

Harihar Prasad Vs. Emperor

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Court : Allahabad

Decided On : Feb-26-1920

Reported in : AIR1920All77; 55Ind.Cas.679

Judge : Piggott, J.

Appellant : Harihar Prasad

Respondent : Emperor

Judgement :

Piggott, J.

1. One Harihar Prasad, who is the applicant before this Court, brought a formal complaint in the Court of a Magistrate of the first class, alleging that he had been abused and beaten by the officer in charge of a certain Police station, The complaint was taken cognizance of under Section 323 of the Indian Penal Code and the Magistrate, after examining the complainant, decided to direct a preliminary enquiry to be made by a Deputy Superintendent of Police. I presume that the enquiry which followed was a 'local investigation' within the meaning of that expression in Section 202 of the Code of Criminal Procedure. The officer conducting it seems to have recorded statements made by witnesses who came forward on behalf of Harihar Prasad and by another witness, a certain ekka driver, in respect of whom it is a matter of controversy before me whether he was put forward by Harihar Prasad or by the accused Police Officer. It seems also to have

been ascertained that there were definite, though not serious, marks of injury on the person of the complainant. The case came before the Magistrate with this report and with the record of the proceedings of the Deputy Superintendent of Police. He thereupon dismissed the complaint under Section 203 of the Code of Criminal Procedure and called upon Harihar Prasad to show cause why his prosecution should not be ordered for having committed an offence under Section 211 of the Indian Penal Code in the matter of the complaint filed by him against the Police Officer. The proceedings which followed were no doubt in substance under Section 476 of the Criminal Procedure Code, though the Magistrate nowhere refers to that section and may not have realised that he was acting in virtue of powers which that section confers.

2. The final order in these proceedings was that Harihar Prasad be prosecuted for an offence under Section 211 of the Indian Penal Code and be sent before another Magistrate for trial. Applications were made in revision to the Sessions Judge against both order, namely, the order dismissing Harihar Prasad's complaint and the order directing Harihar Prasad's prosecution. I have before me two separate orders by the learned Sessions Judge, but in both of these the attention of the Court seems to be entirely concentrated on the question of the order directing Harihar Prasad's prosecution. With reference to this order the learned Sessions Judge was no doubt right, though I cannot trace the authorities to which he refers in holding that he had no jurisdiction himself to set it aside, though he could have referred it, along with the rest of the record, to this Court. What I do not find is that the learned Sessions Judge, upon either of these applications, fairly set himself to consider the simple question whether or not adequate cause was shown on behalf of Harihar Prasad for making further enquiry into his complaint which had been dismissed under Section 203, Criminal Procedure Code. The action of the Magistrate was within his jurisdiction. The order calling for an enquiry by the Deputy Superintendent is covered by the first clause of Section 202 of the Code of Criminal Procedure, always assuming that the enquiry intended was the 'local investigation' referred to in the aforesaid sub-section. The discretion given to a Magistrate by Section 203 of the Criminal Procedure Code is a very wide one; he was within his jurisdiction in dismissing Harihar Prasad's complaint after examining the complainant and considering the result of the investigation which he had

caused to be made under the section next preceding, It is, however, equally clear that the Sessions Judge would have been within his jurisdiction, under Section 437 of the Criminal Procedure Code, if he had insisted upon farther enquiry being made into Harihar Prasad's complaint. The fact that the dismissal of this complaint had been followed by action on the part of the Magistrate under the powers conferred upon him by Section 475 of the Criminal Procedure Code, over which action the Court of Session had no direct control, is irrelevant to the point now under consideration. The learned Sessions Judge would have acted within his discretion if he had ordered further enquiry to be made into the complaint and proceedings to be stayed in respect of the order passed under Section 476 of the Criminal Procedure Code, until the result of that further enquiry was known.

3. As far as I can judge from the orders now before me, the Sessions; Judge did not look at the matter from this point of view at all. A certain responsibility is, therefore, thrown upon me of considering whether the interests of justice do or do not require that Harihar Prasad should be given an opportunity of producing his witnesses in Court. One of the practical inconveniences of the course which has been followed is apparent enough from the record before me. I have mentioned that one of the persons examined by the Deputy Superintendent was a certain ehka driver, and in the report of the 'local investigation' it seems to have been assumed that the man so examined was the driver of the ehka on which Harihar Prasad was riding at the time when he alleges himself to have been assaulted by the Police Officer. In the petition before me it is alleged, whether truly or falsely I cannot say, that the man, examined by the Deputy Superintendent was not the driver of that ehka, but was a person put forward on behalf of the accused Police Officer. The complaint of Harihar Prasad was one against a Police Officer in charge of a police station. It is a serious matter for a Magistrate in dealing with a complaint of this sort to rest content with the report of a 'local investigation' by a Police Officer of superior rank and to dismiss the complaint without himself hearing the witnesses on whom the complainant relies to establish the truth of his allegations. It is not a question of the legality of the Magistrate's order under, Section 203 of the Criminal Procedure Code, but of the propriety of the discretion exercised in this particular instance. The proper Court to have dealt with this question was the Court of the Sessions Judge, and I am only taking it upon myself

to deal with it because it seems to me that the Sessions Judge has omitted to do so. It may be that I am unduly influenced in this matter by the traditions of the school in which I was brought up; but I can assure the presiding officers of both the Courts below that no Sessions Judge under whom I worked as Joint Magistrate would have affirmed an order dismissing the complaint under the circumstances of the present case. If I had passed such an order, I should inevitably have received the case back from my Sessions Judge with an order under Section 437 of the Criminal Procedure Code directing me to make further enquiry and at least to hear the complainant's witnesses myself. I can remember its being pointed out to me in a similar case that the burden laid upon me was not a heavy one, because there was nothing in the law which even required me to record the statements of the complainant's witnesses unless I saw fit to do so. What the Sessions Judge required of me in the case to which I am referring was a plain statement that I had myself examined the complainant's witnesses, heard what they had to say and given my best consideration to their statements along with the report of the officer who had conducted the 'local investigation,' In the present case I may add further that I think the question of the identity of the ekka driver, now that it has been raised, ought to be cleared up. The Magistrate ought to see and examine the ekka driver whose statement was taken at the local investigation' and offer Harihar Prasad an opportunity of producing the man he alleges to have driven his ekka at the time, if he does not admit him to be identical with the person produced at the 'local investigation.' He might also have to explain why he did not make this point dear in the statement which was taken down when he appeared to answer the notice issued to him to show cause why his prosecution should not be ordered. In my opinion the present case called for an order under Section 437 of the Code of Criminal Procedure on the part of the Sessions Judge and as the whole matter is now before me and the record of the proceedings under Section 476 of the Criminal Procedure Code has also been called for, I am competent to deal with both orders. As I propose to direct farther enquiry to be made into Harihar Prasad's complaint, I think it more convenient to set aside at once the order passed under Section 476 aforesaid directing the prosecution of Harihar Prasad. I do so accordingly; but it must be clearly understood that I do this without prejudice to the jurisdiction of the Magistrate to

take action again under that Section, if he should fee adequate cause to do so after the further enquiry which I direct to be made into Harihar Prasad's complaint. I set aside the order dismissing that complaint under Section 203 of the Code of Criminal Procedure. I direct the Magistrate to take that complaint back on to his file of pending cases and to make further enquiry into the same on the lines which have been sufficiently indicated by this order.

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