
(1895) 04 CAL CK 0007
In the Calcutta High Court

Shib Nath Chong

APPELLANT

Vs

Sarat Chunder Sarkar

RESPONDENT

Date of Decision : 01-04-1895

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 560
Penal Code, 1860 (IPC) — Section 211

Citation : (1895) ILR (Cal) 586

Hon'ble Judges : W. Comer Petheram, C.J.;Beverley, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J. and Beverley, J.—This is a reference from the Sessions Judge of Mymensingh, recommending that an order of the Joint Magistrate in the case of Shib Nath Chong v. Sarat Chunder Sarkar, head-constable, by which the complainant is directed to pay Rs. 50 as compensation to the accused u/s 560, Code of Criminal Procedure, or, in default, to suffer simple imprisonment for one month, be set aside. It appears that the Joint Magistrate also sanctioned the prosecution of the complainant for instituting a false charge u/s 211, Indian Penal Code, but that sanction has been revoked by the Sessions Judge.

2. We are of opinion that it was never intended that recourse should be had to the provisions of Section 560, Code of Criminal Procedure, in a case in which the trying Magistrate is of opinion that the complaint was wilfully and maliciously false, and that the complainant should be prosecuted for an offence u/s 211, Indian Penal Code. If, therefore, the Joint Magistrate thought that this was a case in which a prosecution for an offence u/s 211, Indian Penal Code, should be sanctioned, he ought not to have taken action under the provisions of Section 560, Code of Criminal Procedure. To sanction or direct a prosecution, and also to proceed to award compensation u/s 560, Code of Criminal Procedure, was, we think, an improper exercise of his discretion. *Queen v. Rupan Rai* 6 B.L.B. 296. By such action the Joint Magistrate was, in point of fact, prejudging the issue of the charge which he was submitting for trial.

3. In the present case the Sessions Judge has set aside the sanction to prosecute, and we agree in the reasons which he has given in his judgment for so doing; and we think that, for the same reasons, we must set aside the order made u/s 560, Code of Criminal Procedure.

4. it is admitted that the head-constable, with a posse of people, did enter the complainant's homestead, and do considerable mischief to his property, and it is not shown that the head-constable was justified in so doing, even though his object may have been the arrest of one Kama Sheik. It is, therefore, by no means clear that the complainant had not good cause to be aggrieved by the conduct of the police.

5. The order for imprisonment in default of payment of the compensation awarded is, we think, illegal. See the case of Ramjeevan Koormi v. Durga Charan Sadhu Khan ILR Cal. 979.

6. We set aside the Joint Magistrate's order u/s 560, Code of Criminal Procedure, and direct that the sum of Rs. 50, if realized from the complainant, be refunded to him.