

CALCUTTA HIGH COURT

Bajrangi Gope

Vs

Emperor

(Holmwood and Sharf-Ud-Din, JJ.)

08.12.1910

JUDGMENT

Holmwood ,J.

1. This was a rule calling on the District Magistrate of Mozaffarpur 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 petitioner 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. The Emperor*¹ 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 such warrant under Section 98 in this case. The search was, therefore, not a legal search and two, at any late, of the petitioners who were the part owners and occupiers of the house had a right of private defence.

2. 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 323. There was no justification for calling in the neighbour's to beat the Police after they had gone out of the hut, and we uphold that part of the conviction. But as the sentence passed under Section 323 was only 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, Criminal Procedure Code, will be maintained.

3. This order only affects Bajrangi Gope, Nithu Gope, Sheolochun Gope, Mahadeo Gope and Raghunandu 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.

Cases Referred.

12 C.W.N. 1016 : 8 C.L.J. 320 : 8 Cr. L.J. 224