
(1923) 11 BOM CK 0008

Bombay High Court

Case No: None

Gopalia Kallaiya

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Nov. 22, 1923

Acts Referred:

- Penal Code, 1860 (IPC) - Section 324

Citation: 81 Ind. Cas. 317

Hon'ble Judges: Norman Macleod, C.J; Crump, J

Bench: Division Bench

Judgement

1. Gopalia Kallaiya who belongs to the South Kanara District Police, was charged before the Acting Third Presidency Magistrate with having committed an offence u/s 342, Indian Penal Code. The evidence showed that he had come to Bombay with a warrant to arrest one Giria Chinka. On his arrival in Bombay he filled in a form headed "First Information of Cognizable Grime" in which he stated that he had been sent down to Bombay by his Sub-Inspector to execute four warrants in different cases. Since he had been in Bombay he had been making inquiries of these accused. At 8 o'clock he went to the complainant's place at Jenkins House, Apollo Bunder, and arrested him. He knew the complainant very well. His name was Giria Chinka, and he was concerned in a house-breaking and theft case committed in the year 1919. Before the Magistrate Gopalia said he could not positively identify the complainant and consequently he was discharged.

2. The complainant then brought this charge against the Head Constable u/s 342, Indian Penal Code. The explanation by the accused was that he had arrested the complainant after reasonable inquiries and on well-founded suspicion. He did the act in good faith and in furtherance of justice, and did not bear any malice to the complainant, and further he relied upon the description given in the proclaimed offenders' list which he had, and as the appearance of the complainant seemed to correspond with the description therein, he arrested him after making due inquiries,

and claimed the protection offered to the Police Officers under the Indian Penal Code.

3. The Magistrate thought that the accused had deliberately made false statements, and that he did not act in good faith. He referred to the case of *Dhaniala v. F.L. Clifford* 13 B. 376 : 7 Ind. Dec. (N.S.) 250. But that case is not in point, as the accused there had not got the power of arresting a man as had the present accused. The Magistrate has not dealt specifically with the defence which was raised u/s 76, Indian Penal Code, by which nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of mistake of law in good faith believes himself to be bound by law to do it, and illust Ration (6) is as follows: A an officer of a Court of Justice, being ordered by that Court to arrest Y and, after due inquiry, believing Z to be Y, arrests Z, A has committed no offence.

4. We should have to be satisfied before confirming the conviction that the accused deliberately arrested the complainant knowing that he was not the man he was after. It is difficult to imagine how that could have been the case. There is no reason for this accused, Avho came all the way from Kanara to arrest a person who was known to him as Giria Chinka, to arrest some one without having some belief in his mind that he was the man whom he was after; and on the record, although it may be suggested by the prosecution that he did not take all the precautions he might have taken before arresting the complainant, there is nothing which could satisfy us that he did not honestly believe that the complainant was the man whom he was directed to arrest. We think, therefore, that the conviction was wrong and must be set aside. Fine, if paid, to be refunded.