

(1869) 09 CAL CK 0011
In the Calcutta High Court

Shanto Teorni

APPELLANT

Vs

Mrs. Belilias and Others

RESPONDENT

Date of Decision : 16-09-1869

Acts Referred:

Citation : (1869) 09 CAL CK 0011

Judgement

Glover, J.—The Sessions Judge of Hooghly objects to a certain order passed by the Magistrate as illegal, and requests this Court, u/s 434 of the Code of Criminal Procedure, to reverse that order. It appears that a charge of theft was preferred to the Magistrate, and the case made over by him to Mr. Deputy Magistrate Godfrey. The Deputy Magistrate, after taking the deposition of the complainant, considered that there ought to be a Police enquiry, and requested the Magistrate to order that enquiry. The Magistrate did so, and the result was an opinion on the part of the Police Superintendent that the charge of theft was false. There was also a recommendation by that officer that the party complaining should be summoned for preferring a false charge. The Magistrate, in his order upon this report, came to no decision on the question of the original complaint; but merely declared that he would not encourage the bringing of charges of "false complaint," but that the injured person might appear and swear an information if she chose, u/s 212.

2. The complainant, a day or two after this, again petitioned, asking that her witnesses might be summoned to prove the charge of theft. She also objected to the Police proceedings as irregular, and asked that the Police report, together with the other papers in the case, might be sent back to the Deputy Magistrate by whom the case was first entertained. On this, the Magistrate passed the following order: "This case has been dismissed as false, and the accused, Mrs. Belilias, has received permission to prosecute this woman, Shanto Teorni, for false charge. The present petition may be put in defence in that case."

3. In the first place, it appears to us that as the case had once been made over by the Magistrate to the Deputy Magistrate for trial, the Magistrate's jurisdiction

to do anything more in the matter ceased, so long as the transfer to the Deputy Magistrate was in existence. If the Magistrate wished to take any further steps in the matter, or to decide the case himself, he ought, formally, to have withdrawn the case from the Deputy Magistrate's hands, u/s 30 of the Criminal Procedure Code. Not having done so, the only person who could deal with the case was the Deputy Magistrate to whom the trial of that case had been referred.

4. In the next place, we do not find on the record any judicial order on the part of the Magistrate dismissing the plaintiff's charge of theft. It is stated certainly, in one part of the record, that the case "has been dismissed," but we can find no order on the record to that effect; and that being so, there seems to be no reason why the complainant should not be permitted to produce her witnesses before the Deputy Magistrate, and to have the case tried on the merits, unless the Deputy Magistrate considers himself justified, under the provisions of section 180 of the Criminal Procedure Code, in dismissing the case at once as false, after taking the examination of the complainant. We think, therefore, that the Magistrate's order is wrong in law, and should be quashed; and that the case as brought by Shanto Teorni against Mrs. Belilias, should be returned to the Court to which it was originally made over for final disposal.