

Queen-empress Vs. Puran and ors.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All85

Judge : Brodhurst, J.

Appellant : Queen-empress

Respondent : Puran and ors.

Judgement :

Brodhurst, J.

1. This case has been referred merely because the Officiating Magistrate of the District is of opinion that the Magistrate of the first class, who originally received the complaint, and who dismissed it under Section 203 of the Criminal Procedure Code, was not empowered to re-open the case on the mere application of the complainant, and without a further inquiry having been directed by the District Magistrate, the Court of Session, or the High Court, under Section 437 of the Code. The first complaint was made on the 25th May 1886. In his petition the complainant stated that the accused had given him a severe beating, had then falsely charged him with theft, and had taken him to the police-station. He added that the thanadar had made an inquiry, had obtained no proof to support the charge of theft, and had therefore released him. His evidence was very briefly recorded by the Magistrate on the 28th May. He deposed to the same effect as

stated in his petition, and he referred to lathi marks as the result of the assault that had been committed upon him. The Magistrate ordered that a 'copy of the petition be sent to the police-station, calling for a report on the matter.' The Magistrate apparently passed this order because the complainant alleged that the thanadar had already made the inquiry above referred to. There is nothing in the order to show that the Magistrate saw 'reason to distrust the truth of the complaint.' He did not record any 'reasons for distrusting the truth of the complaint,' nor did he 'direct a local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint.' The Magistrate did not comply with the provisions of Section 202 of the Criminal Procedure Code, and he ought not, merely on the report he received, to have dismissed the complaint under Section 203 of the Code.

2. Sardar Lachman Singh, Magistrate of the first class, referred to a note under Section 437 in Mr. Prinsep's edition of the Criminal Procedure Code as supporting his view. The note is as follows: 'If, however, fresh evidence be forthcoming there would apparently be no objection to the Magistrate who passed the order of discharge re-opening the case.' The note is represented to be based on three rulings of High Court³ in India.

3. The Magistrate of the District has not made any allusion to the note and rulings relied upon by his subordinate, but has referred to a note under Section 203 of the same edition, and to a Madras High Court ruling of the 28th March 1878. The note is to the effect that a complaint dismissed under Section 203, Criminal Procedure Code, 'cannot be re-heard except on an order made under Section 437.' All of the four judgments above referred to under either Section 203 or Section 437 were apparently delivered before the present Criminal Procedure Code came into force. Neither of the Madras rulings is obtainable here, and in all probability neither of the lower Courts has had an opportunity of perusing either of them. Neither of the two judgments appear to be precisely in point. In the present case the complainant was not, on the first occasion, asked if he had any witnesses to call, and beyond his own brief statement no evidence whatever was recorded.

4. I think that when the Magistrate who had dismissed the original complaint ordered a further inquiry, on receiving the complainant's second petition, he did not act contrary to any provision of the law ; and considering the circumstances under which the complaint had been dismissed, a further inquiry was, in my opinion, necessary.

5. I see no reason for interference. The applicants will work out the unexpired portions of their short sentences, and the record will be returned to the District Court.

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