

CRIMINAL REVISION.

Before Bartley and Henderson J.J.

KANGALI MOLLA

v.

EMPEROR.*

1938
Dec. 9.

Nārāji petition—Further enquiry, when must be made—Nārāji petition, when a complaint—Dismissal of complaint, Effect of—Code of Criminal Procedure (Act V of 1898), s. 203—Indian Penal Code (Act XLV of 1860), s. 182.

It may be unreasonable to convict a petitioner for giving false information to the police when there is still a possibility that his own case may be found to be true, but when a *nārāji* petition, impugning the police report to the effect that the information lodged was false, has been actually dismissed by the Magistrate under s. 203 of the Code of Criminal Procedure, there is nothing to prevent the trial of the informant under s. 182 of the Indian Penal Code proceeding.

If the person whose *nārāji* petition has been dismissed is dissatisfied with the order, he should file an application in revision to get it set aside and a further enquiry ordered. When he does not do so, no question of prejudice can arise.

Shekandar Mia v. Emperor (1) dissented from.

When no charge is brought against anybody in a *nārāji* petition, it does not amount to a complaint at all.

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The facts of this case were that one Faimuluddin collected a sum of money on behalf of his master from a *hāt* and spent the night, as he usually used to do, in the house of the accused petitioner Kangali. Faimuluddin woke up at night and found Kangali groping about with a lamp near the cash box in which the money had been kept. It was subsequently found

*Criminal Revision, No. 739 of 1938, against the order of R. H. G. Johnston, District Magistrate of Rajshahi, dated May 11, 1938, confirming the order of J. K. Biswas, Magistrate, Second Class, Nator, dated March 11, 1938.

that the money was missing. Faimuluddin, however, did not suspect Kangali at that time and sent the latter to the police station for lodging an information of the theft. The information given by Kangali to the police was, however, to the effect that a few rupees of his own money had been stolen, but he did not mention about the substantial loss of Faimuluddin's money. An investigation was held and on December 9, 1937, the police submitted a report that Kangali's information was false and prayed for his prosecution under s. 182 of the Indian Penal Code. On the same day, Kangali filed a *nârâji* petition impugning the police report, but he brought no charge against any one. The matter was then sent to the Inspector of Police for enquiry and on January 12, 1938, the *nârâji* petition of Kangali was dismissed under s. 203 of the Code of Criminal Procedure. On the same day, Kangali was summoned to stand his trial under s. 182 of the Indian Penal Code. He was convicted and sentenced thereunder by the trial Court. An appeal to the District Magistrate of Rajshahi was dismissed whereupon the petitioner obtained the present rule.

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Amares Chandra Roy for *Surajit Chandra Lahiri* for the petitioner.

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

HENDERSON J. This is a Rule calling upon the District Magistrate, Rajshahi, to show cause why the conviction of the petitioner and the sentence passed on him under s. 182 of the Indian Penal Code should not be set aside on grounds Nos. 1 and 2 attached to the petition. These two grounds are really tautological and the complaint made by the petitioner is that he ought not to have been put on his trial while the *nârâji* petitions filed by him were undisposed of.

We have already, in dealing with another case this morning, said that there are authorities for that proposition. It would certainly be unreasonable to

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convict a petitioner for giving false information, when there is still a possibility that his own case might be found to be true.

We have been through the record, and we have found that the petition loosely called a *nârâji* petition was actually dismissed by the Magistrate under s. 203 of the Code of Criminal Procedure. It was, therefore, finished and done with, and there was nothing further to prevent the trial proceeding. We may, however, observe in passing that, inasmuch as no charge was ever brought against anybody by the petitioner, the petition filed by him was not really a petition of complaint at all.

The learned advocate, who appeared in support of this Rule, however, relies upon a decision of Mitter J. in the case of *Shekandar Mia v. Emperor* (1). That decision certainly supports his contention. But with great respect to the learned Judge we are of opinion that that case was wrongly decided. We are unable to see how, when a complaint has been dismissed, it can be made a ground for holding up other proceedings. The learned Judge seems to have been influenced largely, because he thought that the accused person would be prejudiced. In our judgment no question of prejudice can arise. If the accused person was dissatisfied with the order dismissing his complaint he could file an application in revision and possibly get it set aside and a further enquiry ordered. But when he does not do so, no question of prejudice can arise. With great respect to the learned Judge, he was in effect deciding an application against an order of dismissal, rather an application against a subsequent conviction and sentence.

We accordingly discharge this Rule.

BARTLEY J. I agree.

Rule discharged.

A. C. R. C.