
(1930) 04 AHC CK 0035
In the Allahabad High Court

Kapoor Chand Jain

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 25-04-1930

Acts Referred:

Citation : (1930) 04 AHC CK 0035

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sulaiman, J.—This is an application in revision from an order of the District Magistrate and Collector of Agra including the name of Kapoor Chand in a list of touts u/s 36, Legal Practitioners Act, framed and published by him. A preliminary objection is taken that no revision lies. We think that this question is now concluded by the opinion expressed in Kashi Nath Vs. Emperor, where following an earlier case in the matter of the petition of Madho Ram [1899] 21 All. 181, it was remarked that this Court could interfere in the exercise of the general powers of superintendence conferred upon it by Section 15, High Courts Act, 1871 and Section 107, Government of India Act. We may point out that although this objection was not raised, another Bench also did entertain the application in Ghafoor Khan and Others Vs. Emperor,

2. On the merits we find that the order of the District Magistrate and Collector cannot be supported. Instead of making an enquiry into the complaint himself he thought it fit to entrust the enquiry to the Joint Magistrate under him. The Joint Magistrate took evidence and drew a report in which, so far as Kapoor Chand was concerned, his opinion was that there was a possibility that this man's name had been included in the list on account of party intrigues against him owing to his association with the police. The Joint Magistrate noted that a pleader supported another witness who said that Kapoor Chand was a man of respectable status. The actual recommendation was in the following words:

At any rate the case against this man is doubtful, of which he should be given the benefit.

3. This report bears the date 12th October 1928. On 15th October the District Magistrate and Collector passed the order which is the subject of revision. He started by saying: "I accept the report" and then went on to declare that all the persons including Kapoor Chand were declared touts and remarked:

All these persons were given an opportunity to explain their activities in and about Court and all failed.

4. Although the report of the Joint Magistrate was in favour of Kapoor Chand, the District Magistrate did not give him any opportunity to appear and to be allowed to be heard. It is not correct to say that he had failed to explain his activities because the Joint Magistrate who enquired into his case did not feel satisfied that the case had been made out against him without any reasonable doubt. It is also extraordinary that although the learned District Magistrate and Collector said that he accepted the report he actually differed from the recommendation of the Joint Magistrate so far as Kapoor Chand was concerned. Apart from these irregularities we think that the District Magistrate has acted illegally in declaring Kapoor Chand a tout.

5. u/s 2(A), Legal Practitioners Amended Act (Act 15 of 1926), if the District Magistrate sends the names of persons suspected to be touts to a Subordinate Court and that Court holds an enquiry and reports to the authority which has ordered the enquiry the name of such person who has been "proved to the satisfaction of the Subordinate Court to be a tout" that authority may include the name of Such person in the list of touts. It is therefore quite clear that if the enquiry is entrusted to a subordinate Court it is the subordinate Court which must be satisfied that the person is proved to be a tout. If that authority is not satisfied and does not send up his name, the superior authority which itself made no enquiries cannot include the name of a person who has not been so recommended. The District Magistrate did not make any additional enquiry himself, but merely acted on the report submitted to him. We think that he acted illegally in going contrary to the report.

6. We have already pointed out that no opportunity was given by the District Magistrate and Collector to Kapoor Chand to appear and show cause, particularly when the report of the Joint Magistrate was in his favour. This was in contravention of the proviso to that section. We accordingly allow this revision and set aside the order of the District Magistrate and Collector dated 15th October 1928 so far as concerns Kapoor Chand and direct that his name be not included in the list of touts. We direct that the parties should bear their own costs of this revision.