

Emperor Vs. Appa Ragho Bhogle

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Court : Mumbai

Decided On : Dec-03-1914

Reported in : (1915)17BOMLR69

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Reference No. 69 of 1914

Appellant : Emperor

Respondent : Appa Ragho Bhogle

Judgement :

Heaton, J.

1. In this case the applicants gave information to the Police about certain alleged circumstances in relation to a woman who had just died, and this amounted to information of the commission of a non-cognizable offence. It was made to the Police who obtained the authority of a Magistrate as required by Section 155 of the Criminal Procedure Code to investigate the case. In empowering them to do this the Magistrate directed that they (the Police) should report to him. No report was ever made. Even if the Magistrate had not directed a report to be made, Section 173 of the Code requires that it should be made. The case is one that could not be disposed of without the order of the Magistrate in some form or another. But no report was made to the Magistrate and no order was made by him and the case as

a matter of fact has never been disposed of. Meantime, however, the Police instituted proceedings against the persons who had given the information and prosecuted them under Section 211 of the Indian Penal Code. They obtained a conviction before the Magistrate. On application in revision to the Sessions Judge he referred the matter to us. The ground he took was that the trial which took place without the Magistrate's sanction was illegal. In substance I dare say that that is perfectly true, although technically it may be that that reason is doubtful because of the circumstance that the proceedings did not go before the Magistrate and apparently so far as the police are concerned were not intended to go before him. I mean the proceedings of the investigation into the non-cognizable case. But however that may be, there is another objection which seems to me more fundamental and more cogent than the want of a sanction. It is that, as I have explained, the case had not come to an end and could not come to an end without an order of the Magistrate. This being so, it is contrary to the method and the spirit, contrary indeed to the whole system of our criminal procedure, that the police should be allowed to prosecute in the way they have done without ever having the case disposed of by a Magistrate. The point is one not of technicality but of very great importance. One need say little to show how absolutely contrary to our system things would be if the police were allowed, independently of the Magistrates, to take proceedings, as they have done here, in cases which had never been disposed of by a Magistrate.

2. For that important and fundamental defect I consider that the whole of these proceedings are bad and that the conviction must be set aside.

Shah, J.

3. I concur.