

Babu Ram Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/476526

Court : Allahabad

Decided On : Jun-23-1917

Reported in : AIR1917All41; 42Ind.Cas.174

Judge : Walsh, J.

Appellant : Babu Ram

Respondent : Emperor

Judgement :

Walsh, J.

1. This is a perfectly clear case now that I have got the materials. There is no judicial order at all dismissing the case against the Patwari. As far as I can ascertain, there has been no judicial hearing of the case. What happened was that the Commissioner on the 21st of December 1916 sent the complaint to the Collector and District Magistrate for disposal. Of course that means disposal in any way the Magistrate thinks right. He might enquire into the plaint and decide that there was nothing in it and therefore, refrain from any judicial proceeding. He might on the other hand think that there was some substance in it and direct the ordinary proceedings to be taken and be continued to judgment. What he did was to send the file to his subordinate and ask him to take the evidence produced by the applicant and also of the Patwari and his witnesses and report whether there was a prima facie case against the Patwari. The subordinate officer reported on

the 12th of March 1917 and recommended that the complaint should be dismissed. The Magistrate knew better than to dismiss the complaint. He was not exercising a judicial function at that stage at all. He could not deal with the matter as a Judge and he could not dismiss the complaint in the sense of arriving at a judicial determination. He did what anybody in his position would have done as an executive officer. There being a report that there was nothing in the complaint, he allowed it to be dropped. There is no order of his Court disposing of the complaint: He took a strong view of the complaint and wrote an order that it was a flagrant case of complaint against an official, and he ordered the prosecution of Babu Bam under Section 182 of the Indian Penal Code and sent it to the Subordinate Magistrate for disposal. The Sessions Judge upon the question before him as to whether that was a sanction justified by law, the offence being one which could only be prosecuted after proper sanction had been obtained, held that it was an order under Section 476 of the Criminal Procedure Code. That is the only point which comes before me. Whether it was an order which the District Magistrate could legally make under some other power I have no idea but I am quite satisfied that the Sessions Judge is wrong in saying that the District Magistrate could make it under Section 476. I think the Sessions Judge felt himself in considerable difficulty in working Section 476, and he put in his order what may be described as a plausible case for it, viz.:---The District Magistrate does not say that he proceeds under Section 476, but all the facts were evidently before him. An order under Section 476 cannot be made by a Criminal Court unless the offence alleged was either committed before it or brought to its notice in the course of a judicial proceeding. I am quite satisfied that the facts of this case are not within Section 476. The application must be granted and the order quashed. I simply declare that the order of Mr. Alexander of the 14th of March 1917 was neither a legal sanction nor a valid order under Section 476. I confine myself to that.