

Santosh Kumar and ors. Vs. the King

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Court : Kolkata

Decided On : Sep-17-1948

Reported in : AIR1952Cal193

Judge : Sen, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 156(3) and 200; ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 405 and 409

Appeal No. : Cr. Revision No. 714 of 1948

Appellant : Santosh Kumar and ors.

Respondent : The King

Advocate for Pet/Ap. : A.C. Sircar, ;S.S. Mukherjee and ;Bejoy Kumar Bhowse,
Advs.

Judgement :

ORDER

Sen, J.

1. The petitioners are being proceeded against for having committed offences punishable under Sections 409/120B & 477A, Penal Code that is to say, they are being tried for criminal breach of trust, conspiracy & falsification of accounts.

2. Some of the petitioners were the managing agents of the Behala Sree Bank & some were the employees of the managing agents. The proceedings were started on the complaint of one Nani Gopal Haldar, a depositor, who had a current account with this Bank. His case briefly is that the managing agents of the Bank used the money which he deposited in his current account for the purpose of other businesses & thereby they committed the offences charged against them. On this petition of complaint, being filed the learned Magistrate ordered the police to investigate the matter treating the petition of complaint as the First Information Report. The police investigated the matter & submitted a charge-sheet & thereupon the learned Mag. proceeded against the accused petitioners. The present Rule has been obtained against this order & it is prayed that the proceedings be quashed.

3. The first ground urged is that the learned Mag. having taken cognizance of the case when he took notice of the complaint, he should have followed the procedure laid down in Chap. XVI, Cri. P. C. & that he acted without jurisdiction in directing the police to investigate & submit a chargesheet. The learned Magistrate evidently purported to act in accordance with the provisions of Section 156 (3), Cri. P. C. which appears in Chap. XIV of the Code. Sub-section (3) says that any Magistrate empowered under Section 190 may order an investigation by the police. Now, Section 156 (3) can have no application once cognizance of a case is taken on a complaint. The Magistrate on taking such cognizance was bound to proceed in accordance with the provisions of Section 200 & the following sections, that is to say, he was bound to examine the complainant on oath & then either issue process or postpone the issue of process & order an enquiry & report either by another Magistrate subordinate to him or by the police. The learned Magistrate should after receipt of the report decide whether the process should issue or whether the complaint should be dismissed. The present procedure adopted by the learned Magistrate is entirely wrong. I have had to deal with this matter in ('A.C. Samaddas v. Suresh Ch. Jana', Criminal Rev. No. 467 of 1948), and I have held that this procedure is not supported by law. The subsequent proceedings of the learned Magistrate were therefore without jurisdiction. They must be set aside.

4. The question which next arises is whether I should direct that the Magistrate should examine the complainant & then follow the procedure laid down in Chap. XVI of the Code. Now, the facts disclosed by the complaint do not establish any criminal offence. The relationship between a depositor & a bank is the simple relationship of a creditor & a debtor. A depositor who deposits money in a bank in his current account is nothing more than a creditor & it cannot be said that there has been any entrustment to the bank for any particular purpose. The bank is of course liable to refund the money to the depositor when the depositor calls for it, but the money deposited belongs to the bank & the bank is entitled to deal with it as it likes.

5. In these circumstances I hold that no criminal proceedings would lie. I direct that the proceedings be quashed & the accused be discharged from their bail bonds.

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