

(1907) 05 CAL CK 0005
In the Calcutta High Court
Case No : Rev. No. 335 of 1907

Bisu Haldar and Another

APPELLANT

Vs

The Emperor at the prosecution of Probhat Chunder
Chakrabutty

RESPONDENT

Date of Decision : 28-05-1907

Acts Referred:

Citation : (1907) 05 CAL CK 0005

Judgement

1. In this case the Petitioners have been convicted of an offence under sec. 147, I. P. C, the common object of the riot being the using of criminal force to prevent a public officer from executing his duty. The Petitioner No. 1 has been further convicted under sec. 353, I. P. C. The facts of the case are that the Police came to the house where the Petitioners were armed with warrant to take a woman who was in the house. The warrant was granted on the complaint, her husband who commenced proceedings before the Magistrate under sec. 100, C. Cr. P., alleging that his wife had gone to the house of her father with certain property of his. On that complaint the Magistrate issued the warrant under which the Police purported themselves to be acting. From the terms of that warrant we must take it as having been issued under sec. 96, C. P. C, which is inapplicable to such a case as this, being confined to the production of document or things. The issue of the warrant was therefore wholly illegal and the warrant must be treated as a nullity.

2. The question then arises whether the resistance offered in this case comes within the terms contemplated by the 1st paragraph of sec.99 of the Code the effect of which would be to deprive the Petitioners of a right to private defence he would otherwise have and this depends on the further question whether the conduct of the Police was not something more than " not strictly justifiable by law " according to the words of the section there being no question of their acting in good faith under colour of office. We think the provisions of this section does not extend to the case. In Mr. Mayne's Commentary on Criminal Law, sec. 225, it is stated that the words, " not strictly justifiable by law " seem to point to

cases where there is an excess of jurisdiction, as distinct from a complete absence of jurisdiction, to cases where the official has done wrongly what he might have done rightly not to cases where the act could not possibly have been done rightly. This seems to us to be a sound exposition of the law and to express exactly what has happened in this case, and therefore sec. 99 does not apply. Consequently we find that the Petitioners were justified in what they did and the convictions are therefore illegal.

3. The rule is made absolute and the convictions and sentences are set aside. The Petitioners will be discharged from their bail bonds.