

CRIMINAL REVISION.*Before Chotaner and Duval JJ.*

ISAF NASYA

v.

EMPEROR.*

1926

Sep. 8.

Complaint—Cognizance taken thereon and complainant examined—Order by the Magistrate taking cognizance directing police enquiry and submission of charge sheet to the Magistrate having local jurisdiction—Legality of the order—Charge sheet sent to the Magistrate having local jurisdiction—Power of the latter to proceed with the case without orders by the former Magistrate under ss. 204 and 192—Criminal Procedure Code (Act V of 1898), ss. 156(3), 200, 202.

When a Magistrate has taken cognizance of a complaint under s. 190 (1)(a) examined the complainant under s. 200 of the Criminal Procedure Code, and ordered a police enquiry under s. 202, he must dispose of the complaint himself under s. 203 or s. 204, and his direction to the police, if they found the complaint established, to submit a charge sheet to the proper Magistrate, is without jurisdiction. S. 156(3) of the Code does not apply to such a case.

Where the police, in accordance with such direction, investigated the case and sent up a charge sheet to a Magistrate having local jurisdiction, he acts without jurisdiction in proceeding with the case on the charge sheet, without an order by the former Magistrate under s. 204 or transfer of the case under s. 192 of the Code.

On the 5th October, 1925, one Khola Barman complained to the Subdivisional Magistrate of Dinajpur that his widowed daughter-in-law was taken away forcibly by the petitioners on her way to the house of a relative. The Magistrate, after examining some witnesses, discharged the accused under section 253 of the Code, on the ground that the offences alleged

*Criminal Revision No. 860 of 1926, against the order of S. Modak, Sessions Judge of Rungpore, dated Aug. 9, 1926.

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were committed in the District of Rungpore. On the 16th February, 1926, a fresh complaint was lodged before the District Magistrate of Rungpore who took cognizance, examined the complainant on oath, and sent the case to the police for enquiry with the following direction :—

“The police will see if there is any evidence for the submission of a charge sheet and after that they will send it to the Magistrate concerned.”

The police investigated the case, and sent up a charge sheet against the petitioners on the 3rd May, to the Subdivisional Officer of Nilphamari, within whose local jurisdiction the offences were committed. The latter thereupon issued a warrant against the petitioners. The Sessions Judge of Rungpore was moved, but he refused to send up a report, under section 438 of the Code, whereupon the petitioners moved the High Court and obtained the present Rule.

Mr. H. C. Guha, Mr. A. K. Fazlul Huq and Babu Jnan Chander Roy, for the petitioners.

The Deputy Legal Remembrancer (Mr. Khundkar), for the Crown.

DUVAL J. In this matter a complaint was lodged before the District Magistrate of Rungpore on the 16th February, 1926, a complaint against certain people of charges under section 366 of the Indian Penal Code and other sections. The complainant was examined on oath, as provided for in section 200 of the Criminal Procedure Code and the Magistrate then passed an order sending the case to the police for inquiry, but adding “the police will see if there is any evidence for the submission of a charge sheet, and after that they will send it to the Magistrate concerned”. As a matter of fact it appears that the alleged place of occurrence was within Nilphamari, a subdivision of the Rungpore district. An inquiry was made by the

police, and, on the 3rd May, a charge sheet was submitted to the Subdivisional Officer of Nilphamari, who thereupon issued a warrant for the arrest of certain accused persons. Certain of the accused subsequently surrendered, and then an application was made to the Sessions Judge to refer the matter to this Court for quashing of the whole proceedings. The Sessions Judge, however, refused to refer the matter to this Court, and this Rule was then obtained from this Court why the proceedings should not be quashed on the grounds (1) that the procedure adopted by the District Magistrate is wrong, inasmuch as he acted under Chapter XVI of the Criminal Procedure Code, and then proceeded under Chapter XIV of the Criminal Procedure Code; (2) that, after having taken cognizance of the case under section 190, clause (a), and proceeded under section 200, the learned Magistrate had no power to act under section 156(3); (3) that his action in directing the police to submit a charge-sheet is illegal and without jurisdiction; (4) that the Subdivisional Magistrate of Nilphamari has no jurisdiction, unless the case is transferred to him according to the provisions of law.

Now the facts seem to be clear; the Magistrate took cognizance of a complaint under section 200 of the Criminal Procedure Code and it would appear that he referred the case to the police for inquiry under his power to do so under section 202 of the Criminal Procedure Code but in giving that order he did not observe that it was for him to pass the necessary order on the police report either under section 203 or section 204. His order, therefore, directing the police, if they found the case to be established, to submit charge sheet to the Magistrate concerned (in this case the Subdivisional Officer of Nilphamari) appears to us to have been without jurisdiction. We do not think that section 156(3)

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can have any application to the case before us. The Magistrate had certainly taken cognizance of the case under section 200, and it appears to us that this section only empowers the Magistrate to order a police inquiry in a case when the Magistrate does not himself issue process at once. It seems, therefore, that the whole of the proceedings of the Subdivisional Officer, Nilphamari, accepting the charge sheet and proceeding with the case, without any order by the District Magistrate under section 204 of the Criminal Procedure Code or any order of transfer of the case to him under section 192 are without jurisdiction and must be set aside. We, accordingly, set these orders aside, and send the proceeding back to the District Magistrate of Rungpore who will now under section 203 or section 204 pass the necessary orders on the police inquiry which has taken place; and if he so thinks he may issue processes and transfer ~~the~~ case to the Subdivisional Officer for trial or inquiry.

The Rule is made absolute to the extent only that the later orders are set aside. The order of the District Magistrate taking cognizance will remain, and he will now pass orders in the manner directed above.

CHOTZNER J. I agree.

E. H. M.