

(1869) 09 CAL CK 0034
In the Calcutta High Court

The Queen

APPELLANT

Vs

Mahim Chandra Chuckerbutty and Others

RESPONDENT

Date of Decision : 01-09-1869

Acts Referred:

Citation : (1869) 09 CAL CK 0034

Judgement

Kemp, J.—This is an application, u/s 404, on the part of the prisoners, who have been sentenced to various sentences, under sections 183, 323, 347 and 384 of the Indian Penal Code. The papers were sent for by Justices E. Jackson and Dwarkanath Mitter, and the case has been argued to-day before this bench. It appears to me that the proceedings in this case have been illegal, and that the conviction must be quashed. A complaint may be made either u/s 66 of Act XXV of 1861, to the Magistrate of the district or to a Magistrate in charge of a division of the district; or u/s 135, by either complaint or information to any officer in charge of a Police station. In the latter case, u/s 139, the complaint shall be reduced into writing, and the substance thereof entered into the diary. In the former case, the procedure laid down is that the complainant shall be examined by the Magistrate, the examination shall be reduced into writing, and shall be signed by the complainant and also by the Magistrate. In the case before us, the Judge of the Small Cause Court of Backergunge, Baboo Ganga Charan Shome, wrote to the Magistrate of Backergunge, informing him that certain peons attached to his Court had been resisted by the prisoners, Mahim Chandra Chuckerbutty and others, in the discharge of their duty; that they had been beaten; and that both the peons and the plaintiffs had been confined by the prisoners and their people, who also extorted a sum of Rs. 500 from the plaintiff. The Judge of the Small Cause Court requested the Magistrate to take cognizance of the offence, and to inform his Court of the results of the case. On this, on the back of the letter, Bhagwan Chandra Poddar, the plaintiff in the case, appears to have made a statement; but this statement is not signed by him; and it is not a complaint coming within the meaning of section 66 of the Code of Criminal Procedure, that is to say, it is not an examination reduced into writing and signed

by the complainant as required by the law. The Police were then directed to make a local enquiry on this illegal complaint, and the case was made over to the Deputy Magistrate for trial. Now, u/s 273 of the Code of Criminal Procedure, criminal cases brought before the Magistrate on complaint may be referred by him to any Magistrate subordinate to him. In this case no complaint having been made within the meaning of section 66, the reference by the Magistrate of the case to the Subordinate Magistrate for trial was illegal. The proceedings of the Deputy Magistrate, therefore, being without jurisdiction, must be quashed, and the prisoners discharged.

Markby, J.

I am of the same opinion. It seems to me that there are but three modes in which criminal proceedings can be instituted under the Code of Criminal Procedure. The first one is pointed out by section 66; and in that case the complainant is to be examined by the Magistrate, the examination reduced into writing, and signed by the complainant and by the Magistrate himself. The next mode is u/s 68, which gives power to the Magistrate himself to take cognizance of any offence which may come to his knowledge, and initiate proceedings himself in the same manner as if a complaint had been made. The other is u/s 135, which allows of a complaint being made before a Police officer, and u/s 139, that complaint must be reduced into writing, although it need not be signed; that complaint is referred by the Police to a Magistrate. It appears to me that there was, in this case, neither of these proceedings. The matter having been brought to the notice of the Magistrate by the Judge of the Small Cause Court, the deposition of a person named Bhagwan was taken; but this was not a complaint u/s 66, as Bhagwan did not sign the deposition, so that there was no complaint. Neither was there any complaint made before and reported by the Police. Nor can it be supposed that the Magistrate took cognizance of this offence without complaint u/s 68, because in that case, as was admitted in the argument before us, he could not have referred the case for trial to the Deputy Magistrate u/s 273; that section only empowers a superior Magistrate to refer cases, where the complaint is made to himself or before a Police officer, but not cases where he himself takes cognizance of an offence. It appears to me therefore that there was nothing upon which these proceedings could be founded, and that the conviction must be quashed.

2. It has been contended for the prosecution that, under sections 426 and 439, we ought not to interfere with the sentence passed on account of a mere irregularity or defect, which does not affect the amount of punishment awarded; but I do not think, it can be contended that either of these two sections applies to a case like the present, where the complaint which is laid down in the Procedure Code as the commencement of a prosecution is altogether absent. I do not think, we ought to say that the conviction must stand good, because the punishment awarded would probably have been the same had the proper proceedings been observed. I think it never was intended that these sections

should be used to the extent of doing away altogether with the procedure laid down by the Code, and to rendering convictions valid, where the proceedings prescribed as preliminary to the institution of a criminal prosecution are altogether omitted, and the jurisdiction of the Court which passed the sentence is affected by the omission. If carried to this extent, Magistrates might altogether desert the Code of Procedure. The prisoners will therefore be discharged.