

Bhagwan Das Vs. Emperor

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Court : Allahabad

Decided On : Apr-03-1935

Reported in : AIR1935All745; 155Ind.Cas.1070

Appellant : Bhagwan Das

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. This application for revision arises out of the following circumstance. The applicant filed a complaint under Section 448, Penal Code, against Lala Budh Prakash, an Honorary Magistrate, on 29th October 1934. The Magistrate in whose Court it was filed did not examine the complainant on oath, but ordered an enquiry by the Police, and on November 5, a report was received that the complaint was false and that proceedings ought to be taken to file a complaint under Section 182 Penal Code. The Magistrate, therefore issued notice to the complainant for his appearance to show cause against such a complaint on November 30. Without going into details, it maybe said that the record shows that this notice was not served on the present applicant. The Magistrate, however, took up the case on November 30, and in the absence of the applicant, passed an order in which he directed a complaint to be made against the; applicant under Sections 182 and

211 Penal Code.

2. An appeal was filed by the applicant in the Court of the Sessions. Judge, and several arguments were advanced against the legality of the Magistrate's order of complaint. The learned Judge dealt with the matter at some length, but he held that there was no legal defect in passing the order without a notice being served on the applicant, and he further held that the proceedings of the Magistrate were not vitiated by his omission to record the statement of the applicant on oath. The learned Judge remarked:

Here again under the law, as it now stands,, no such recording of the statement of the complainant is necessary. In a case like this what has happened is that the Magistrate has refused to take cognizance. It is only when he actually does take cognizance that the Magistrate is bound to take down the statement of the complainant on oath.

3. It will be seen that the Magistrate-decided to take action against the applicant on the basis of a Police report, but it is clear from the wording of the present proviso to Sub-section (1) of Section 202 Criminal P.C. that he had no jurisdiction to direct an investigation, by Police until he had examined the complainant on oath. His omission to take this necessary step therefore vitiated the whole of the proceeding. I have been referred on behalf of the applicant to a decision of a Bench of the Bombay High Court in the case of *In re Ningappa Rayappa Ghotadki* 1924 Bom. 312, in which it was held that it was not permissible for the Magistrate to sanction the prosecution of the applicant under Sections 182 and 211 Penal Code, where he had not examined him on oath, and the same view was taken in 1901, by the Judicial Commissioner's. Court in Oudh in *Ram Sarup v. Emperor* (1901) 4 O.C. 127. Both these decisions, it will be noted, are, prior to the amendment to Section 202 Criminal P.C., by which the proviso referred to above was introduced. I have no doubt, that the Magistrate's proceedings in directing a complaint to be made were without jurisdiction. I therefore allow the application, and set aside the order of the Magistrate in which he directed that a complaint be made against the applicant.

