

CRIMINAL REVISION.

Before Bartley and Henderson J.J.

SUNDAR DAS LOGHANI

v.

FARDUN RUSTOM IRANI.*

1939

Jan. 16.

Jurisdiction—Order of discharge without examination of witnesses, if without jurisdiction—Code of Criminal Procedure (Act V of 1898), s. 253(2).

When, after the issue of process and the appearance in Court of the accused pursuant thereto, a Magistrate, on examination of some documents and after hearing both sides but without examining any of the witnesses for the complainant, discharges the accused under s. 253(2) of the Code of Criminal Procedure on the ground that the complaint was a dishonest one, such order of discharge is not without jurisdiction.

Fazlar Rahaman v. Emperor (1) followed.

Mukunda Patra v. Purusattam Shah (2) distinguished.

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The facts of the case were that, on September 29, 1938, the petitioner preferred a complaint against the opposite party in the Court of the Chief Presidency Magistrate, Calcutta, for an offence under s. 420 of the Indian Penal Code. The complainant was examined and summons was issued on the accused. On October 17, as the accused did not appear, a bailable warrant was issued for his apprehension. On October 26, the accused entered appearance and made an application that the proceeding should be quashed alleging that the complaint was a dishonest one in which several vital facts had been suppressed. In the application, reference was made to several documents and it was contended that the complainant had tried to distort a purely civil dispute into a criminal offence. The accused was asked to produce the documents. On October 28, the Magistrate after examination of the documents and hearing arguments

*Criminal Revision, No. 1152 of 1938, against the order of R. Gupta, Chief Presidency Magistrate of Calcutta, dated Oct. 28, 1938.

(1) (1930) I. L. R. 58 Cal. 346.

(2) (1929) 51 C. L. J. 44.

on both sides discharged the accused under s. 253(2) of the Code of Criminal Procedure. He, however, did not examine any witness. The complainant thereupon obtained the present Rule.

Narendra Kumar Basu and *Mani Mukerji* for the petitioner.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharyya, for the Crown.

Suresh Chandra Taluqdar for the opposite party.

HENDERSON J. This is a Rule calling upon the Chief Presidency Magistrate, Calcutta, and the opposite party to show cause why an order of discharge passed under s. 253, sub-s. (2) of the Code of Criminal Procedure should not be set aside.

The petitioner made a complaint on the 17th of October last against the opposite party to the effect that he had committed an offence punishable under s. 420 of the Indian Penal Code. The Magistrate examined the petitioner upon oath and then directed that a warrant should issue for the arrest of the opposite party. The opposite party duly appeared on October 26 and October 28 was fixed for the hearing. On that day, the Magistrate heard both sides and examined some documents; but he did not take the evidence of the petitioner or any of his witnesses. The Magistrate reached the conclusion that the petitioner had deliberately suppressed several facts in his petition of complaint and that the complaint was a thoroughly dishonest one. He, accordingly, discharged the opposite party.

The petitioner then obtained this Rule on the ground that the Magistrate's order was made without jurisdiction. In support of the Rule Mr. Basu pointed out that the procedure laid down in s. 252 of the Code had not been followed. He accordingly contended that the Magistrate's order was without jurisdiction, inasmuch as ss. 252 and 253 are both self-contained.

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I am bound to say that, on this view, I should not be able to attach any meaning to sub-s. (2) of s. 253. Section 252 is not concerned with an order of discharge. The only bar in the Magistrate's way was sub-s. (1) of s. 253. Sub-section (2) removes this bar. Furthermore, the words "at any previous stage of the case" are perfectly clear. It is only reasonable that an accused person should be allowed to show at any stage of the proceedings that there is no case against him: for example, he might show that there was something in the nature of a want of sanction which would render the proceedings invalid: in such a case it would be clearly waste of time to examine the complainant's witnesses.

This view finds support in the decision of the case of *Fazlar Rahaman v. Emperor* (1). We respectfully agree with the observations of Suhrawardy J. in that case.

Mr. Basu contended that that learned Judge gave a contradictory decision in the case of *Mukunda Patra v. Purusattam Shah* (2). Though there is one passage in the actual judgment which would support this view, we are satisfied that the judgment proceeded upon other grounds. The Rule was not opposed and in showing cause the Magistrate admitted that he could not defend his proceedings. The point at issue in this Rule was not even considered, and the ground of the decision was that the reasons given for the order of discharge were quite inadequate. We can find nothing here in conflict with the views laid down by that learned Judge in the case to which I have already referred to.

The result is that this Rule must be discharged.

BARTLEY J. I agree.

Rule discharged.

A. C. R. C.

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