

Emperor Vs. Kharga

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Court : Allahabad

Decided On : Dec-13-1913

Reported in : (1914)ILR36All147

Judge : Tudball and ;Piggott, JJ.

Appellant : Emperor

Respondent : Kharga

Judgement :

Tudball and Piggott, JJ.

1. This is an application in revision against an order of the District Magistrate of Cawnpore, purporting to have been passed under Section 437 of the Code of Criminal Procedure in regard to proceedings taken against the applicant under Section 110 of the Code. The facts of the case are simple. Proceedings were instituted against Kharga and he was called upon to show cause why he should not give security for his good behaviour. The Magistrate before whom he appeared inquired into the matter and, after recording the evidence, discharged him. The District Magistrate examined the record and directed further inquiry. This was made by another Magistrate who after recording evidence, held that there was no necessity to bind over the man to be of good behaviour. The District Magistrate, without issuing any notice to Kharga, has again sent for the record and has again directed further inquiry.

2. We note here that at the second of the two above inquiries the Magistrate drew up a fresh formal order under Section 112 of the Code.

3. Two grounds are taken before us:

(1) 'That Section 437 of the Code does not apply to proceedings under this Chapter (VIII) at all and the Magistrate had no power to direct a further inquiry as he has done.

(2) 'That, even assuming that the order passed is within the District Magistrate's powers, still the applicant having undergone the ordeal of two inquiries and having been discharged by two different magistrates, ought not to be subjected to any further proceedings, at least for the present.'

4. Strictly speaking, by reason of the view which we take of the merits, it is unnecessary for us to decide the first point for the purposes of this case, but as it has been raised in another Case King-Emperor v. Sheobher and Jageshar which has been heard in conjunction with the present one we deem it fit to consider and decide it.

5. Section 437, Criminal Procedure Code, authorizes a District Magistrate to make or direct the making of further inquiry into (a) any complaint which has been dismissed under Section 203 or Sub-section (3) of Section 204; or (b) the case of any accused person who has been discharged.

6. It is clear that the action taken by the District Magistrate, if taken under this section, could only fall under the latter of the two above-mentioned sets of circumstances i.e., the case of any accused person who has been discharged. In view of the rulings of this Court, it is conceded for the applicant that he is an 'accused' person within the meaning of this section, but it is pleaded that he is not a person who has been 'discharged' within its meaning, inasmuch as the word 'discharged' here means 'discharged from an offence charged against him' and in proceedings under Chapter VIII the accused is not charged with any offence and if the Magistrate does not deem it necessary to make his order absolute he either releases the accused, if in custody, or discharges him, i.e., allows him to leave the

court, only if he is on bail. In support of this plea the attention of the Court has been called to the following rulings: Queen-Empress v. Ahmad Khan (1900) Weekly Notes 1900 p. 203 Sheo Din v. King-Emperor (1903) 6 Oudh Cases 562 Muhammad Khan v. King-Emperor (1905) Punj. Rec. Cr. J. p. 102 Velu Tayi Ammal v. Chidambaravelu Pillai (1909) I. L. R. 33 Mad. 85 Queen-Empress v. Imam Mondal (1900) I. L. R. 37 Calc. 662 Dayanath Taluqdar v. Emperor (1905) I. L. R. 33 Calc. 8 and Hopcroft v. Emperor (1908) I. L. R. 36 Calc. 163.

7. On the other hand, it cannot be overlooked that there are the following rulings of our own Court which are against the applicant's contention: King-Emperor v. Fyaz-ud-din (1901) I. L. R. 24 All. 148 Queen-Empress v. Mutasaddi Lal (1898) I. L. R. 21 All. 107 and Queen-Empress v. Ratti Weekly Notes 1899 p. 203.

8. It is urged also that the section would not apply to the case of a person who had been 'released' under Section 119, who clearly is not, in, view of the language of the section, a person 'discharged.'

9. The question is what meaning the Legislature intended to give to the word 'discharged' in Section 437. If the matter were 'res integra' we should be inclined to hold that Section 437 was never intended to apply at all to proceedings under Chapter VIII, chiefly for the reason, as pointed out in Muhammad Khan v. King-Emperor (1905) Punj. Rec. Cr. J. p. 102 and Dayanath Taluqdar v. Emperor (1905) I. L. R. 83 Calc. 8 that there is apparently no reason, so far as the provisions of the Code go, why the District Magistrate should not at any moment institute fresh proceedings under the Chapter, for good and sufficient reasons, against a person in whose case an order of release or discharge has been passed under Section 119. We are aware of the ruling in the Oudh case mentioned above where it was laid down in the judgment that such fresh, proceedings should not be instituted at least for 'some months,' but neither the Code nor good reasoning lays down any period. All that is necessary in our opinion for such action is 'good and sufficient reason.' It is not inconceivable that a wrong order of release or discharge may be passed in the case of a man who is a real and serious danger to society and in whose case it may be imperatively necessary for the public welfare to take fresh steps: and in taking these fresh steps we can see no reason why the District

Magistrate should not examine the record of the former proceeding.

10. But, as we have pointed out, the trend of the decisions in this Court is clearly to the effect that the language of Section 437 is wide enough to cover the case of a person in whose case an order of release or discharge (both of which are really to the same effect) has been passed under Section 119. The only decision to the contrary is that of Aikman J. in *Queen-Empress v. Ahmad Khan* Weekly Notes 1900. p. 200 and his decision was based merely on the Calcutta ruling mentioned therein, without giving any other reason.

11. The District Magistrate has jurisdiction over the entire district and is responsible for the preservation of peace and order therein; his responsibility has been recognized in a peculiar manner by the Criminal Procedure Code, in that he is made the court of appeal from the orders of first class magistrates in proceedings under Chapter VIII. It was clearly intended that he should have authority to take further action in the event of his feeling satisfied that a person who had been called on to show cause why he should not furnish security had been improperly discharged by a magistrate subordinate to him. His authority in the matter does not appear to have been doubted in any of the reported cases, except in the Oudh case, with which we are unable to concur. The only question then is as to the procedure which the District Magistrate should adopt in the circumstances stated. Other High Courts have, by excluding his jurisdiction under Section 437 of the Code of Criminal Procedure, left it open to him to take cognizance of the matter upon such information as he may consider satisfactory and sufficient, to pass a fresh order under Section 112 of the Code, and then (if he thinks proper) to transfer the case thus instituted to some subordinate court for disposal. Our High Court has in the main preferred the view that the District Magistrate, when he is in effect taking up in revision a case decided by a subordinate magistrate, should do so formally under the section provided for the purpose, viz., Section 437 of the Code of Criminal Procedure. The words of that section do not, in our opinion, definitely exclude this interpretation. We are not disposed, therefore, to disturb the general trend of authority in this Court, merely in order to compel District Magistrates to appeal to their wider territorial jurisdiction for the sake of getting round the order of a subordinate court. By putting a

reasonably wide interpretation on the word 'discharged' in Section 437, Criminal Procedure Code, our High Court has regularized the entire proceeding, and has incidentally brought it under the operation of sound principles of law, such as the principle that an order directing further inquiry into a case like the present should not have been passed without first giving the accused person an opportunity of showing cause against it.

12. As to the merits of this case we feel no hesitation. The applicant has been through two Inquiries by two different magistrates who have both discharged him. Without giving him an opportunity of showing cause the District Magistrate has directed at once (and on what, as far as we can see, are insufficient grounds) a third inquiry. We do not think that this order can be supported and we accordingly set it aside.

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