

Calcutta High Court

Bajrangi Gope vs Emperor on 8 December, 1910

Equivalent citations: (1911) ILR 38 Cal 304

Author: H A Sharfuddin

Bench: Holmwood, Sharfuddin

JUDGMENT Holmwood and Sharfuddin, JJ.

1. This was a Rule calling on the District Magistrate of Mozufferpore to show cause why the conviction of, and sentences passed on, the petitioners should not be set aside on the ground that the common object charged failed, and that the search for stolen property without a warrant was not a legal search, and, therefore, the petitioners had a right of private defence. We have heard the learned Deputy Legal Remembrancer showing cause against the Rule, and we are clearly of opinion that Section 165 of the Criminal Procedure Code does not authorize a general search for stolen property. It speaks of a specific document or thing which may be the subject of summons or order under Section 94, and it is clear that Section 94 does not refer to stolen articles or to any incriminating document or thing in the possession of an accused person. The latter proposition has been laid down in the case of *Ishwar Chandra Ghoshal v. Emperor* (1908) 12 C.W.N. 1016. In this case, however, it is sufficient to hold that Section 165 did not authorize a search for stolen property in the house of the absconding offender; and, remarkable as it may appear, there is no other section, admittedly, which would cover such a search. There was no search warrant under Section 98 in this case. The search was, therefore, not a legal search, and two, at any rate, of the petitioners who were the part-owners and occupiers of the house had a right of private defence. The common object of the riot, therefore, failed, and the conviction under Section 147 was also bad. But we see no reason to disturb the conviction under Section 823. There was no justification for calling on the neighbours to beat the police after they had gone out of the hut, and we uphold that part of the conviction. But, as the sentence assed under Section 323 was only one of three months' rigorous imprisonment, and we understand that the petitioners have already been four months in jail, the result of our order would be that they would be discharged from custody, unless they are liable to be detained in any other matter. The order under Section 106 of the Criminal Procedure Code will be maintained. This order only affects Bajrangi Gope, Nithu Gope, Sheolochan Gope, Mahadeo Gope and Raghunandan Gope, the other petitioners having been acquitted on the only charges against them; the orders on them under Section 106 will of course go with the conviction.