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Court : Allahabad

Decided On : Jun-29-1915

Reported in : AIR1915All417; 30Ind.Cas.653

Judge : Henry Richards, C.J. and; Piggott, J.

Appellant : Bateshar and ors.

Respondent : Emperor

Judgement :

1. This is an application in revision. The facts are briefly as follows: A complaint was made to the Police in which the complainant complained that he and certain other persons had been beaten by the present applicants, and that one of them had suffered injuries amounting to grievous hurt. The Police do not appear to have been very anxious to initiate proceedings. The result was that the complainant came before Mr. Williamson, a Magistrate of the first Class, with what amounted to a 'complaint' though no doubt it was to a certain extent also a complaint against the Police for not moving in the matter. This was on the 8th of February. The Magistrate made an order in the following terms: 'Papers of the Police investigation to be produced before me on February the 16th. The complainants, if they wish to prosecute their case independently of the Police, should produce evidence on that date and also summon the accused.' This order was not regular. There was no objection, of course, to the Magistrate sending for the Police papers. On the contrary it was a very correct thing for him to do, but under Section 200 of

the Code of Criminal Procedure he ought at once, and before he summoned the accused, to have examined the complainant on oath. On the 16th of February for some reason or other the complainants did not turn up. The accused were in Court and the Magistrate made an order of discharge under Section 259 of the Code of Criminal Procedure. The very same day the complainants turned up and evidently explained to the learned Magistrate how it was that they were unable to be present in Court. Thereupon the Magistrate made the following order: The applicants appeared after the rising of the Court, having arrived by a late train. In view of the Police report and the departure of the accused it will be sufficient to allow applicants so much grace as to give them an opportunity of showing, under Section 202 of the Code of Criminal Procedure, whether they can support their case by evidence. To February the 23rd for this purpose.' This order is dated the 17th, although the corresponding vernacular order in the order sheet is dated the 16th. On the 23rd of February the complainant and four witnesses were examined and process was ordered to issue for the accused. The proceedings against them began on the 8th of March. The Magistrate again, on the 16th or 17th of February, in a lesser degree made the same mistake as he had made in the previous order. He did not at once examine the complainants on oath. It is contended in revision that the conduct of the Magistrate amounts to such an illegality that it vitiates the entire proceedings. It is admitted, however, that according to the rulings and practice of this Court, an order of discharge is no bar to the Court taking cognisance of the case upon a fresh complaint or a fresh Police report, notwithstanding that the complaint or Police report refers to the very same offence in respect of which the accused had previously been discharged. It follows from this that if the Court had never made the order dated the 17th of February, and that on the 23rd of February the complainant had come to the Magistrate, explained to him why it was he had been unable to attend on the 16th, and had then made an oral complaint to the Magistrate, the proceedings which led to the issue of process and the subsequent trial would all have been regular. It seems to us that the irregularity in the previous orders cannot, under the circumstances of the present case, be said to vitiate the proceedings. At the same time we wish very strongly to impress upon the learned Magistrate that the provisions of the Code as to procedure ought to be strictly complied with. Non-observance of the

provisions of the Code leads to much confusion and waste of public, time, not to speak of involving the parties in unnecessary expense. Under the circumstances, of this case we see no sufficient ground for setting aside the conviction on the ground of the irregularity in the issuing of process to the accused.

2. The second point raised in the application is that cumulative sentences were illegal. It seems to us that there is no force in this contention. Different persons were injured, grievous hurt was caused in one case and simple hurt in others. Therefore, it was competent for the Court to impose separate and accumulative sentences.

3. The only other matter is a question of severity of sentence. The injuries in most of the cases were simple. In one case there was a broken finger and the infliction on the head of a wound which laid bare the bone. No doubt these injuries were of a serious nature. There are, however, some circumstances connected with the case in which it is unnecessary to go in detail but we have considered these circumstances, and we think that the ends of justice will be met by making the sentences passed run concurrently. We order that the sentences of imprisonment passed on Bateshar and Mathura shall run concurrently instead of consecutively. In all other respects we dismiss the application. The applicants must surrender to their bail.