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SooperKanoon Citation : sooperkanoon.com/477516

Court : Allahabad

Decided On : Dec-14-1925

Reported in : AIR1926All358

Appellant : Khacho Mal and anr.

Respondent : Emperor

Judgement :

Daniels. J.

1. This is a Reference by the learned Sessions Judge recommending the setting aside of the conviction of the applicants for assault under Section 352, Indian Penal Code, and a consequent order binding them over for a sum of Rs. 200 with one surety in the same amount under Section 108, Criminal P.C.

2. On the substantive charge a fine of Rs. 20 only was inflicted. The complainant's case which the trial Court accepted was that owing to a report which the complainant had made against the accused three days earlier they came up behind him with lathis when he was on his bicycle, and said: 'See the result of making a report,' and ran after him and tried to strike him with their lathis, but being on a bicycle he managed to escape.

3. The learned Sessions Judge has written an unnecessarily lengthy order containing some matter quite irrelevant to the present reference, but the grounds of his reference are really five in number:

- (1) That the provisions of Section 842, Criminal P.C., were not complied with
- (2) That the petition filed by the complainant Dau Dayal was under Section 107. Criminal P.C., and the Magistrate had no jurisdiction to treat it as a complaint under Section 352.
- (3) That the Magistrate wrongly took security for good behaviour under Section 106. Criminal P.C., instead of for keeping the peace.
- (4) That by taking action under Section 106 instead of under Section 107 the Magistrate has deprived the accused of a right of appeal.
- (5) That the evidence on which the Magistrate acted was unworthy of credit and the accused should not have been convicted on the merits.

4. As regards Section 342, there was an irregularity. The Magistrate did not omit the examination of the accused, but he recorded it after the examination of the complainant and before that of the remaining witnesses. There were two other witnesses who gave evidence against the accused. The remaining two witnesses, when called, said they knew nothing. The Magistrate in his explanation says that Section 342 does not apply to summons cases. This is incorrect. Section 342 occurs in a chapter headed 'general provisions as to inquiries and trials.' Section 245, Criminal P.C., does indeed use language which it is difficult to reconcile with Section 342 in saying that if the Magistrate after taking evidence and, 'if he thinks fit', examining the accused, finds him not guilty he shall acquit him, and if he finds him guilty shall convict him. But Section 342 has always been held applicable to summons cases as well as to warrant cases. It may be that in a summons case the examination of the accused may be dispensed with under the first clause of Section 245 if the Magistrate after hearing the evidence finds that there is nothing to answer. At the same time it has been held in this Court in *Emperor v. Bechu Chaube* AIR 1923 All 81 that an omission to comply with the provisions of Section 342 does not necessarily vitiate the trial, and that it depends on whether the accused have been prejudiced. In this case the accused were examined after the complete story told by the complainant was before the Court and they had the opportunity of filing, and did file, a lengthy written statement setting out their

version of the facts and of the causes why the charge had been brought. I am not, therefore, prepared to set aside the judgment on the ground of this irregularity.

5. Turning to the second objection: the definition of a complaint is contained in Section 4(1)(h). A complaint is an allegation made orally or in writing to a Magistrate that some person has committed an offence, the allegation made with a view to the Magistrate taking action under this Code. The definition does not require that the action asked for should be under any particular provision of the Code and does not exclude a request for action under Section 107, provided the facts alleged do amount to a substantive offence. In this case both the written complaint and the oral statement of the complainant alleged facts which amounted to an offence under Section 352, Indian Penal Code, and the allegations were made with a view to the Court taking action under the Code. It appears to me, therefore, that the requirements of the definition were satisfied.

6. The third ground is correct. The Magistrate says that by a slip of the pen he wrote the words 'good behaviour' instead of the words 'keeping the peace' The security actually taken from the accused was security for keeping the peace. The fourth ground requires no separate notice. If the requirements of Section 106 were fulfilled the Magistrate was perfectly entitled to act under the section whether there was an appeal or not.

7. It is next said that the order was incomplete because it did not state what was to happen if the security was not furnished. This objection has no substance. The security was furnished, and the stage at which it would be necessary to decide what should be done in default was never reached.

8. On the merits I have been taken through the evidence, and I do not consider that this is a case in which a Court of revision would be justified in setting aside the findings of fact at which the Magistrate had arrived on the evidence. In the result I am unable to accept the reference and I direct that the record be returned.