

CRIMINAL REFERENCE.

Before S. K. Ghose and Henderson J.J.

OSMAN SHEIKH

1934

Dec. 6.

v.

HARIPADA BISWAS.*

Quashing—Code of Criminal Procedure (Act V of 1898), s. 159.

The only point for consideration of the High Court in quashing a proceeding instituted on a police charge-sheet is whether the submission thereof is illegal or irregular.

Where a magistrate directed, under section 159 of the Code of Criminal Procedure, an enquiry to be held by the Deputy Superintendent of Police, who, however, did not hold the enquiry, the submission of the charge-sheet by the investigating police officer did not thereby become illegal nor was the proceeding liable to be quashed.

CRIMINAL REFERENCE.

This was a Reference by the Sessions Judge of Khulna, recommending that certain proceedings against the accused should be quashed. The material facts appear from the letter of reference which was as follows :—

The petitioner is one Babu Haripada Biswas, who is a graduate of the Calcutta University, and auditor in the office of the Deputy Accountant-General, Posts and Telegraphs, Calcutta, a member of the *Sadar* Local Board, a director of the Khulna Central Co-operative Bank, and was, at the time of the alleged occurrence, President of the Barrackpur Union Board near Khulna town. The Sanitary Inspector of the District Board of Khulna went for examination of milk at the Barrackpur *hât*. Adulterated milk was suspected in some of the pots, two of which belonged to one Osman Sheikh, on whose first information the present action has arisen. The Sanitary Inspector took the suspected adulterated milk to the dispensary of one Dr. Shibendranath Bhadra, who is admitted, even in the first information report, to be a disinterested and respectable doctor. The pots were taken there for the purpose of examination and taking of samples. As Osman had decamped, at the request of the Sanitary Inspector, the petitioner who was then the President of the Union Board, sent a *chaukidâr* to bring Osman. On his arrival, Osman is said to have assumed a threatening attitude and used abusive language and prevented the taking of samples. The petitioner informed the Circle Officer, a Sub-Deputy Magistrate, about

*Criminal Reference, No. 74 of 1934, made by K. C. Chunder, Sessions Judge of Khulna, dated April 30, 1934.

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it. The Sanitary Inspector reported the matter to the District Board authorities and, on a report from the District Health Officer forwarded by the Chairman of the District Board, action was taken by the Subdivisional Officer, Khulna, for the prosecution of Osman, who had two previous convictions for the same offence under the Food Adulteration Act, and also for criminal intimidation. As far as Babu Haripada Biswas is concerned, he submitted a written report, copy of which will be found with the record, and the Circle Officer, a Sub-Deputy Magistrate, wrote the following note for the Subdivisional Magistrate :—

“S. D. O., I am still lying ill. The President reported the facts to me on the 20th November. The man may be summoned for causing obstruction to a public servant on duty, after a report from the Sanitary Officer concerned.

(Sd.) P. C. Sen, C. O.

22-11-33.”

The occurrence was on the 20th November, 1933.

It appears, and it is not possible on the face of the documents to deny the allegation, that Babu Haripada Biswas was not pulling on well with the local police. A first information was taken by the police from Osman against Haripada Babu and the *chaukidār*. A report from the Circle Officer to the Subdivisional Officer on a letter by Haripada Babu to the Circle Officer intimating him of what the police had done contains the version of the relation between the police and Babu Haripada Biswas from a responsible Government Officer (Sub-Deputy Magistrate). This is what the Circle Officer writes :—

“S. D. O.,

The Daulatpur Police, with encouragement from the Circle Inspector, seem to be consistently against the President of Barrackpur U.B., since their frustration of attempt to put in a *chaukidār* or their nomination under your order. The second Sub-Inspector of Daulatpur has cause of animosity against Haripada Babu and so long as the previous officer in charge (now o/c *Kotesali*) was there he could do no serious mischief. Now that the new o/c is entirely with him things have come to a fine pass. I am sending this letter to you as I am lying ill and bed-ridden for proper measures. This is in connection with the petition I sent you this morning. The man Osman went over to *thānd*.

(Sd.) P. C. Sen, C. O.”

Other documents on record will show that the quarrel between Haripada Babu and the police officer of Daulatpur was over the appointment of this very *chaukidār*, against whom and Haripada Babu the first information was taken by the police. The Subdivisional Officer supported in that quarrel Haripada Babu. The first information that was lodged at the *thānd* was to the effect that the Sanitary Inspector of the District Board had come to the locality for the purpose of taking samples of adulterated milk, but it is alleged by Osman that his milk had not been found adulterated. The Sanitary Inspector, it is admitted in the First Information Report, collected some pots and took them to the dispensary of Dr. Shibendra Babu for the purpose of examination and taking of samples. It is further admitted that Osman, the first informant, was sent for through a *chaukidār* and he went

to Dr. Bhadra's dispensary. Up to this stage, the versions are practically the same. Osman's further story is that on arrival he was asked to identify the other pots and obviously he then told a lie. He said he did not know to whom the pots belonged. It is not alleged even that he had the faintest previous quarrel with Haripada Babu. He said that, under orders of Haripada Babu, the *chaukidār* tied his hands with a *págrhi* and forced him to take his seat at the place. He then identified the pots. The offence alleged was of unlawful confinement by tying his hand and assault by forcing him to take his seat for the purpose of extorting information which Osman knew but about which he had deliberately told a lie. This is if the prosecution story is accepted as the gospel truth.

Haripada Babu, on coming to know what the police had done and on finding that he is liable to be arrested without warrant, appeared before the magistrate with a petition and prayed for action under section 159, Criminal Procedure Code, by the magistrate for having the police case investigated either by a magistrate or by the Deputy Superintendent of Police, as the police officers up to the Circle Inspector were against him. The Subdivisional Magistrate, who had ordered the prosecution of Osman on the complaint of the District Board and who knew the previous relation between Haripada Babu and the local police officers and who had received the official reports of the Sub-Deputy Magistrate (Circle Officer), passed judicial order for an investigation by the Deputy Superintendent of Police releasing Haripada Babu on P. R. It is unnecessary for me to discuss whether a non-compliance with the order of the magistrate for an investigation by a particular officer passed under section 159, Criminal Procedure Code, is curable under section 537 of the Code or not; because the subsequent facts are so astounding that the bare statement of them without the least comment will be sufficient to dispose of any question of section 537, which is not meant for deliberate disobedience of an order. On the judicial order of the Subdivisional Officer for an enquiry by a responsible officer like the Deputy Superintendent of Police some wire was pulled somewhere, of which we have nothing on written record and the next step that we find was that every attempt was made to prevent an enquiry by the Deputy Superintendent of Police. No enquiry was made by that officer. I can do no better than quote what the Deputy Superintendent of Police himself reported to the magistrate on enquiry from the Sessions Judge as to what had happened. This is what the Deputy Superintendent of Police writes:—

“S. D. O., Sadar,

The petition, I understand, was made over to the D. M. (District Magistrate) by the S. P. (Superintendent of Police) protesting (against) your order on the Dy. S. P. for holding an enquiry. Since then neither have I got it back nor have I heard anything about it.

(Sd.) Illegible.

9-4-1934.

Dy. Superintendent of Police, Khulna.”

It appears that administratively for some reason, of which we know nothing, the Superintendent of Police interfered and took the matter up to the District Magistrate. The District Magistrate, as the superior officer of the Subdivisional Magistrate, was competent to withdraw the case to his file under section 528 of the Code and to pass such order cancelling the order of the Subdivisional Officer as he might have pleased. But it

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appears that the District Magistrate did nothing of the kind. On the petition he noted this :—

“F. I. R. which was attached to this petition made over to S. P. personally to-day.

K. A. L. Hill,

5-1-1934.”

So all that we know is that the Superintendent of Police, for some reason best known to himself, interfered in the matter and went up to the District Magistrate. The District Magistrate allowed the order of the Subdivisional Magistrate to stand and passed no counter order. On the other hand, Mr. K. A. L. Hill, I.C.S., District Magistrate, personally made over the First Information Report of Osman to the Superintendent of Police himself.

It appears from the report of the Deputy Superintendent of Police that, in spite of this, he never got any of the papers, nor heard anything further of the matter. A charge-sheet was submitted, without any enquiry by the Deputy Superintendent of Police as ordered by the Subdivisional Officer, against Haripada Babu by the local police Sub-Inspector under section 348, Indian Penal Code, the Sub-Inspector accepting the version of Osman and finding therefrom that a technical offence of wrongful confinement of Osman had taken place and it was for the purpose of extorting information from him. The charge-sheet is a very curious document. In the First Information Report it is definitely mentioned by Osman that Dr. Shibendranath Bhadra, who is a respectable local doctor, had personally seen all the occurrence and it was in front of his dispensary that the whole thing had taken place. Curiously enough, the only respectable person whose name besides that of the Sanitary Inspector and the accused Haripada Babu is to be found mentioned in the First Information Report was not made a witness in the charge-sheet. The reason is not far to seek. Dr. Bhadra was examined in connection with the complaint under the Food Adulteration Act by the Chairman of the District Board against Osman. A certified copy of his sworn testimony before the magistrate will be found with the records of this case and he fully supported the version of *Haripada Babu*. The Sanitary Inspector was also not cited as a charge-sheet witness and his version will be found in the certified copy of his report to the District Health Officer, on which action was taken by the magistrate. It entirely corroborates the story of Haripada Babu as also the deposition of Dr. Shibendra Bhadra.

The petitioner, Babu Haripada Biswas, who is a respectable Government servant serving in Calcutta, has moved this court for referring the case to the High Court for quashing of the proceedings against him. Even at its best, the allegation, on which the local police submitted a charge-sheet, was a very technical and a frivolous one. On the other hand, the versions of respectable men on record like Dr. Bhadra, who is an admitted eye-witness on both sides, are definitely against the story of the prosecution. The Sub-Deputy Magistrate and the Subdivisional Officer both considered from personal knowledge that the petitioner Haripada Babu is in the bad books of the local police of Daulatpur and the Subdivisional Officer under section 159, Criminal Procedure Code, on receipt of the first information report from the police definitely ordered as a magistrate having jurisdiction an enquiry by the Deputy Superintendent of Police. It appears that for some reason or other the District Magistrate, being moved administratively behind the back of others, did not interfere with the order passed by the Subdivisional Magistrate, but personally returned the First Information Report to the Superintendent of Police. It appears further that, for some

unknown reason, the order of the Subdivisional Magistrate was deliberately defied, in spite of the non-interference by the District Magistrate and the Deputy Superintendent of Police never got the paper or heard anything further about the matter. Comment is unnecessary.

The facts I have summarised, and every statement in connection herewith, is based on documentary evidence, will speak for themselves. I recommend that Babu Haripada Biswas should be relieved of the trouble and expense and annoyance of having to meet a frivolous charge like this to the detriment of his public services as an auditor under the Deputy Accountant-General, Posts and Telegraphs, Calcutta, and the proceedings should be quashed.

The explanation of the Subdivisional Officer was called for and will be found with the record. He has not denied any of the allegations, all of which incidentally are supported by documentary evidence.

S. K. Sen and Nanigopal Das in support of the Reference.

Upendrakumar Ray and Amritalal Mukherji for the opposite party.

GHOSE J. It seems to us that this Reference was entirely misconceived. It appears that against the petitioner Haripada Biswas the police have submitted a charge-sheet, alleging an offence under section 348 of the Indian Penal Code. The learned Judge has recommended that the proceeding should be quashed. But at this stage, the only point is whether the submission of the charge-sheet is either illegal or irregular. The learned Judge has referred to circumstances which may quite properly be urged at the trial. It appears that the magistrate at one stage of the case directed an enquiry under section 159 of the Code of Criminal Procedure. His order dated the 25th November, 1933, is to the effect that it was not possible to depute a magistrate and, therefore, he would like the enquiry to be held by the Deputy Superintendent of Police himself. It also appears that, as a matter of fact, the Deputy Superintendent of Police did not hold the enquiry. Whether this was a proper action on the part of the Deputy Superintendent of Police is another matter. But the mere fact that the enquiry was not held by a particular officer as suggested by the magistrate in his above order does not make the submission of the charge-sheet on the part of the investigating police contrary

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to the provisions of the Code of Criminal Procedure.
We must, therefore, decline to interfere at this stage.

The Reference is therefore rejected.

HENDERSON J. I agree. It is clear that the learned Judge has entirely misconceived the meaning and effect of section 159 of the Code of Criminal Procedure.

Reference rejected.

A. C. R. C.