

**Durga Prasad Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Dec-18-1934

**Reported in :** AIR1935All439

**Appellant :** Durga Prasad

**Respondent :** Emperor

**Judgement :**

ORDER

**Bennet, J.**

1. This is an application in revision on behalf of one Durga Prasad. There was a complaint under Sections 417 and 420. Penal Code, made against him which was dismissed under Section 203, Criminal P.C., by a Magistrate and further inquiry has been ordered by the District Magistrate. The grounds of revision are that the matter was of civil nature and that after an inquiry, under Section 202, Criminal P.C., the District Magistrate should not interfere. Apparently the latter argument is that a District Magistrate should only interfere in the case of a complaint which is dismissed without inquiry. Section 202 however directs that there should be inquiry in every case in which process was not issued for the accused. Therefore it appears to me that the argument in ground No. 2 is wrong as this argument alleges that the District Magistrate should not interfere where there has been a full inquiry under Section 202. Criminal P.C. It is, in my opinion, in the case of such an

inquiry that a District Magistrate can interfere and that this is specifically laid down in Section 436, Criminal P.C. Learned Council in argument: attempted to draw some distinction as to whether Magistrate should interfere on the merits of a case on a question of fact or whether he is limited to interference only on a point of law. Learned Counsel argued that it was only on the point of law that a District Magistrate could interfere. I find nothing in Section 436, Criminal P.C., to support this view; but in any case the point does not arise in this case because in my view the District Magistrate has interfered on a point of law. The order of the City Magistrate sets out, that the accused made a promise to pay the balance within 15 days and the complainant stated that he would not have allowed credit to the accused, if he had known at the time that the accused was an insolvent and apparently if the accused had not concealed from him the fact that insolvency proceedings were pending against him. The accused has not apparently been declared an insolvent yet. The City Magistrate stated:

Apparently it was not the duty of Durga Prasad to have told the complainant that insolvency proceedings had been pending against him.

2. Section 415, Penal Code, states in the explanation:

a dishonest concealment of fact is a deception within the meaning of the section.

3. The District Magistrate states:

I think there are good reasons for taking the view that on the facts the accused appears to be technically guilty under Section 420 and that the circumstances do not justify an inquiry being refused by a Criminal Court.

4. He therefore does not differ in regard to the facts, but he differs in regard to the law. Learned Counsel for the applicant in revision did not convince me that the view of law taken by the District Magistrate was erroneous. Under these circumstances, I see no ground for interference in revision. I consider it desirable that a case should be fairly heard by a Criminal Court. I do not consider that the revisional powers of this Court should be used to prevent criminal trials taking place. The prosecution as much as defence is entitled to a fair hearing and it is in

the interests of justice that a fair trial should take place. For these reasons I dismiss this application in revision.

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