

**Dalpat Rai Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/464161](http://sooperkanoon.com/464161)

**Court :** Allahabad

**Decided On :** Feb-18-1936

**Reported in :** AIR1936All469; 163Ind.Cas.609

**Appellant :** Dalpat Rai

**Respondent :** Emperor

**Judgement :**

ORDER

**Bennet, J.**

1. This is an application in criminal revision against the order of the learned Sessions Judge of Bareilly dismissing an appeal from the order of the District Magistrate of Bareilly who had made a criminal complaint under Section 182, I.P.C., against the applicant Dalpat Rai for his prosecution under the provisions of Section 199(1)(a), Criminal P.C. The points which are urged in the application of revision are that the application made by Dalpat Rai to the District Magistrate on 18th July 1935 amounted to a criminal complaint within the meaning of the Criminal Procedure Code and disclosed an offence and that the District Magistrate therefore should have taken the deposition of the complainant on oath and that because he did not do so, therefore as laid down in Emperor v. Bhagwan Das 1935 ALJ 1067, the order of the Magistrate directing a complaint to be made against the applicant was without jurisdiction. The question is whether the

application of Dalpat Rai was or was not a criminal complaint.

2. A criminal complaint is defined in the Criminal Procedure Code, Section 4(1) (h) as meaning the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person whether known or unknown has committed an offence. Now the application in question did not suggest that the Magistrate should take any action against any person for committing an offence; nor do the allegations in the application form the ingredients which constitute any offence under the Penal Code; nor was there any offence referred to in the application by the number of the section. Learned Counsel suggests that the offence of criminal trespass may have been indicated by the application. The application says that Raghubir Sahai, the husband of Mt. Katori Kuar, came to the house of Dalpat Rai, and took her away from that house where she was staying with Dalpat Rai, her uncle. This would not in my opinion amount to the offence of criminal trespass because the object of Raghubir Sahai was merely to take his wife away. The relief which was asked by the application was that Mt. Katori Kuar should be set at liberty and taken from the custody of her husband because there was an apprehension that he might ill-treat her. It is strange that the Courts below have not noticed that this application is one which comes under Section 552, Criminal P.C., which provides as follows:

Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of (16) years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

3. The application was made to the District Magistrate and it asks that this woman should be set at liberty. The application therefore was not a criminal complaint but an application under Section 552, Criminal P.C. Learned Counsel then altered his ground and pointed out that under Section 552, Criminal P.C., the Magistrate should have the statement on oath of the complainant. That may be a defect in his procedure and might vitiate any order which he might have passed for the

restoration of the woman, but he has passed no such order. I do not consider that this omission has any effect on the order which he did pass which was for the prosecution of Dalpat Rai under Section 182, I.P.C. That section is for the prosecution of a person who gives any information which he knows or believes to be false, etc., to a public servant. The offence is complete as soon as the information is given.

4. Whether the public servant omits to take a statement subsequently on oath of the person giving the information for the purpose of taking certain action on it is a matter which will not affect the giving of the information. I think therefore that the present complaint by the Magistrate has not been shown to be in any way irregular. It was suggested by learned Counsel that this Court should consider the merits of the case or that the Sessions Judge should have considered the merits of the case. I do not think that at this stage it is at all desirable that either the Sessions Court or this Court should express any opinion on the merits of the case. To do so would, if the opinion were against the accused, prejudice the case against the accused. All that need be seen is whether there was material before the Magistrate on which he could form an opinion. In the present case there was a police report before the Magistrate and also an application by Counsel containing a Hindi letter stated to have been written by the woman in question saying that she had asked her husband to take her away and that she had gone with him of her own free will. The correctness or otherwise of this evidence will be a matter which will be adjudicated upon at the trial. But in my opinion it is altogether premature for an adjudication on this question at present. For these reasons I dismiss this application in criminal revision. The case should therefore proceed.