

Durga Dutt Vs. Emperor

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Court : Allahabad

Decided On : May-17-1912

Reported in : 15Ind.Cas.75

Judge : George Knox, J.

Appellant : Durga Dutt

Respondent : Emperor

Judgement :

George Knox, J.

1. This is an application for the revision of an order passed by the Joint magistrate of Cawnpore, on April 1st, 1912.

2. The Magistrate was asked to cancel a charge-sheet, which he had drawn up against the petitioner. He was also asked to take the evidence of witnesses which the accused wished to produce before him. He declined to cancel the charge and ho also declined to take the evidence. Ordinarily, this Court is most unwilling to interfere with interlocutory orders; in the present case, however, it is abundantly clear that the Court below has not adopted the procedure prescribed by law. It has followed a procedure of its own and it seems better that in an important and elaborate case like the present, the Court should be put back so far as possible upon the proper procedure, viz., that prescribed by law. My experience is that

when Courts follow arbitrary procedure of their own invention, difficulties and confusions are sure to arise. In the present case, the accused, according to a charge-sheet, which has been drawn up by the Joint Magistrate, is charged with committing criminal breach of trust in respect of a sum of Rs. 46,085. A case of this kind is obviously one, which should be tried by a Court of Session and not by a Magistrate. In saying this I must not be understood to interfere with the powers of a Magistrate as given in Section 213 of the Criminal Procedure Code. I have not heard the merits of the case and I know nothing further about it beyond this that according to the complaint the accused is supposed to have been entrusted with money and to have committed breach of trust over a very large sum. As soon as this was known to the Court, or perhaps I should rather say to the prosecution, the case should have been pushed on in the channel provided by Chapter XVIII of the Criminal Procedure Code. It was, on the face of it, not a case for trial in the form provided by Chapter XXI. I cannot conceive any Magistrate of experience holding the opinion that the case was not one which ought to be tried by a Court of Session.

3. The Magistrate in his order of 1st April says that in this case the ordinary procedure of a warrant trial was followed. I venture to doubt this, but I am not concerned with going into the question further, as I hold that the case is one in which the procedure given in Chapter XVIII should have been adopted. It is interesting to note here, that the complainant was represented in this Court by a Vakil of great ability and experience who admitted that the case is one in which the procedure allowed by Chapter XVIII should have been followed. The point I have to see is whether there has been material irregularity in the procedure by refusing to summon the witnesses of the accused and framing the charge before their evidence and whether as a result of such refusal it is expedient that the order of the 1st of April should be altered. In every inquiry into a sessions case, a Magistrate is bound, before he draws up a charge, to take all such evidence as may be produced

(1) in support of the prosecution.

(2) on behalf of the accused and

(3) as may be called for by the Magistrate. If he does not take that evidence, he errs, unless he can justify his procedure, on some such ground as, let us say, the evidence of such and such a witness produced is obviously irrelevant or that he considers the fact in issue between the parties proved one way or the other by the evidence already produced. A Magistrate is further bound, if the complainant, or the officer conducting the prosecution or the accused applies to him, to issue process to compel the attendance of witnesses, to issue such process and, as a matter of consequence, to take the evidence thus caused to be produced. Here there is one exception provided by law, the Magistrate can record reasons showing that it is unnecessary to compel the attendance of witnesses in question and can in such a case decline to issue process. As each witness, out of the classes mentioned above, is examined, the accused is at liberty to cross-examine him. From the wording of Section 208, it seems abundantly clear that the intention of the Code was that as each witness was examined, he should be then and there cross-examined and re-examined and allowed to go to his home. The Code has considerations for witnesses and their convenience, but this consideration is not, I regret, always shared by Magistrates.

4. The procedure under Chapter XXI is very different. Sections 208 and 256 have only to be compared to establish this. From time to time the Court may, when it is necessary under Section 342, put such questions to an accused as it considers necessary. When the Court has taken all the evidence produced by either complainant or accused and examined all the witnesses compelled to attend by process, examined the accused for the purpose of enabling him to explain the circumstances appearing in the evidence against him, then, and not till then, is a Magistrate authorized to frame a charge. The procedure here differs in this point also from the procedure laid down in Chapter XXI. A charge under Chapter XXI can be framed long before this point is reached in a case, and one of the reasons, in my opinion, for this difference is again the convenience of witnesses. But for this, however, witnesses would be and too often are harassed by being kept days and days waiting for a cross-examination. In the case before me, I understand that there were one or more witnesses who would have been produced by the accused and who were in the Court precincts. I understand that no application was made to the Magistrate before the charge was drawn up to issue process to compel the

attendance of any witness. I also understand that the accused was prepared to cross-examine each witness immediately after his examination. But as the affidavit shows, those who appeared on behalf of the accused, being cognizant that it was the usual practice of this learned Magistrate not to allow any cross-examination before he frames a charge-sheet or till such time that the examination-in-chief of all witnesses for the prosecution is over, they did not press their right to cross-examine at that stage. If such be the practice of the learned Magistrate in inquiries into cases triable by a Court of Session, the practice is contrary to law and must be avoided in future. The accused put in a special application before the charge was framed to call a number of prosecution witnesses for a short cross-examination. The learned Magistrate, so the affidavit goes on asked the Counsel for the accused not to put more than six to eight questions to each witness. All this was quite irregular. The learned Magistrate had no power to curtail the cross-examination of witnesses, except as provided either in this Code or in the Evidence Act. The result of these departures from procedure has been that the accused considers himself prejudiced and I think he has ground for so considering. In any case, as I have already said, it is expedient that the inquiry should, as far as possible, be put on to the lines laid down by the law. I cancel the charge-sheet. I set aside the orders of the 1st of April. Under the peculiar circumstances of the case, opportunity should now be given to the accused to exercise the right conferred on him by para. 3 of Section 208, provided that right is exercised at an early date. As the omission to issue process under Section 208, para. 3, appears to have been partly due to the procedure adopted by the learned Magistrate, I think he would have been wiser to follow the precedent of this Court and not the precedent which he says he has followed.