

**Sheoraj and ors. Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Nov-20-1946

**Reported in :** AIR1948All46

**Appellant :** Sheoraj and ors.

**Respondent :** Emperor

**Judgement :**

ORDER

**Mulla, J.**

1. This is an application in revision by Sheoraj and twelve others against an order passed by the learned District Magistrate of Banda upon an application in revision made to him by the opposite party Bhagwan Din who had made a complaint against the applicants charging them with an offence under Sections 504, 506, 426, Penal Code, and Section 24, Cattle Trespass Act.

2. The complaint was filed on 15-9-1945. The allegations in the complaint were that on a certain date when the complainant proceeded to one of his fields he found that a large number of cattle belonging to the first four applicants were grazing his crop and, when he rounded up the cattle and was taking them to the cattle pound the four applicants with the assistance of the remaining nine applicants forcibly rescued the cattle. At the end of complaint a sentence was added to the following effect : 'The accused persons 1 to 4 were abusing the

complainant and also threatening him'.

3. It is evident that so far as the principal part of the complaint is concerned it disclosed only an offence under Section 426, Penal Code, and Section 24, Cattle Trespass Act. It was apparently only by virtue of the last sentence in the complaint, to which reference has been made above, that the complainant sought to introduce SS.504 and 506, Penal Code, into the case. It is however notice able that even at that stage no allegation amounting to a charge under those sections was made against any applicant excepting the first four. The Sub-Divisional Magistrate before whom the complaint was filed sent the case for trial to a Bench of special Magistrates and proceedings commenced in that Court on 28-9-1945. On that date the case was registered and it was ordered that the complainant should appear on 9-10-1945 for prosecuting his case. It is not specifically stated in the Urdu order sheet that the complainant was ordered to produce evidence under Section 202, Criminal P.C. in support of his complaint, but from the notice issued to the complainant which is on the record it is clear that the complainant was asked to appear on 9-10-1945, with his evidence under Section 202, Criminal P.C. The case was taken up on 9-10-1945 and it appears from the Urdu order sheet that some evidence under Section 202 was produced by the complainant and was recorded in due course. Having done so, the Bench Magistrates passed an order that only four of the accused persons, namely the first four applicants in this case, should be summoned to answer a charge under Section 426, Penal Code, and the case was fixed for hearing on 29-10-1945. This order amounted to a dismissal of the complaint against nine of the accused persons and it further showed that, according to the Bench, no charge under, Sections 504 and 506, Penal Code, had been made out against any accused person. The Bench had obviously full jurisdiction to pass such an order though it was open to revision by a higher Court. No relief against that order was, however, sought by the complainant, Bhagwan Din and the case was taken up in due course on 29-10-1945. On that date it was found that the four accused persons had not been served with the summons issued to them and upon an application made by the complainant the Court proceeded to pass an order that bailable warrants should be issued for the arrest of the four accused persons who were absent. The 13-11-1945 was fixed for the appearance of the accused persons in these circumstances. On that date however

the complainant absented himself and the two learned, Magistrates constituting the Bench then proceeded to pass the following order:

The complainant is absent and the accused are present. In the absence of the complainant we dismiss the complaint under Section 247, Criminal P.C. and acquit all the accused.

4. Section 247, Criminal P.C. runs as follows:

If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Having regard to the terms of Section 247, Criminal P.C. the order passed by the learned Magistrates of the Bench on 13-11-1945, was not open to any objection. The complainant, however, went up in revision against that order before the learned District Magistrate Banda. It must be noted that the application made by the complainant was specifically directed against the order passed by the Bench Magistrates on 13-11-1945 acquitting the four accused persons who had been summoned to answer a charge under Section 426, Penal Code only. The application was clearly described as a criminal revision, but it appears that the office of the learned Magistrate treated it as an appeal as would appear from the Urdu order sheet on the back of the application itself. It was first described as any appeal which had been presented by the complainant's counsel and was apparently registered as such. It was put up before the learned District Magistrate on 23-11-1945, and on that date it was ordered that the appeal should be put up for hearing the arguments of the parties on 18-12-1945- It cannot be suggested that the order passed by the learned Magistrates of the Bench on 13-11-1945, was an appealable order and, indeed, the complainant himself only made an application in revision against that order. It appears however that the learned District Magistrate did not take the trouble of perusing the application and, relying upon the report made by his office treated it as an appeal. It is not surprising,

therefore, that after hearing the parties he passed an order in the following terms:

Heard learned Counsel for applicant. In the first place the Court below gave no order for summoning evidence under Section 202, Criminal P.C. on 9-10-1945, but evidence under Section 202, Criminal P.C. was recorded on that date. The case was postponed on 29-10-1945, obviously (vide fardehkam) for mere presence of accused. But case was dismissed on that date by (seemingly) only one member of the Bench. The application is allowed and the case is sent to the Court of the S.D.M. Baberu-Naraini for further inquiry.

5. It is noticeable that every fact mentioned in this order upon which the learned District Magistrate based his decision was wrong. The learned Magistrates of Bench, as already stated had undoubtedly given a notice to the complainant to produce his evidence under Section 202, Criminal P.C. Again, the order of 13-11-1945, passed by the learned Magistrate of the Bench was passed by both the Magistrates constituting the Bench and not by one as suggested by the learned District Magistrate. The learned District Magistrate may have perused the Urdu order sheet of 29-10-1945, for there is a reference to that order sheet in his order but it is clear that he did not take the trouble of considering the true nature of the application before him and perusing the record of the case. It is also clear that he did not take the trouble of reading the relevant sections of the Criminal P.C. but that is explained by the fact that he was treating the application before him as an appeal is consequence of the report made at his office. Sitting as a Court of revision the only power which the learned District Magistrate could have exercised was that given by Section 436, Criminal P.C. which runs as follows:

On examining any record under Section 435 or otherwise the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or Sub-section (3) of Section 204, or into the case of any person accused of an offence who has been discharged.

6. No elaborate comment is needed to show that having regard to the terms of Section 436, Criminal P.C. the learned District Magistrate of Banda had no power to pass the order which he actually did pass on 18-12-1945 by which he ordered a further inquiry into the case. There was no complaint which had been dismissed under Section 203 or Sub-section (3) of Section 204, unless it is suggested that the omission on the part of the Magistrates to issue summonses to eight of the accused persons before them amounted to a dismissal of the complaint under Section 203, Criminal P.C. as against them. It is however to be borne in mind that the complainant in his application in revision challenged only the order passed by the Magistrates of the Bench on 13-11-1945 acquitting the four accused persons whom they had summoned to answer a charge under Section 426, Penal Code. There was no, case before the learned District Magistrate of any person accused of an offence having been discharged. Four accused persons had been acquitted under Section 247, Criminal P.C. and, in the circumstances of the case which have been set out that order of acquittal was not open to any objection. It is evident therefore that the order passed by the learned District Magistrate of Banda directing a further inquiry into the case upon an application in revision was entirely beyond his jurisdiction. Against this order the present applicants went up in revision before the learned Sessions Judge at Banda, who however took the view that the application was incompetent inasmuch as the order against which it was directed was passed by the learned District Magistrate while exercising his powers in revision under Sections 435 and 436. The learned Sessions Judge has referred to the explanation to Sub-section (1) of Section 435, Criminal P.C. which runs as follows:

All Magistrates, whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 437.

The learned Sessions Judge has argued that when the learned District Magistrate of Banda passed the order sought to be revised he was exercising revisional jurisdiction and, therefore, he could not be deemed to be an inferior Court within the meaning of Section 435, Criminal P.C. and hence the record of the case could not be summoned from his Court.

7. The point does not arise for decision directly in the present case, but I cannot help observing that the view taken by the learned Sessions Judge is not, in my judgment, a correct view of the true interpretation to be placed upon the explanation attached to Sub-section (1) of Section 436, Criminal P.C. It is not necessary for me in the present case to give detailed reasons, and I consider it sufficient to point out to the learned Sessions Judge that he has not given full weight to the first two words of the explanation, namely, 'All Magistrates;' and he has also failed to consider that what the explanation says is 'whether exercising original or appellate jurisdiction,' and not 'while exercising original or appellate jurisdiction.'

8. In my opinion the application in revision was competent and the learned Sessions Judge could have considered it and could have made a reference to this Court if he was of that opinion for having the order passed by the learned District Magistrate of Banda set aside on the ground that it was beyond jurisdiction. For the purposes of the present case, however, I am concerned only with the order passed by the learned District Magistrate of Banda on 18-12-1945 directing further inquiry into the case for it is against that order that the application in revision now before me is directed. Having regard to all that I have stated above I hold that the order passed by the learned District Magistrate was wholly beyond his jurisdiction and, I therefore allow this application in revision and set aside that order.