

Emperor Vs. Tula

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Court : Allahabad

Decided On : May-04-1907

Reported in : (1907)ILR29All587

Judge : Dillon, J.

Appellant : Emperor

Respondent : Tula

Judgement :

Dillon, J.

1. In this case one Tula lodged a complaint of robbery against Rameshwar and another in the Court of a first class Magistrate of Garhwal. As Tula had already reported the matter to the police, the Magistrate decided to await the police report before taking action on the complaint. The police report was to the effect that the complaint was false. Beyond examining the complainant at the time of recording his complaint the Magistrate took no further evidence in the case. On receiving the police report, the Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure. Tula was then called upon to show cause why he should not be prosecuted under Section 211, Indian Penal Code. In showing cause, Tula said that beside other witnesses he relied upon those who had already been examined by the police. The Magistrate then passed an order, directing Tula to be prosecuted under Section 211, Indian Penal Code, and sent

the case to the District Magistrate for disposal. On the case coming before the District Magistrate objections were taken on behalf of Tula to the validity of the order directing his prosecution on the ground that Tula had been given no opportunity of proving his case. The question, therefore, is whether the order of Mr. Dharmanand Joshi, Magistrate of then first class, Garhwal, dated 11th February 1907, above referred to, is a proper order or not. There is apparently no ruling of this Court directly on the point except one--Queen-Empress v. Ganga Ram (1885) I.L.R., 8 All., 38 which lays down that an order under Section 195 of the Code of Criminal Procedure directing the prosecution of the complainants for bringing a false charge under Section 211, Indian Penal Code, should not have been made until the complainants had been afforded an opportunity of proving their case. In Queen-Empress v. Raghu Tiwari (1893) I.L.R., 15 All., 336 it was held that in a case like that under consideration, 'the Court should, in our opinion, as a rule, proceed to determine such criminal proceeding instituted in it and should give the person instituting such proceeding a reasonable opportunity of supporting his case before proceeding against him for an offence under Section 211.' Following these rulings I hold that the order in question was not a proper order. I therefore set it aside.

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