
(1925) 07 PAT CK 0027
In the Patna High Court

Mahari Dhangar

APPELLANT

Vs

Baldeo Narain

RESPONDENT

Date of Decision : 27-07-1925

Acts Referred:

Penal Code, 1860 (IPC) — Section 211, 420

Citation : AIR 1926 Patna 525

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—This is a Reference by the learned Sessions Judge of Purneah. It appears that on the 3rd December 1924 one Mahari Dhangar filed a complaint before the Sub-Divisional Officer of Purneah in respect of an offence u/s 420 of the Indian Penal Code. The Sub-Divisional Officer examined the complainant; and passed an order in these terms: "Examined complainant, The offence disclosed is cognizable. Sub-Inspector, Kazanchi Hat P.S. to investigate and report by 17th December 1924." The police submitted a final report stating that the case was maliciously false and filed a complaint for the prosecution of the complainant u/s 211 of the Indian Penal Code. It is to be noted that the Sub-Divisional Officer did not take cognizance of the case u/s 211 of the Indian Penal Code, but merely asked the accused to shew cause on the 27th January 1925 why he should not be prosecuted.

2. At the same time the complainant in the case u/s 420 of the Indian Penal Code put in a petition impugning the police report and praying for an enquiry by a Judicial Officer. This petition is under the law a complaint. The complainant was directed to adduce evidence on the 10th February 1925. His witnesses however were not present on that day and he prayed for time. The case was thereupon adjourned to the 19th February 1925, on which seven of the witnesses were present. The Sub-Divisional Officer on that day passed the following order:

Seven witnesses were present. To M. Fakhru'l Hussan Qadri for disposal.

3. Mr. Qadri did not examine any of the witnesses being of opinion that it would be a waste of time to do so. But On looking into the police report and hearing the pleader for the complainant he directed the investigating officer to submit a charge-sheet in the case on the 12th March 1925.

4. On the 12th March, 1925 the Sub-Divisional Officer passed the order which has been recommended for revision by this Court. By that order the Sub-Divisional Officer purported to recall the case from the file of the Deputy Magistrate, Mr. Qadri, and make it over to another Deputy Magistrate, Mr. Duff, with certain instructions as to how he should proceed. The order of the Deputy Magistrate, Mr. Qadri, directing the police to submit a charge-sheet, is also recommended for revision. The ground upon which such recommendation is made is that by his order, dated the 12th March 1925. transferring "the case" to Mr. Qadri for disposal, the whole case u/s 420 of the Indian Penal Code was transferred for disposal, and the transfer must be deemed to have been made u/s 192. In that view the Deputy Magistrate, Mr. Qadri, had full seisin of the case, and if he found that there was a prima facie case he had the right to issue summons against the accused. As regards the order of the Deputy Magistrate upon the police to submit a charge-sheet it is stated that the Deputy Magistrate was not competent to make such an order and therefore, it is recommended that this order too should be set aside.

5. It is, however, contended by learned Counsel appearing against the letter of reference that the Sub-Divisional Officer's explanation should be accepted to the effect that all that Mr. Qadri was asked to do was to enquire and report as to whether the police report; that the complaint was maliciously false was true or not. The substantive case u/s 420 of the Indian Penal Code remained on the file of the Sub-Divisional Officer and was not transferred to Mr. Qadri at all. Various arguments have been advanced on this theory, but it is unnecessary to enter into a consideration of the arguments as the meaning of the order, dated the 12th March, is quite plain on the face of it. It is not proper to decide this matter on the explanation submitted by the Sub-Divisional Officer and specially in view of the fact that the terms of the order itself are quite clear. They show that the order was u/s 192 and that the whole case was transferred. Mr. Qadri, therefore, had full seisin of the case and the Sub-Divisional Officer could not recall the case for the reasons shown in the order or transfer it to another Deputy Magistrate, much less with instructions as to how he should deal with the case. In my opinion the view taken by the learned Sessions Judge is sound. The reference is accepted and the order of the Sub-Divisional Officer dated the 12th March 1925, as well as the order of the Deputy Magistrate asking for a charge-sheet from the police, are set aside.