

In Re: Ganesh Narayan Sathe

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Court : Mumbai

Decided On : Jan-28-1889

Reported in : (1889)ILR13Bom590

Judge : Charles Sargent, C.J.,; Bayley,; Scott and; Nanabhai Haridas, JJ.

Appellant : In Re: Ganesh Narayan Sathe

Judgement :

Charles Sargent, C.J.

1. In this case an order had been made by Birdwood and Jardine, JJ., in the exercise of the power of revision of this Court, for notices to be served on Balkrishna Govind Sindekar, Balvant Narayan Dabir, Mahadev Keshav Kumtekar, Ramchandra Gopal Javarkar and Narayan Shamrav Satbhai to show cause why the Magistrate's order, dated the 24th October, 1888, dismissing the complaint of one Ganesh Narayan Sathe should not be set aside. Notice was also ordered to be given to the Government Pleader and the complainant. At the hearing of the rule no one has appeared, except the accused, who have been represented by counsel. This order was made in consequence of a letter of the 6th November, 1888, from the District Magistrate of Poona, in reply to the request by Mr. Justice Birdwood and Mr. Justice Jardine, that he would state how he had disposed of the complaint made by Ganesh Narayan Sathe. In that letter the Magistrate state? that he had summarily dismissed the complaint under Section 203 of the Criminal Procedure Code (Act X of 1882), 'there being, in his judgment, no sufficient

grounds for proceeding with the case' As his reasons for so acting the District Magistrate further stated that the circumstances under which the complaint was filed raised a strong suspicion in my mind that it was not a bond fide complaint, and that the object of the complainant, or of the person or persons at whose instigation he came forward, was to intimidate witnesses on whom the prosecution presumably relied in the proceedings before the Crawford Commission. I thought that I should be exercising a wise discretion if I declined to take any further action on this complaint.'

2. We may remark, at the outset, that the Magistrate could not dismiss the complaint under Section 203 until he had examined the complainant, and this he appears not to have done. As to the reason assigned by him for dismissing the complaint, it is plain that he allowed himself to be influenced by considerations altogether apart from the facts which were adduced by the complaint in support of the charge, that he proceeded exclusively on what he presumed, from the surrounding circumstances, to be the motive by which the complainant was actuated in moving in the matter. In doing so, we think, he failed to exercise his discretionary power of summary dismissal within the limits assigned to it by Section 203 of the Criminal Procedure Code, (Act X of 1882). There is a close analogy between that power and the discretion which a Magistrate in England has as to refusing to issue a summons or warrant. In *Ex. parte Woolf*, referred to in *The Queen v. Adamson* L.R. 1 Q.B.D. 201 a mandamus was granted where a Magistrate refused to issue process on the ground that it appeared to him to be an attempt to enforce a civil right through a Criminal Court. In *The Queen v. Adamson* L.R. 1 Q.B.D. 201 where there was a charge of conspiracy to break the peace and do grievous bodily harm, founded upon a riot which took place at a public meeting and the Magistrates refused to issue summons, the Court of Queen's Bench, consisting of Cockburn, C.J., Blackburn and Field, JJ., having come to the conclusion that the Magistrates had, as the Chief Justice expresses it, 'acted upon a consideration of something extraneous and extra-judicial and not' exercised the discretion upon the facts presented to them 'sent back the case to the Magistrates with that expression of opinion. Mr. Justice Field says (p. 206): 'What the justices have to consider is, whether there was prima facie evidence of a criminal offence which, in their judgment, calls upon the alleged offender to answer,' and such, we

think, is the nature and extent of the discretion which the Magistrate has under Section 203 in determining whether he should dismiss the complaint or proceed. The expression 'sufficient ground' points exclusively to the facts which the complainant brings to the knowledge of the Magistrate, and to their establishing a prime facie truth worthy case against the accused. The motives by which complainants are actuated must necessarily be of the most varied description; may attempt to determine them would open out a very wide and speculative field of enquiry. The object of a Criminal Code of procedure is to provide a machinery for the punishment of offenders against the substantive criminal law. Had it been intended that the Magistrate should only proceed to enquire into an alleged offence when the complainant's motives were such as he could approve of, we should have expected very different language to have been used. It was, however, argued before us that it was open to the Magistrate to take into his consideration apart from the question of the complainant's motive the effect which further proceedings might have in the impending enquiry before the Crawford Commission; but that enquiry was a matter entirely outside the facts bearing on the alleged offence, and which the Magistrate could not, therefore, in our opinion, import into the question before him. It was, however, urged upon us that the only evidence before the Magistrate were the admissions, made by the accused in Hanmantrao's trial, and that those admissions could not, having regard to Section 132 of the Evidence Act I of 1872, and the policy of the present law in India, be used as a ground for criminal proceedings against the accused. As the complainant was not examined by the Magistrate it is impossible to say whether or no there was other evidence forthcoming in support of the prosecution; and it is to be remarked that in the complainant's second letter to the Magistrate of the 24th October, 1888, he alludes not only to the statements by the accused, but to the rest of the evidence adduced at Hanmantrao's trial. It would, therefore, be necessary in any case to send back the record to the Magistrate. Moreover, the question, whether the alleged incriminating statements were made by the accused under circumstances which would preclude their being used as evidence against them in support of the present charge, only arose incidentally on the present rule, and was consequently not argued before us, the prosecution having no reason to suppose that the question would be raised. Under these circumstances it would

not only be unfair to the prosecution, but highly inconvenient having regard to existing decisions of this Court and the Court of Madras, were we, sitting, as we do, as a Court of revision on the past action of the Magistrate, to express an opinion on the subject, which is undoubtedly one of some difficulty.

3. We must, therefore, return the complaint to the Magistrate, for him to deal with it according to law.

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