

Gulab Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/469125

Court : Allahabad

Decided On : Nov-25-1924

Reported in : AIR1925All667

Appellant : Gulab

Respondent : Emperor

Judgement :

Daniels, J.

1. This is an appeal against an order passed under Section 476-A of the Code of Criminal Procedure by the learned Sessions Judge of Farrukhabad, directing the prosecution of the appellant Gulab for an offence under Section 211 of the Indian Penal Code. The facts are as follows.

2. On 28th November 1923, Gulab filed a complaint against a Sub-Inspector under Section 165, 504 and 506 of the Indian Penal Code. His case was that he possessed a very fine pair of bullocks, that the Sub-Inspector had tried to get these bullocks from him, and that as he would not give them to the Sub-Inspector the Sub-Inspector had caused his house to be searched and instituted various proceedings against him. The Deputy Magistrate before whom the complaint was filed, after recording evidence under Section 202 of the Code of Criminal Procedure, dismissed it under Section 203. His order clearly shows that he considered the complaint to be false and got up. He did not, however, at that time

take any steps to prosecute the complainant. On the case being brought to the notice of the District Magistrate, he considered that a prosecution under Section 211 should have been instituted immediately after the case was finished, and should be commenced even now, and sent instructions to this effect to the Deputy Magistrate. The Deputy Magistrate thereupon passed an order 'Gulab to be prosecuted under Section 211 of the Indian Penal Code.' Gulab appealed to the Sessions Judge. The Sessions Judge held that the order for prosecution was really passed by the District Magistrate who had no jurisdiction to pass it, not being the superior Court of the Deputy Magistrate within the meaning of Section 195 of the Code of Criminal Procedure. The Deputy Magistrate merely acted under the order of his superior. As, however, he was clearly of opinion that Gulab ought to be prosecuted he himself made a complaint under the powers conferred on him by Section 176-A.

3. Section 476-A, appears on the face of it to confer full powers on the Appellate Court in cases of this sort. It is conceded on behalf of the appellant that if the Deputy Magistrate made no complaint at all the Sessions Judge had power under Section 476-A to make the complaint which the Deputy Magistrate refused to make. His argument is that as a complaint was made by the Deputy Magistrate, although that complaint might be altogether illegal and void, the hands of Sessions Judge are tied. It appears to me that the case can be put very simply. If the complaint made by the Deputy Magistrate was a valid complaint in law it should have been and would have been upheld by the learned Sessions Judge. If it was invalid and ultra vires, as the Sessions Judge found, then the position is that no complaint, that is to say no complaint recognizable by the law, had been made by the Court below, and as the matter had come before the Sessions Judge in appeal it was within his jurisdiction to make a complaint himself under Section 476-A. In my opinion the order passed by the Sessions Judge is a perfectly legal order and I therefore dismiss this appeal.