charge of a police-station within the meaning of clauses (*p*) and (*s*) of the Code, there being no declaration by Government declaring a thanah or police-station in Calcutta to be a police-station within the meaning of the Code.

The Government appealed against the order of discharge.

Mr. O'Kinealy for the petitioner.

The discharge of the accused was made under an erroneous view of the law. S. 55 of the Code has been expressly made applicable to the police in the town of Calcutta, therefore the arrest of the accused by the Inspector, who was in charge of a police thanah in Calcutta, was quite legal. S. 1 of the Code states that in the absence of any specific provision to the contrary nothing in the Code shall apply to the police in the town of Calcutta. There is no special provision, which makes clauses (*p*) and (*s*) of s. 4 of the Code applicable to the Calcutta police, therefore those clauses do not govern s. 55. Whether there is in Calcutta a police-station within the meaning of cl. (*s*) or an officer in charge of a police-station within the meaning of cl. (*p*) does not matter. We must ascertain what corresponds in Calcutta to a police-station and who in Calcutta is equivalent to an officer in charge of a police-station, who could arrest under s. 55. For the officer in charge of a police-station we have in Calcutta the

police Inspector and in place of the police-station we have the thanah.

Whether Inspector Hamilton had authority or not to arrest the accused does not affect the case. Once the Magistrates had received information from Inspector Hamilton, who was in charge of a thanah and had the accused before them, they should have proceeded under s. 109 of the Code, and left the accused to take such steps to obtain redress for his wrongful arrest, if it were wrongful, as he might be advised. It was immaterial whether the accused was properly before them or not. The case of *Emperor* v. *Ravalu Kesigadu*(1) is an analogous case and supports my contention. There a salt officer belonging to Circle A arrested an offender in Circle B. The Magistrate trying the case, although he believed the evidence for the prosecution that an offence had been committed was true, acquitted the accused on the ground that he had been illegally arrested. The Madras Court held that the order of acquittal was wrong; that the question whether the officer, who effected the arrest, was acting within or beyond his powers in making the arrest did not affect the question, whether the accused was guilty or not.

RAMPINI AND HANDLEY J.J. This is an appeal at the instance of Government against an order of discharge, dated the 14th February 1903, of one Madho Dhobi, who had been arrested by Inspector Hamilton of the Colootollah thanah under the provisions of section 55 (*b*) of the Code of Criminal Procedure, on a charge under section 109 (*c*), that is, of having no ostensible means of subsistence or being unable to give a satisfactory account of himself.

The accused was discharged by a Bench of Honorary Magistrates on the ground that Inspector Hamilton had no authority to arrest him, as he was not an officer in charge of a police-station within the meaning of paragraphs (*p*) and (*s*) of section 4 of the Code of Criminal Procedure, there being no declaration by Government declaring a thanah or police-station in Calcutta to be a police-station within the meaning of the Code. The

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Honorary Magistrates accordingly held that the accused was not properly before them.

Mr. O'Kinealy, who appears on behalf of Government, argues that paragraphs (*p*) and (*s*) of section 4 of the Code of Criminal Procedure do not apply to the Police of Calcutta, whereas section 55 expressly applies to them, and further that, whether the accused was properly before the Bench of Honorary Magistrates or not, their duty under section 109 was to go on with the case, leaving the accused to take such steps to obtain redress for his wrongful arrest, if it were wrongful, as advised.

We consider these contentions are well founded. From section 1 (2) (*a*) of the Code of Criminal Procedure, it is clear that the Code does not apply to the police of Calcutta, unless expressly made applicable to them. Paragraphs (*p*) and (*s*) of section 4 have not been expressly made applicable, and hence they do not apply to the Calcutta police. Section 55 of the Code is, however, expressly applicable; so the arrest of Madho Dhobi by Inspector Hamilton, who says he is in charge of a police-station in Calcutta, appears to have been quite legal.

Further, the Honorary Magistrates were, it seems to us, empowered to put in force the provisions of section 109 of the Code, whenever they had credible information that the accused had no ostensible means of livelihood or was unable to give a satisfactory account of himself and was within the limits of their jurisdiction. How he came before them was immaterial. In support of this view we need only cite the case of *Emperor* v. *Ravalu Kesigadu*(1) in which a Magistrate had acquitted an accused, because he was of opinion that the accused had been illegally arrested. It was held that whether the officer who effected the arrest was within or beyond his powers in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged.

For these reasons we make this Rule absolute. We set aside the order of discharge of the accused Madho Dhobi, and direct that he be re-arrested and that the Bench of Honorary Magistrates do proceed with the case against him under the provisions of section 109 of the Code of Criminal Procedure.

D. S. *Rule made absolute.*

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