

Laxmi Narain Vs. Emperor

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Court : Allahabad

Decided On : Jun-20-1932

Reported in : AIR1932All670; 140Ind.Cas.536

Appellant : Laxmi Narain

Respondent : Emperor

Judgement :

ORDER

Iqbal Ahmad, J.

1. This is an application in revision against an order of a Magistrate of the First Class ordering that proceedings under Section 107, Criminal P.C., that have been initiated against the applicant, be conducted by the police. On 30th July 1931, one Manni Lal filed a petition before the learned Magistrate alleging that the applicant, along with certain other persons, was likely to commit a breach of the peace or disturb the public tranquillity, and prayed that the persons named in the petition be bound down under Section 107, Criminal P.C. The learned Magistrate sent the petition to the police for inquiry and report. The police submitted a report on 7th October 1931, recommending that the applicant and the other persons named in the petition be bound down.

2. The Magistrate then issued a notice under Section 112, Criminal P.C. and directed the Sub-Inspector, who had submitted the report above referred to, to

bring all the evidence and produce the same in Court on 24th February 1932. On that date an application was filed on behalf of the applicant requesting the learned Magistrate to prevent the police from prosecuting the case. The learned Magistrate rejected the application. Against the order of the learned Magistrate the applicant went in revision to the learned District Magistrate. The learned District Magistrate holding that the case

has become a Crown one and the Crown has to attend to the important work of prosecuting it

dismissed the application in revision. Now the applicant has come to this Court. The learned Counsel, for the applicant contends that as the petition of Manni Lal was not a complaint as defined by Section 4(1)(h), Criminal P.C. the learned Magistrate had no jurisdiction to proceed under Section 202 of the Code and send the same for inquiry to the police and, accordingly, the police had no locus standi to prosecute the case and to lead evidence against the applicant. In support of this contention he relies on a decision of the Lahore High Court, reported as Hari Singh v. Jagta A.I.R. 1928 Lah. 694. In that case an application under Section 107, Criminal P.C. was presented by a man named Hari Singh and the Magistrate after recording his statement, sent the case to the local Zaildar for report. The Zaildar reported that there was no sufficient ground for proceeding under Section 107 and dismissed the application. The learned District Magistrate being of opinion that a Magistrate before whom an information contemplated by Section 107, Criminal P.C. is laid may either at once refuse to proceed' or, if in his opinion, there is sufficient ground for proceeding, may act in the manner provided for by Oh. 8 of the Code and that it is not open to him to refer to a Zaildar or anyone else before deciding whether to proceed, made a reference to the High Court recommending that the order of the Magistrate dismissing the petition be set aside. The High Court held that as a proceeding under Section 107 of the Code cannot be regarded as a complaint within the meaning of Clause (h), Sub-section (1). Section 4 of the Code, the Magistrate had no jurisdiction to deal with the case under Sections 202 and 203 of the Code and, accordingly, quashed the order of the Magistrate dismissing the petition and directed him to try the case in accordance with law.

3. If it was intended to lay down in that case that it is not open to a Magistrate, before whom a petition is filed requesting him to take action under Section 107 of the Code, to send the same for inquiry and report to the police, I with all respect, am unable to agree with that decision. Such a petition is no doubt not a complaint and therefore it is manifest that the procedure prescribed by Sections 202 and 203 of the Code, which are confined in their operation to complainants as defined by the Code, has no application to such a petition. It follows therefore that a Magistrate is not competent to proceed under Sections 202 and 203 when dealing with such a petition, but I can discover no justification for holding that he cannot, independently of those sections, refer the matter to the police for inquiry and report. It is to be noted that Section 107, Criminal P.C. is in part 4 of the Code which is headed 'Prevention of Offences.' The Magistrate is responsible for the maintenance of peace in the district. This, responsibility is cast on him in his administrative and not in his judicial capacity. He is the sole authority to decide whether or not it is imperative for maintenance of peace to set the law in motion by initiating proceedings under Section 107 or other preventive sections in Ch. 8 of the Code. His discretion in this respect is absolute and unqualified. Accordingly his discretion to initiate proceedings under Section 107 or other preventive sections in Ch. 8 of the Code has not been trammelled by such conditions the fulfilment of which is a condition precedent to the issue of a process to a person to answer a charge formulated against him in a complaint. Complaints are for the redress of wrongs already committed, and from the moment a Magistrate takes cognizance of a complaint he acts judicially and therefore is bound to proceed in accordance with law, and in coming to a decision one way or the other to take cognizance only of such matters that constitute legal evidence in the case. But in acting under Sections 107, 108 and 109 or Section 110 of the Code the Magistrate does not, so long as he does not record an order in writing in accordance with Section 112 of the Code calling upon any person to show cause, act judicially. In those sections complete discretion is given to the Magistrate either to act or not to act on the information received by him. The discretion to issue a notice under Section 112 in pursuance of an information received by him is absolute and uncontrolled by any conditions whatsoever. It is nowhere provided that the information contemplated by those sections must be information gathered from legal evidence, nor is there

any provision as to the source from which the information may be received.

4. The information may be conveyed to the Magistrate by a private individual or by an officer of the police. But in either case he is given a discretion to issue or not to issue a notice to the person against whom he has received the information to show cause why he should not furnish security for keeping the peace or to be of good behaviour. With a view to satisfy himself as to the desirability or urgency of issuing a notice under Section 112 the Magistrate has, for obvious reasons, the right to test the accuracy of the information received by him before issuing the notice. The manner in which he is to do so is not provided for in the Code. The reason is not far to seek. The above sections being enacted simply with a view to prevent commission of offences and being a part of the administrative machinery for maintaining law and order, the legislature did not think it fit to circumscribe the administrative powers of the Magistrates under those sections by making it obligatory on them to follow the procedure that by law they are bound to follow while dealing with complaints. A reference to Section 117 of the Code makes it clear that it is only after an order has been made under Section 112 that the Magistrate is to

proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

5. Clause 2 of that section provides that 'such inquiry' is to be made in the manner prescribed in the Code for 'conducting trials and recording evidence' either in summons cases or in warrant cases as the case may be. It is only from the stage that the inquiry under Section 117 begins that the proceedings before the Magistrate become judicial proceedings. Before that stage the proceedings are more or less of an administrative character, and the Magistrate till then is not bound by rules of evidence. For the maintenance of law and order Magistrates have control over the police, and it is open to them to seek their assistance in the discharge of their duties. If a Magistrate before issuing a notice under Section 112 thinks it fit to consult the police in order to form an opinion as to whether or not he should issue such a notice there is nothing in the Code to prevent him from doing so. It follows therefore that apart from the provisions of Section 202 of the Code, a

Magistrate proceeding under Ch. 8 has the right to call for a report from the police before issuing a notice under Section 112. The view that I take is in consonance with the view taken in the case of P. Sanjivi Reddy v. K. Koneri Reddi A.I.R. 1926 Mad. 521. The moment a notice is issued under Section 112, the Crown has the right to conduct the case against the person called upon to show cause and Section 495, Criminal P.C. gives discretion to the Magistrate to permit the prosecution to be conducted by any person mentioned in that section. That person may or may not be a police officer. In the present case therefore the Magistrate was fully competent to direct the police to adduce evidence in the case. For the reasons given above I dismiss this application.

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