

Queen-empress Vs. Murphy

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All666

Judge : Mahmood, J.

Appellant : Queen-empress

Respondent : Murphy

Judgement :

Mahmood, J.

1. after stating the facts of the case, continued: Amongst the reasons given for this rule, my learned brother BRODHURST stated that the provisions of Section 203 of the Criminal Procedure Code were imperative in respect of the examination of the complainant before the dismissal of any such complaint. That section runs as follows: 'The Magistrate before whom a complaint is made Or to whom it is transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under Section 202, there is in his judgment no sufficient ground for proceeding.'

2. The general effect of the order of my brother BRODHURST was to call upon the accused to show cause why the infringement of the provisions of this section should not result in the exercise of this Court's revisional powers, directing the

Magistrate to examine the complainant and to proceed according to law.

3. Mr. Strachey appeared on behalf of the accused, and I think the argument which he addressed to me upon the subject is sufficient to enable me to discharge the rule. Mr. Strachey argued that the original petition which initiated the prosecution was sworn to by the complainant himself as I have already stated, and the learned Counsel argued that the words I have quoted are in substance sufficient to satisfy the requirements of Section 203, and that even if swearing to the contents of the petition is not covered by and included within the meaning of the word 'examine' as used in Section 203, the omission to Examine could amount only to an irregularity of such a character as would be covered by the somewhat extensive provisions of Section 537.

4. I accept the contention because it appears to me that in using the word 'examine' in Section 203, the Legislature could only have intended (putting the highest, interpretation on the word) to provide that such examination should be made under the sanction of an oath or solemn affirmation, with such checks upon untruthful statements as the law provides as penalties for perjury. Where a deposition in the shape of a complaint is made orally or in writing, and when it is sworn to, I hold that the provisions of Section 203 are sufficiently satisfied. I have no doubt on the subject, and if there is any reason to doubt this proposition, Section 537 fully covers any such irregularity in this particular case. The main reasons therefore, why the rule was issued on the 25th March, are shown by Mr. Strachey to be such as disable me from making the rule absolute.

5. But the rule went further, because it generally makes it necessary for me to consider whether or not the case is one in which, irrespective of the provisions of Section 203, I should not direct the prosecution to be taken up again with such results as may follow. For this purpose I have carefully read the original complaint of Jervis on which the Magistrate passed his order of the 7th September last and I am satisfied that the allegations contained in that petition, even if held to be perfectly true, are not sufficient in law to furnish grounds for a charge of an offence such as that contemplated by Section 405 of the Indian Penal Code, The complaint amounts only to saying I hat because as between the father of the

complainant and the accused Murphy certain arrangements were made, in consequence of which certain moneys were received by the accused, and inasmuch as the accused declined to render accounts, therefore the accused has been guilty of the offence of criminal breach of trust. There is no allegation in the complaint that the money had, as a matter of fact, been realised by the accused Murphy; no allegation that the money realised was wrongfully appropriated to his own use, and obviously the object of the complaint was simply to force Murphy to render account. The object in fact was to obtain a remedy which a civil court can alone properly award, in a suit which is known here as a suit for rendition of accounts, or in other words, a suit for accounts. The relations between the complainant and the accused were not of a direct character, because the moneys alleged to have been realised by Mr. Murphy, or the transactions to which the prosecution relates, were transactions between the father of the complainant and the accused.

6. Upon these grounds I hold that the Magistrate was right in declining to proceed further, that he did substantially comply with the provisions of Section 203, and that upon the facts stated in the petition of Jervis, no such case is disclosed as would constitute the corpus delicti of the offence defined in Section 405 of the Indian Penal Code, and that the Magistrate accordingly rightly dismissing the complaint.

7. I, however, wish to add that in dealing with this case the Magistrate in calling upon the accused to furnish an explanation, in entering into a correspondence with the accused, and in placing upon the record correspondence and opinions of professional men and lawyers and making them part of the record, has acted in a very irregular manner. It is not necessary for the purposes of this judgment for me to say more. But I may say that my judgment is limited to the documents which are strictly part of this record, and irrespective of other papers which have been sent up here as if they were legal evidence to enable this Court to determine the question. I reject the application.