

The Government Vs. Karimdad

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Court : Kolkata

Decided On : Dec-09-1880

Reported in : (1881)ILR6Cal496

Judge : Richard Garth, C.J. and ;Field, JJ.

Appellant : The Government

Respondent : Karimdad

Judgement :

1. On the 26th July 1880, one Karimdad laid a complaint before the head constable in charge of Kubdia outpost, against one Doorga Churn Ghose, a Government officer, and against his peon, under Section 342 of the Penal Code. The Police enquired into the case and reported that the charge was false.
2. On the 20th August, the Deputy Magistrate in charge of the sub-division recorded his order on the Police report to the effect, that the charge laid was utterly false, and recommended the Magistrate of the District to order the prosecution of Karimdad under Section 211 of the Penal Code. The Magistrate had previously summoned Karimdad to make his statement at head-quarters before one of the Deputy Magistrates; he, however, neglected to attend.
3. On the 31st August, the Magistrate sanctioned the institution of proceedings against Karimdad under Sections 211 and 198 of the Penal Code, and directed the Deputy Magistrate to take up the case.

4. On the 21st September, the Deputy Magistrate, without going into the case, passed the following order:--'As without first hearing the case in which 'Karimdad is the complainant, a case under Section 211 of the Indian Penal Code 'cannot proceed, it is therefore ordered that the Police be directed to send up 'witnesses and Golok Sipp, peon, as accused in the case in which Karimdad 'is the complainant, and the case be fixed for the 30th September. The 'witnesses present to appear on that day.'

5. On the 30th September, Golok Sing was not present, and the Deputy Magistrate addressed the District Magistrate on the subject, and postponed the case until a reply was received.

6. The District Magistrate, considering that the course pursued by the Deputy Magistrate was wrong, transmitted the record, under Section 296 of Act X of 1872, to the High Court.

7. No one appeared before the High Court.

Garth C.J. and Field, J.

8. We are unable to see that the orders passed by the Deputy Magistrate in this case are irregular or illegal. Whatever opinion may have been formed by the Magistrate upon the Police report as to the truth of Karimdad's complaint, when he appeared with his witnesses and asked to be allowed to prove his case, we think that the Magistrate could not, without hearing him and his witnesses, and deciding upon the truth or falsehood of his charge, proceed to put him on his trial under Section 211 of the Penal Code. It is manifest justice that a man ought not to be tried for making a false complaint until he has had an opportunity of proving the truth of the complaint made by him; and such opportunity should be afforded him, if he desire to take advantage of it, not before the Police, but before the Magistrate. If persons are to be prosecuted under Section 211 of the Penal Code upon the mere report of a Police officer that their complaints are not true, the Police are made the judges, whether a complaint is true or false. Such a delegation of magisterial functions is not contemplated by the law, and it requires but little experience of this country to understand how dangerous it would be to the

best interests of justice. Magistrates of all grades cannot understand too clearly that, while the Police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of this evidence when collected.

9. We decline to interfere (see *Empress v. Irad Ally*, I. L. R., 4 Cal., 869; *Empress v. Salik* I. L. R., 1 All. 527; *Empress v. Abul Husain*, I. L. R. 1 All, 497; *Bhokteram v. Heera Kholita*, I. L. R. 5 Cal. 184; and *Ashruf Ali v. The Empress*, I. L. R., 5 Cal., 181).

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