

recover the money and under section 78 he can only be discharged from his liability to pay it by payment to the holder.

Whether a person not named as the payee or indorsee of a promissory note can sue upon it as being the beneficial owner is, in my opinion, a question, that does not arise in this case and I therefore refrain from discussing it here. I should however state that I have lately decided the question in the negative in *Sadagopa Ayyangar v. Ramanuja Ayyangar*(1) which decision has been confirmed by a Bench of two Judges in *Ramanuja Ayyangar v. Sadagopa Ayyangar*(2). The matter therefore seems to be finally settled so far as this Court is concerned.

Holding that the defendant had no good defence to the action, I would reverse the decree of the District Judge, and give the plaintiff a decree for the amount sued for with costs throughout.

In the result, the petition is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Sankaran Nair.

MAHOMED ABDUL MENNAN (ACCUSED), PETITIONER,

v.

PANDURANGA ROW (COMPLAINANT), RESPONDENT. *

1904.
October 12,
13.

*Criminal Procedure Code—Act V of 1898, ss. 203, 435, 439—Complaint—
Complaint dismissal of—Revival of Proceedings—Illegality.*

When an original complaint is dismissed under section 203 of the Code of Criminal Procedure no fresh complaint on the same facts can be entertained so long as the order of dismissal is not set aside by a competent authority.

Mir Ahwad Hossein v. Mahomed Askari, (I.L.R., 29 Cal., 728), differed from.

This was a petition to revise the order of the Stationary Sub-Magistrate of Tenali passed in the following circumstances:—

The petitioner was charged with receiving and retaining property in respect of which criminal breach of trust had been committed. After the case for the prosecution had been closed, the petitioner filed a petition stating that a charge, based upon

(1) O.R.P. No. 12 of 1904 (unreported).

(2) I.L.R., 28 Mad, 205.

* Criminal Revision Case No. 232 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of M.B.Ry. T. Sitaramiah, Stationary Sub-Magistrate of Tenali, in Calendar Case No. 126 of 1904.

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the same set of facts, had been preferred against him by an undivided brother of the complainant and dismissed under section 203 of the Criminal Procedure Code by the Stationary Sub-Magistrate, Bezwada. He objected that the Court had no power to entertain the second complaint until the order of dismissal passed by the Stationary Sub-Magistrate, Bezwada, had been set aside. The Stationary Sub-Magistrate in disposing of the case was of opinion that the two complaints did not relate to the same set of facts, but in discussing the case upon the assumption that the two complaints were identical, held that the Court had power to rehear the case and directed the case to be proceeded with.

Dr. S. Swaminadhan for petitioner.

Acting Public Prosecutor and the Hon. Mr. P. S. Sivaswami Ayyar for respondent.

The following order was passed :—

ORDER.—As against the petitioner, the first accused, the present complaint is exactly on the same facts as the previous complaints which were dismissed under section 203 of the Code of Criminal Procedure on the ground that *prima facie* no criminal offence was disclosed. On revision the District Magistrate refused to interfere with the Magistrate's order and in our opinion that order was right. On the merits therefore we think that this complaint against the petitioner should not have been entertained, and we are further of opinion that, in law, the Magistrate was not competent to entertain it. We are unable to agree with the decision of the majority of the learned Judges of the Calcutta High Court in the case of *Mir Ahwad Hussein v. Mahomed Ashari*(1) and we concur in the previous decisions of the same Court in *Nibratan Sen v. Jogesh Chundra Bhattacharjee*(2) and *Komal Chandra Pal v. Gour Chand Audhikari*(3).

The Allahabad High Court and this Court have taken the same view (see *Queen-Empress v. Adam Khan*(4) and the rulings of the Court referred to in Weir's 'Criminal Rulings', pp. 874 and 875).

The order of the Magistrate dated the 31st of May last directing that the trial be proceeded with on the new complaint is accordingly set aside so far as the petitioner, the first accused, therein is concerned, and the complaint as against him is dismissed.

(1) I.L.R., 20 Calc., 726.

(2) I.L.R., 23 Calc., 983.

(3) I.L.R., 24 Calc., 286.

(4) I.L.R., 22 All., 106.