

Lallaln and anr. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/464327

Court : Allahabad

Decided On : Dec-15-1933

Reported in : AIR1934All514; 150Ind.Cas.376

Appellant : Lallaln and anr.

Respondent : Emperor

Judgement :

Sulaiman, C.J.

1. This is an application in revision by an accused person praying that the proceedings pending against him in the Court of the Sub-Divisional Magistrate of Konch be quashed. It appears that on 22nd August 1932 the complainant tiled a complaint under Section 379, Penal Code, against the accused in the Court of the predecessor of the present officer on the allegation that the complainant owed some money to the accused and the latter took away two of his she-buffaloes and one calf-buffalo in his absence without his consent and that later when he came to know of this and went to the accused and demanded a receipt from the accused in discharge of the debt, they refused to give the receipt or to return the promissory note. The Magistrate examined the complainant and summarily dismissed the complaint under Section 203, Criminal P.C. holding that the matter was of a civil nature and there was no use in dragging the accused to the criminal Court. Thereafter, the complainant made a report to the police of the cognizable offence aforementioned, on which the police made enquiries and challaned the accused.

The case came up after some delay before the successor of the previous Magistrate who took cognizance of the offence on police report and is enquiring into it and so the case is now pending in his Court.

2. The accused went up in revision before the Sessions Judge who came to the conclusion that the Magistrate was not precluded from trying the case on the police report and dismissed the application. The rice-used have now come up to this Court in revision and pray that the proceedings be quashed. The learned Counsel for the applicants has to admit that there is no express provision in the Code of Criminal Procedure under which a fresh enquiry like this is legally barred. Section 403 which prevents a retrial is confined to cases where an accused person has either been convicted or acquitted. The explanation added to the section makes it clear that the dismissal of the complaint or discharge of the accused, is not an acquittal for the purposes of that section. This explanation therefore clearly implies that the retrial will not be barred if the complaint has been summarily dismissed or the accused has been discharged. The mere fact that there is a special procedure under which the District Magistrate or the Sessions Judge or the High Court can order further enquiry does not necessarily mean that a fresh complaint is legally barred and cannot be entertained. There is a plenty of authority in this Court in support of this view that an enquiry even on a second complaint whether after the accused has been discharged or the complaint has been summarily dismissed is not absolutely barred. In the first place, there is an observation made in the Pull Bench case of *Queen Empress v. Chotu* (1886) 9 All. 52 (at p. 558) suggesting that the Magistrate, who passes the order of discharge, might, at the instance of the complainant, himself exercise (the discretion of further inquiring into the matter) without direction from any superior authority.

3. In the same volume there is the case of *Queen Empress v. Puran* (1886) 9 All. 85 decided by a Single Judge in which it was clearly held that a Magistrate, in ordering a further enquiry, on receiving the complainant's second petition, did not act contrary to any provision of the law, although a previous complaint had been summarily dismissed under Section 203, Criminal P.C. In *Queen Empress v. Umedan* (1895) A.W.N. 86 a Division Bench of this Court held that:

a Magistrate who has passed an order dismissing a complaint may at the instance of the complainant and without direction from any superior authority take cognizance of the same offence or of any other offence constituted by the same facts upon a second proper complaint being laid before him.

4. In this case however it was the same Magistrate who had taken cognizance of the second complaint. These cases were followed in *Bhagwan Din v. Dibban* (1908) 5 A.L.J. 137, *Emperor v. Mehrban Husain* (1907) 29 All. 7, decided by a Single Judge, *Emperor v. W.C. Keymer* A.I.R. 1914 All. 179, *Bam Bharos v. Babban* A.I.R. 1914 All. 79, and *Puran v. Emperor* : AIR1926 All298 . In the last mentioned case it was the successor of the pre-vious Magistrate who had taken cognizance of the second complaint.

5. On the other hand, in the case of *Queen Empress v. Adam Khan* (1899) 22 All. 106, a Division Bench of this Court distinguished the previous cases including that of *Queen Empress v. Umedan* (1895) A.W.N. 86 on the ground that there the same Magistrate had himself entertained a second complaint. In the case before them, it was another Magistrate before whom the second complaint was filed. The learned Judges observed that they thought it utterly contrary to sound principles that one Magistrate of co-ordinate jurisdiction should, in effect and substance deal with, as if it were an appeal or a matter for revision, a complaint which had already been dismissed by a competent tribunal of co ordinate authority. They however desired it to be distinctly understood that they decided nothing except the question actually raised by the facts in that case, namely, that when a competent tribunal has dismissed a complaint, another tribunal of exactly the same powers cannot reopen the same matter on a complaint made to it. This case has been followed by two Single Judges of this Court in *Nanda v. Emperor* : AIR1927 All815 and in *Rama Nand v. Sheri* A.I.R. 1914 All. 79. In *Adam, Khan's case* (1899) 22 All. 106 the learned Judges did not in express terms lay down that there was an absolute legal bar to entertaining the second complaint. At any rate, they did not refer to any sections of the Code which would preclude the Magistrate from entertaining a second complaint, but they based their decision entirely on general principles which ought to be given effect to. The High Court has undoubtedly jurisdiction to intervene in a fit case and the Bench considered that that was a case in which they

ought to intervene. No doubt, in the last sentence, quoted above they used language indicating that they thought that another tribunal cannot re-open the same matter on a complaint made to it. But reading the judgment as a whole, we think that they intended to lay down that another tribunal should not ordinarily re-open the question. In any case, as there is no prohibition contained in the Code, but, on the other hand the explanation added to Section 403 indicates that there can be a retrial we cannot take this solitary case as an authority for the proposition that there is any such legal bar.

6. In the present case, the previous Magistrate examined the complainant only and did not take down any evidence. He did not even suggest that he disbelieved the prosecution case, but merely threw out the complaint on the supposition that the matter was of a civil nature. He did not examine the question whether the act of a creditor in seizing the properties of a debtor without his consent or knowledge did not amount to a criminal offence. As a result of the subsequent proceedings there has been an investigation by the police and a report to the Magistrate on which the present Magistrate is acting. It is possible after enquiry into the whole case the present Magistrate may also be satisfied that the accused should be discharged. We wish to express no opinion on this matter; but we certainly think that this is not a fit case in which in the exercise of our revisional powers we should interfere and quash the present proceedings. No doubt in a proper case, if the matter is brought up to the High Court on revision, it would be open to the High Court either to revise the previous order, set aside the dismissal and direct further enquiry, or to quash the subsequent proceedings. But we must hold that the second Magistrate himself cannot dismiss the complaint on the simple ground that he is precluded from trying it because a previous complaint of the same nature has already been dismissed. Even on the facts we do not think it to be a fit case for interference at this stage. The application is dismissed.