

Angan and ors. Vs. Ram Pirbhan

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SooperKanoon Citation : sooperkanoon.com/459087

Court : Allahabad

Decided On : Nov-23-1912

Reported in : (1913)ILR35All78

Judge : Tudball, J.

Appellant : Angan and ors.

Respondent : Ram Pirbhan

Judgement :

Tudball, J.

1. One Ram Pirbhan alias Ram Parpan filed a complaint in the court of a first class magistrate against the present applicants, preferring a charge of defamation against them. The petitioner's complaint was dated the 21st August, 1912, but was filed in court on the 22nd of August. The Magistrate recorded the complainant's statement on oath and forthwith dismissed the complaint. The complainant at once went to the District Magistrate in revision and the latter ordered a further inquiry. The applicants come to this Court in revision against that order and the main contention is that the order was passed behind their back and without notice to them and is therefore bad in law. In my opinion there is no substance in the contention for the simple reason that there has been no order of discharge whatsoever. They at no time had been called upon to appear and defend. The Magistrate has simply dismissed the complaint without any inquiry whatsoever.

Under rulings of this Court it would have been open to the same magistrate to accept a fresh complaint by the complainant on the same facts and to have taken action thereon and to have made an inquiry. To the same effect is the decision of a Full Bench of the Calcutta High Court. In my opinion a notice to a person against whom complaint is made is quite unnecessary where it is sought to set aside the summary order in a proceeding to which he was actually no party. In the present instance the complaint was dismissed without inquiry and at the very least the complainant was entitled to an inquiry even though only under Section 202, Criminal Procedure Code. It was open to the court to make an inquiry under Section 202 of the Code or after issue of summons to the accused person. My attention has been called to certain rulings of this Court, e.g. *Queen Empress v. Ajudhia* (1898) I.L.R. 20 All., 339, but an examination of these rulings shows that they were all cases in which the accused was tried and discharged and a further inquiry was ordered behind his back and without notice issued to him. The present is not a case in which it was necessary to issue notice to the accused persons before ordering further inquiry. I therefore reject the application. The proceedings which have been stayed will be continued.