

**Nanhu Singh Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/464153](http://sooperkanoon.com/464153)

**Court :** Allahabad

**Decided On :** Jun-06-1928

**Reported in :** AIR1928All706

**Appellant :** Nanhu Singh

**Respondent :** Emperor

**Judgement :**

**Mukerji, J.**

1. This is an appeal under Section 476-B, Criminal P. C, and has arisen under the following circumstances;

2. Certain persons, Man Singh and others, were being tried before an Honorary Magistrate Mr. Puech, An application to transfer the case from the Court of Mr. Puech to some other Court was made on behalf of the accused persons and in support of that application one Nanhu Singh, the appellant before me filed an affidavit. In that affidavit he made various statements. The District Magistrate transferred the case from the file of Mr. Puech to a Stipendiary Magistrate. Badhu Mal, the complainant at whose instance the criminal case was pending filed a petition before the District Magistrate asking him to file a complaint for the prosecution of Nanhu Singh on the ground that he made various false statements. Badhu Mal enumerated these false statements and these were according to him to be found in paras. 2, 7 and 8 of the affidavit. The District Magistrate directed the

Stipendiary Magistrate who was hearing the case against Man Singh and others for a report. That officer reported that the statement in para. 8 of the affidavit was false. The Magistrate did not specify the paragraph by number but his report concerned itself with the statement contained in para. 8 of the affidavit. The District Magistrate, in a very short order directed the filing of the complaint and quoted certain words from para. 2 as being the subject-matter of the complaint.

3. Nanhu Singh appealed to the Sessions Judge. That officer came to the conclusion that the subject-matter of para.2 of the affidavit was not a fit statement on which Nanhu Singh should be charged with perjury. He therefore substituted the statement in para. 8 for the prosecution.

4. In this Court two points have been urged. First, it has been said that para. 8 of the affidavit has been misunderstood by the learned Sessions Judge. I am not quite clear that this is so but I do not think it necessary to discuss the point, because the question of interpretation will be before the trying Magistrate and it is not right that my opinion should in any way influence him.

5. The second point is that the learned Sessions Judge had no jurisdiction to alter the subject-matter of the prosecution. This argument is this. The Sessions Judge as the appellate Court could file a complaint of his own accord provided that the subordinate Court i.e., the District Magistrate, had neither made a complaint nor rejected an application for making such a complaint. It is said that, because the District Magistrate did make a complaint the appellate Court i.e., the Sessions Judge, was deprived of his authority otherwise given to him under Section 476-A, Criminal P. C, to make a complaint.

6. It appears to me that the whole thing is capable of being correctly adjusted to rules of law. As I have already said, the District Magistrate had directed a Stipendiary Magistrate to make a report. The report of the Magistrate was confined to the statement to para. 8. In filing a complaint therefore 'the District Magistrate must be taken to have meant that the complaint should relate only to the matter about which he had the report and to nothing else but instead of quoting the words of para. 8 he quoted the words of para. 2. This was in my opinion nothing but a slip. The Sessions Judge corrected that slip and did nothing else.

7. I will, however, look at the matter from a strict technical stand-point and see if the learned Judge was not right. If the District Magistrate filed a complaint in respect of a statement, of which the learned Sessions Judge was not assured that it was a false statement, it must be taken that the learned Sessions Judge set aside the order of the District Magistrate in respect of that complaint. The result is that the Sessions Judge withdrew the complaint so far as it was based on para. 2. The offence of perjury is intimately connected with the statement to be made. There may be, say, five statements, and, if those five statements be all false, there would be five different offences. If the District Magistrate ordered prosecution for one offence he Sessions Judge ordered the withdrawal by filing a complaint for other offence. In effect, therefore, the District Magistrate's order was set aside. After having set aside the order of the District Magistrate it was certainly open to the Sessions Judge to direct prosecution for a different offence. The statement contained in para. 8 of the affidavit if it be untrue, constituted as offence different from the offence committed in making a false statement in para. 2 of the affidavit. The Sessions Judge's order, therefore, amounted to the filing of the complaint for a different offence, though of the same nature, to the offence for which the District Magistrate had filed a complaint in this view of the whole proceedings, even the strictest letter of the law has not been contravened. I dismiss the appeal.