

(1893) 10 MAD CK 0009
In the Madras High Court

Queen-Empress

APPELLANT

Vs

Fakira

RESPONDENT

Date of Decision : 25-10-1893

Acts Referred:

Penal Code, 1860 (IPC) — Section 224

Citation : (1894) ILR (Mad) 103

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—It appears that the accused had been apprehended on a hue and cry being raised as he was running away after committing a

robbery. He was handed over to the village magistrate and was by the latter placed in charge of the taliyaries for detention till next morning, when

he was to be taken to the police station. Early in the morning, he asked to be allowed to go and case himself, and availing himself of this

opportunity, made his escape. He has been convicted u/s 224 of the Penal Code and sentenced to four months' rigorous imprisonment. The

District Magistrate has referred the case u/s 438 of the Code of Criminal Procedure with a view to the conviction being set aside as illegal on the

authority of Queen v. Bojjigan ILR 5 Mad. 22

2. In that case the accused had escaped from the custody of a taliyari and a toti by whom he had been arrested on suspicion. The custody was

held to be not lawful, because the taliyari and toti, not being police officers, could not legally make the arrest for an offence not committed in their

presence.

3. The present case is distinguishable, in that the prisoner on being arrested on

the hue and cry was handed over to the village magistrate and was in custody of the taliyaries under his orders with a view to being handed over to the police. See *Queen-Empress v. Potadu* ILR 11 Mad. 480

4. I do not think the conviction is illegal.

Muttusami Ayyar, J.

5. I am of the same opinion. By Section V, Regulation XI of 1816, heads of villages are authorized and directed to apprehend all persons charged

with committing crimes and to forward them to the police officer of the district. The arrest being legal and the detention at night being necessary to

his being forwarded to the police officer, the principle laid down in *Queen v. Bojjigan* ILR 5 Mad. 22 is not applicable. There it was the village

taliyari and toti who arrested the accused, and the arrest and therefore the subsequent custody were unlawful.