

Ram Prasad Vs. King-emperor

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Court : Allahabad

Decided On : Mar-21-1927

Reported in : AIR1927All571

Appellant : Ram Prasad

Respondent : King-emperor

Judgement :

Ashworth, J.

1. This is a reference by the Sessions Judge of Benares calling attention to the illegality of an order of the District Magistrate of Benares, dated the 20th of October 1926, wherein he purports to order the withdrawal of a complaint made by a special Magistrate against certain persons of an offence under Section 211 of the Indian Penal Code (false charge) committed in his Court. For the reasons stated by the Sessions Judge the District Magistrate could not order the withdrawal of a complaint made by a Court under Section 476 of the Criminal Procedure Code in respect of an offence falling under Section 211 of the Indian Penal Code as such a complaint is not referred to in Section 195(5) of the Criminal Procedure Code which gives the Magistrate the power of withdrawal. But I find from the record that there has been no complaint made by the special Magistrate. What is treated as a complaint by the District Magistrate is an order dated the 30th September 1926, for the institution of a case. Under the present law a Court

must make a complaint and cannot directly order prosecution. That complaint must set forth the offence, the precise facts on which it is based and the evidence available for proving it.

2. In the circumstances I set aside both the District Magistrate's order of withdrawal and also the original order of the special Magistrate's directing prosecution. The question whether a Court can review its order refusing to make a complaint under S: 476 of the Criminal Procedure Code which has been raised by the Magistrate is one that I do not consider it necessary to decide in this reference. I would point out, however, in view of an appeal being allowed by Section 476-B, that a review would appear undesirable, and the Criminal Procedure; Code generally makes no provision for a review. An appealable order would, at any rate, appear to stand, until set aside by any order in appeal or revision.

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