

**CRIMINAL REFERENCE.***Before Sharfuddin and Coxo J.*

1914

April 21.

ABHAYESWARI DEBI

v.

KISHORI MOHAN BANERJEE.\*

*Complaint—Personal presentation of complaint—Complaint of defamation presented by alleged agent of pardanashin but not signed by her—Power of attorney not filed in Court—Necessity of examination of complainant before issue of process Examination of pardanashin on commission—Criminal Procedure Code (Act V of 1898), ss. 198, 200, 503—“At once.”*

The words “at once” in s. 200 of the Criminal Procedure Code clearly indicate that a complaint must ordinarily be presented in person: otherwise a Magistrate should be very loath to take cognisance, and should not accept a complaint, not signed by the alleged complainant, and not preferred by a person duly authorized to institute the specific complaint.

No process can be issued against the accused, either by the Magistrate first taking cognisance, or by the Magistrate to whom the case is transferred, unless and until the Magistrate issuing it has first examined the complainant, and this course is the more necessary in the case of a *pardanashin* to enable the Magistrate to satisfy himself that the complaint is really her action.

When a *pardanashin* makes a complaint, the Magistrate may take cognisance, if satisfied that it is really her complaint, by whatever means it reaches him.

When it is presented on her behalf, the Magistrate may, under s. 503 of the Code, issue a commission for the examination required by s. 200. Section 503 is very wide in its terms, and refers not only to an inquiry or trial but to any other proceeding, and authorises the examination of any “witness”, which includes a complainant.

\* Criminal Reference, No. 1 of 1914, by R. D. Chatterjee, 4th Presidency Magistrate, Calcutta, dated March 25, 1914.

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Where a written complaint of defamation was presented by an alleged agent on behalf of a *pardanashin*, but it was not signed by her, nor was any power of attorney filed before the Magistrate, and he issued process without examining the complainant :

*Held*, that he had no power to issue process in such a case.

THERE appeared in a weekly newspaper called the "*Indian Empire*," printed and published in the town of Calcutta, a series of articles reflecting on the management of the Bijni Raj under the present *Rani*, Abhayeswari Debi, who resided in the Goalpara district in Assam. On the 6th November 1913, one Bhuban Mohan Chatterjee, Assistant Superintendent of the Bijni estate, presented a complaint before the Chief Presidency Magistrate, purporting to be made on behalf of the *Rani*, and as her constituted agent, against Kishori Mohan Banerjee and others, the editor and the printer of the said newspaper, charging them with defamation, under s. 500 of the Penal Code. The petition of complaint was signed by Bhuban but not the *Rani*, and no power of attorney was filed in Court. The Magistrate issued process, without examining the lady, and transferred the case thereafter to the Second Presidency Magistrate who examined several prosecution witnesses, but refused to issue a commission for her examination. On application by her to the High Court, the case was transferred to the Chief Presidency Magistrate who sent it to Babu R. D. Chatterjee for disposal.

On the 24th March 1914, when the case was called on for hearing, the counsel for the accused objected to the trial proceeding on the ground that, under s. 198 of the Criminal Procedure Code, a complaint by the *Rani* was necessary, and that there was nothing to show that the petition presented by Bhuban was her complaint, there being no power of attorney on the record. The Magistrate thereupon referred the

case, under s. 432 of the Code, to the High Court, through the Registrar, in the following terms:—

“Under section 432, Criminal Procedure Code, I beg to refer the following point of law to you for submission to the Hon'ble Judges of the High Court for decision. A case of defamation (section 500, I. P. C.) was instituted in the Court of the Chief Presidency Magistrate of Calcutta on the 6th November 1913, on behalf of Rani Abhayeswari Debi, Rani of Bijni, through her constituted attorney Bhuban Mohan Chatterjee, Assistant Superintendent, Bijni Raj, against Kishori Mohan Banerjee and others. The petition was signed by Bhuban Mohan Chatterjee on behalf of Rani Abhayeswari Debi of Bijni and not signed by the Rani. No power of attorney has yet been filed in this matter . . . . . On the case being called up to-day (24th March 1914), the defence counsel wanted *de novo* trial, and contended that, as the Rani, who is alleged to have been defamed, did not lodge the complaint herself but did so through one Bhuban Mohan Chatterjee who was represented in the petition as her constituted agent, the complaint could not be said to have been made by the party aggrieved, and as such, under section 198, Cr. P. C., the case cannot go on. As this point is not free from difficulty, I submit the record of the case to you for laying before the Hon'ble Judges of the High Court for their decision on the following point:—“Whether the Rani can institute the case of defamation through her agent, Bhuban Mohan Chatterjee, and whether by doing so the requirements of section 198, Cr. P. C., have been met with.

The whole record of the case including the petition of complaint is submitted for their Lordships' decision.”

*Mr. H. N. Sen* (with him *Babu Tarkesswar Pal Chowdhury*), for the accused. The Chief Presidency Magistrate has no jurisdiction, by reason of s. 198 of the Code, to take cognisance, except on the complaint of the person aggrieved viz., the *Rani*: see s. 345. The petition of complaint was not signed by her, nor was any power of attorney filed by Bhuban. Refers to *Chhotalal Lallubhai v. Nathabhai Bechar* (1), *Thakur Das Sar v. Adhar Chandra Missri* (2), *Satya Charan Ghose v. Chairman of the Utterpara Municipality* (3), *Kesri v. Muhammed Bakhsh* (4) and

(1) (1900) I. L. R. 25 Bom. 151.

(3) (1897) 3 C. W. N. 17.

(2) (1904) I. L. R. 32 Calc. 425.

(4) (1896) I. L. R. 18 All. 221.

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*Rangasawmi Gounden v. Sabapathy Gounden* (1). There is no evidence of Bhuban's authority to file the present complaint: *Kali Kinkar Sett v. Nritya Gopal Roy* (2). The power of attorney must show not general authority to prosecute, but authority to file the particular complaint: Mackenzie on Powers of Attorney, p. 33. There is nothing to show that that complaint was really the act of the lady and not that of others acting under the colour of her name.

*Mr. J. N. Roy* (with him *Babu Manmatha Nath Mukerjee*), for the complainant. As the Magistrate has already issued process and transferred the case, the accused cannot now complain of the want of jurisdiction. The person presenting the complaint has a general power of attorney to institute criminal prosecutions. The lady ought to be examined on commission.

COXE J. This proceeding arises out of a complaint, purporting to be made on the part of Rani Abhayeswari Debi against the petitioners, accusing them of committing defamation. The complaint is not signed by the *Rani*, but by one Bhuban Mohan Chatterjee on behalf of the *Rani*. We are informed that there is no power of attorney on the record, and that there is no power of attorney authorizing the presentation of this specific complaint, although there is a general power of attorney authorizing the presentation of criminal complaints. The document was presented to the Chief Presidency Magistrate, who issued process against the accused; and thereafter the case was transferred. The Magistrate, to whom it has ultimately come, has referred for our decision the following point—"Whether the *Rani* can institute the case of defamation through her agent, Bhuban Mohan Chatterjee, and whether by

(1) (1868) 4 Mad. H. C. R. 162.

(2) (1904) I. L. R. 32 Cal. 469.

doing so the requirements of section 198 of the Criminal Procedure Code have been met with."

If the *Rani* makes a complaint to a Magistrate the Magistrate is entitled to take cognizance of it. But before he takes cognizance he must be satisfied that it is her complaint. It is comparatively unimportant by what means the complaint reaches the Magistrate, if really it is her own complaint.

But I hold that the Magistrate should be very loath to take cognizance of any complaint which is not presented in person. The words "at once" in section 200 of the Code clearly indicate that ordinarily a complaint must be presented in person. And I do not think that a complaint should ever be accepted which is not signed by the complainant and is not preferred by a person duly authorized to prefer that specific complaint.

It is perfectly clear to me that the Magistrate in the Court below had no right to issue process against the accused persons in this case. It has been argued that, when a case is transferred under section 192 of the Criminal Procedure Code before the complainant has been examined, process can issue without the examination of the complainant. That argument really has no application to the present case, because, as a matter of fact, process had been issued before the case was transferred. But in any case it is perfectly well settled that a process cannot be issued against an accused person, either by the Magistrate first taking cognizance of an offence, or by the Magistrate to whom the case is transferred under the proviso to section 200 of the Criminal Procedure Code, unless and until the Magistrate issuing process has first examined the complainant; and this is perhaps more necessary in the case of a *pardanashin* lady than in other cases to enable the Magistrate to satisfy himself that the

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complaint is really her own action. In the present case if the complaint is ill-founded, it would be difficult, if not impossible, to fix the *Rani* with any responsibility for the proceeding.

I see no reason, however, why the complainant should not be examined under section 503 of the Criminal Procedure Code. The terms of that section are very wide. They refer not only to an enquiry and a trial but to any other proceeding. The section authorizes the examination of any witness, and a complainant is certainly, in my opinion, a witness. There is, indeed, less objection to the first examination of a complainant than to the examination of a witness under this section, inasmuch as, on the examination of a complainant before process is issued, the accused is not entitled to be present or to cross-examine.

It seems to me, therefore, that the proper course to adopt in this case is to say that, if the complaint on the record is the complaint of the *Rani*, a point on which we have no materials for a decision, the requirements of section 198 have been satisfied. But the Magistrate was wrong in issuing process against the accused persons. In these circumstances it is best to quash the whole proceedings, giving liberty to the *Rani* to make such further complaint as she may be advised. If such complaint is made, the examination of the complainant under Chapter XVI of the Code may be made by a commission, which should be directed to a Magistrate.

SHARFUDDIN J. I agree.

E. H. M.