

(1912) 09 MAD CK 0028
In the Madras High Court

Sri Sri Nadaduru Raiaguru Satagopala Charlu	APPELLANT
Vs	
Satrughna Behara and Another	RESPONDENT

Date of Decision : 26-09-1912

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 165

Citation : 17 Ind. Cas. 75 : (1912) 23 MLJ 445

Judgement

1. The suit is brought to recover damages for the wrongful acts of Defendants (Respondents) in maliciously searching Plaintiff's (Appellant's)

house on 17th June 1907 in connection with a case of house-breaking and theft in 1st Defendant's house. "2nd Defendant is the Police Inspector

who conducted the search.

2. It is not argued before us that there is any evidence of malice on the part of the 2nd Defendant but it is contended that the search was illegal in

certain particulars and therefore wrongful such as to give rise to an action for damages.

3. On the evidence before us we are unable to find any illegality in the search. The Inspector is said to have remained outside the house while the

actual search was being made by two constables : and the learned vakil for the Appellant argues relying on the ruling of Boddam J. in Venkatappa

Naidu v. King-Emperor (1907) 17 M.L.J. 323 that this was not conducting the search in person within the meaning of Section 165 of the Criminal

Procedure Code. With all respect to the learned judge who decided that case we feel bound to differ from his view. We do not understand the

section to mean that an Officer in charge of Police Station or investigating Officer personally conducting a search must himself make the search e.

g. ransack boxes, examine the roof," dig up the floor, or otherwise seek for the property. Nor do we understand it to be necessary that all those

processes must take place under his eye. What we do understand the section to mean is that the officer should be present on the spot and exercise

a general supervision over the search, in contradistinction to the cases where he is unable to go to the spot and deposes a subordinate by a written

order to conduct the search in his place.

4. It is next argued that the Inspector's failure to call inhabitants of the locality as witnesses to the search renders it illegal. For this Inspector has

given an explanation and the failure to strictly comply, with the provisions of Section 103 does not in our opinion make a search illegal (vide *Queen*

Empress v. Raman ILR (1897) M. 83.

5. We find no illegality in the search.

6. As regards the 1st Defendant the search was admittedly made in consequence of information furnished not by him but by two dandasis. We can

find nothing from which it could be inferred that these dandasis were instigated by 1st Defendant nor can we infer malice from the fact that 1st

defendant professed to identify a bag of money found in the search.

7. The appeal is dismissed with costs.