

DIn Mohammad Vs. Emperor

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Court : Allahabad

Decided On : Aug-05-1926

Reported in : AIR1927All107

Appellant : DIn Mohammad

Respondent : Emperor

Judgement :

Banerji, J.

1. This is an application in revision against an order of the Sessions Judge of Cawnpore passed on appeal. A complaint was filed by the petitioner Din Mohammad charging Rup Ram with an offence under Section 417, Indian Penal Code. Rup Ram is an employee of the Cantonment and it was said in the complaint by Din Mohammad that he had taken Rs. 5 from Din Mohammad for permitting him to cut a tree, and demanded some more money. The learned Joint Magistrate before whom the complaint was filed questioned the complainant. He, in his order of 19th February 1926, said:

Complainant would be better advised to approach Executive Officer, Cantonment. It does not seem to be a case of 417.

and he then dismissed the complaint under Section 203, Criminal P.C., without giving an opportunity to Din Mohammad to prove his complaint by calling the

witnesses whom he had named in the complaint.' The Joint Magistrate was certainly empowered to do so, in my opinion, under Section 203, Criminal P.C., and I have, therefore, dismissed the application of Din Mohammad in the connected case, No. 364 of 1926. Din Mohammad went up in revision before the learned Sessions Judge who declined to order further enquiry. After that an order was passed without giving any notice to Din Mohammad on the 29th March 1926 (I do not say that was incumbent upon the Joint Magistrate to issue notice when acting under Section 476, Criminal P.C.) under Section 476, saying:

I have reason to believe that the complain was false and that the complainant was aware that it had no just or lawful ground and that the filing of this complaint constituted an offence under Section 211, Indian Penal Code. I hereby make formal complaint against Din Mohammad, son of Baqar Idi, for an offence under Section 211, Indian Penal Code, under Section 476/195, Criminal P.C., and forward the case to the Court of Mr. Moore for trial.

2. There is not a tittle of evidence on the record to justify this order at all. What reasons the Joint Magistrate has, must be found within the four corners of the record of a criminal case; a mere belief without any foundation whatsoever does not, in my opinion, justify a Court of justice to send a man for trial. The learned Sessions Judge before whom an appeal lay from the order of the Joint Magistrate under 476B has, in my opinion, come to a wrong conclusion. That in every case in which a man files a complaint and that complaint is dismissed summarily by a Magistrate it will be for the complainant to justify that his complaint was a good and correct complaint in his defence is a proposition of law which Lam not prepared to accept. A prosecution under Section 211 of the Indian Penal Code must not be launched against a man and the time of the Court wasted in a futile proceeding. Before a Court orders a prosecution under Section 211 of the Indian Penal Code there must be enough materials to justify a complaint being filed, i.e., there must be enough material to show that there is a prima facie case. A complaint without any reason which appears from the record directing a prosecution of an accused person, in my opinion, is clearly illegal and should never be filed by a Court.

3. I, therefore, set aside the proceedings taken by Mr. R. Johnston on the 29th of March 1926, direct that he do withdraw the complaint that he has filed by his order of that date.

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