

Nanda and ors. Vs. Emperor

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Court : Allahabad

Decided On : Apr-22-1927

Reported in : 102Ind.Cas.344

Judge : Cecil Henry Walsh, J.

Appellant : Nanda and ors.

Respondent : Emperor

Judgement :

Walsh, J.

1. This is an application by Chatra for a report to the High Court under Section 438, Criminal P.C., in revision of an order dated 6th January 1927, by Babu Sri Nivas, First Class Magistrate of Agra, issuing summons for the applicant and others on the complaint of one Chob Singh. The Magistrate is the Sub-Divisional Officer and on 15th July 1926, Chob Singh had made a complaint under the same Sections 392 and 457, I.P.C., against the same accused on the same charge. That complaint had been transferred on 2nd November 1926, to an Honorary Magistrate Syed Ibn Ali who had heard evidence of two witnesses against the accused in the presence of the accused on 6th December 1926, and on 10th December 1926, the Magistrate had discharged the accused. The application for revision is based on the ground that when one Magistrate has discharged an accused person another Magistrate of a different Court cannot entertain a fresh

complaint on the same facts. The following ruling of the Allahabad High Court supports this proposition: Queen-Empress v. Adam Khan [1899] 22 All. 103. In this ruling a Divisional Bench laid down that when a competent tribunal has dismissed a complaint another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it. This ruling has been referred to with approval in. Ram Bharos v. Bahan [1914] 36 All. 129. The S.D.M. in Ms order taking cognizance of the fresh complaint relies on Wollim Cecil Keymer v. Emperor [1914] 36 All. 53. That ruling held that where an accused has been discharged on a particular charge a new complaint may be made to the same Magistrate. In Ram Bharos v. Bahan [1914] 36 All. 129 it was held that a new complaint may be made to the same Court even though the presiding officer is different, Queen-Empress v. Puran. [1886] 9 All. 85 and Emperor v. Mehrban Husain [1906] 29 All. 7 are cases of new complaint to the same Magistrate. I have not been able to find any ruling of the Allahabad High Court in which a different view has been taken from that in Queen-Empress v. Adam Khan [1899] 22 All. 103. The vakil for the complainant admits that he cannot find any such ruling, although there are rulings of other High Courts which take a different view from the Allahabad High Court. I consider, therefore, that on the view of the law taken by the Allahabad High Court, the S.D.M. was not competent to take cognizance of this complaint again. Accordingly I forward the record to the Hon'ble High Court with the recommendation that the order of the Magistrate dated 6th January 1927, should be set aside.

2. To-day the vakil on behalf of complainant has filed an application under Section 436, Criminal P.C., asking this Court to direct that further enquiry should be made into the first complaint which was dismissed by the Honorary Magistrate on 10th December 1926. The facts in this case are briefly as follows: On 11th July 1926 at 10 a.m., the complainant made a report in the thana which was taken down as a complaint of assault under Section 323, I.P.C. by four accused persons who are said to have beaten him with lathis. The writer of the report says that there were no marks of being beaten on the complainant and only a small scratch on his right knee. On 15th July, the complainant filed a complaint in Court under Sections 392/457, I.P.C. In this complaint the matter has grown into the theft of utensils, cloth and grain from his house valued at Rs. 50 or Rs. 60 and the forcing of complainant for putting his thumb mark on a blank piece of paper. Neither the

complaint nor the deposition of the complainant taken at the time mentioned the name of any witnesses. It is only 18 days after the occurrence on 29th July 1926, that the complainant filed a list of 12 witnesses. Three of these were examined on 4th August and eventually the case was transferred to the Honorary Magistrate who received it on 15th November. On 6th December, the complainant produced only two prosecution witnesses and applied for the evidence of the Sub-Inspector, the Chaukidar and another person called Chote Lal. It is admitted that none of these persons were eye-witnesses. The vakil for the complainant based his case on the opinion of the Sub-Inspector that a receipt produced by some of the party of accused to support a cross-case was the receipt which had been taken forcibly from the complainant. This is a matter which would have to be strictly proved in the present case and the evidence appears to me to be quite insufficient and unworthy of credit. I see no reason for any further inquiry into the complaint of Chob Singh. Accordingly under Section 438, Criminal P.C., I refuse to order further inquiry.

JUDGMENT

3. I accept this reference. The view of the Sessions Judge is clearly right. I set aside the Magistrate's order of the 6th January 1927.

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