

(1932) 12 CAL CK 0009
In the Calcutta High Court
Case No : Rev. No. 977 of 1932

Makhan Lal Pal

APPELLANT

Vs

Khuki Sundari Dasya

RESPONDENT

Date of Decision : 08-12-1932

Acts Referred:

Citation : (1932) 12 CAL CK 0009

Judgement

M.C. Ghosh, J.—In this case one Khuki Sundari Dasya made a written petition of complaint against three persons (1) Jaladhar Pal, (2) Prafulla Mohan Pal and (3) Sailendra Mohan Pal alias Makhan Lal Pal, stating that she was a widow with two infant children and that the accused Nos. 1 and 2 were father and son and they were under the influence of accused No. 3; that the three men for some time had been conspiring to deprive her of her property and to turn her out of her house and that in pursuance of that conspiracy on the 7th August, the accused men entered into her house and turned her out. The Magistrate who received the complaint examined the complainant under sec. 200, Cr. P. C, on the same day; but apparently the oral examination was sketchy. Afterwards on the 1st October, 1931, he again examined the complainant further with reference to her written allegations against Makhan Lal. The first two accused men compromised the case with the complainant and they thereupon were acquitted by the Magistrate under sec. 345, Cr. P. C. But the Magistrate proceeded to try the third accused Makhan Pal who has been convicted under sec. 447 of the Indian Penal Code and sentenced to pay a fine of Rs. 100. This Rule was issued on two grounds, namely, (1) that the whole trial has been vitiated by reason of the fact that the order of issuing process against the Petitioner is illegal and ultra vires and (2) that in view of the fact that a piecemeal examination of the complainant is not contemplated by sec. 200, Cr. P. C. or by any other provision of the law, the trying Magistrate acted without jurisdiction in proceeding- to examine the complainant afresh on the 1st October, 1931 and in issuing processes against the Petitioner on the basis of that examination. Upon hearing the learned Advocates and upon a perusal of the records it appears to me that there is no force in either of the two grounds.

The written petition of the complainant was complete in itself. It was the fault of the Magistrate that he did not on the first date completely examine her orally. The examination was sketchy. But on a later date when the Magistrate found the defect in the oral examination, he examined her once again. For this no blame can be attached to the complainant. It is not that she made out a new case on the later date. She had made out the case in her written petition of complaint. The Magistrate certainly should have examined the complainant in full on the first day. But his negligence to do so does not amount to an irregularity which vitiates the trial. I am of opinion that the procedure of the Magistrate, although open to criticism, was not illegal nor was there any illegality in issuing the process against the present Petitioner who was accused No. 3. The learned Advocate has placed before the Court the decision in case of Subal Chandra Namadas v. Ahadulla Sheikh I. L. R. 53 Cal. 606 : 30 C. W. N. 540 (1926). But the facts of that case are entirely different from the present case. There a certain case was made out against two persons. One of them was put upon trial and upon a consideration of the whole evidence he was acquitted. Thereafter a process was issued upon the second accused against whom there was the same allegation and the same witnesses were brought forward to support the allegation. In these circumstances this Court set aside the order issuing process against the second accused. In the present case the first two accused men were not put on trial at all, they having compromised the matter with the complainant, presumably upon paying her adequate compensation. Apparently accused No. 3 did not think it fit to compromise the case but chose to stand the trial. He thus takes the consequence.

2. The fine of Rs. 100 would appear to be excessive but the learned Advocate for the Opposite party points out that the Petitioner is a person of influence and his conduct towards the widow was cowardly. In the circumstances the fine does not appear to be excessive. The Rule is accordingly discharged.