

upon the particular facts of it. In our judgment the order of remand is erroneous. We accordingly set it aside, and, allowing the appeal with costs, remand the case to the Court below with directions to readmit it and dispose of it according to law.

1906

SHIB
KUNWAR
SINGH
v.
SHEO
PRABAD
SINGH.

REVISIONAL CRIMINAL.

1906

February 16.

Before Mr. Justice Sir George Know.

IN THE MATTER OF THE PETITION OF DUKHI KEWAT.*

Criminal Procedure Code, sections 528 and 537—Transfer—Notice—Reasons for transfer not recorded, the transfer being obligatory—Police Officer against whom a complaint was made called upon to submit an explanation.

A complaint was made in the Court of a Deputy Magistrate accusing a Sub-Inspector of Police of offences under sections 323 and 384 of the Indian Penal Code. The Deputy Magistrate brought the complaint to the notice of the District Magistrate, who without recording his reasons for so doing, but in obedience to an order of Government, transferred the case to his own file. The District Magistrate also called upon the officer accused to report as to any reason which he knew for the complaint having been made against him. This report was placed on the record, and was used, as the Magistrate stated in his order, to supply grounds for cross-examining the witnesses produced by the complainant. *Held* that omission on the part of the Magistrate to record his reasons for transferring the case was not under the circumstances more than an irregularity, and that his action in calling for a report from the Sub-Inspector and the use made of that report were not improper. *Baidya Nath Singh v. Muspratt* (1) dissented from. *Held* also, that where a District Magistrate transfers a case from the file of a Subordinate Magistrate to his own, it is not necessary that he should issue notice to the complainant before doing so.

ONE Dukhi Kewat filed a complaint in the Court of a Deputy Magistrate, accusing Shifayat-ullah, a Sub-Inspector of Police, of offences under sections 323 and 384 of the Indian Penal Code. The Magistrate in whose Court this complaint was filed sent the papers to the Magistrate of the district, who without recording his reasons for so doing, but apparently in obedience to a general order of Government (*vide* Manual of Government Orders, Department VI, p. 104), transferred it to his own

* Criminal Revision No. 733 of 1905.

(1) (1886) I. L. R., 14 Cal., 141.

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Court. The District Magistrate sent for the complainant and his witnesses and examined them. He also called upon the Sub-Inspector charged for a report as to the reasons for the charge being made. This report was placed upon the record, and was used by the Magistrate as supplying grounds for cross-examining the complainant and his witnesses. Ultimately the Magistrate, after careful consideration of the case, dismissed the complaint as false under section 203 of the Code of Criminal Procedure. The complainant thereupon applied to the Sessions Judge asking for further inquiry into his complaint. This application was rejected, and he then came to the High Court with an application asking that the order of the Sessions Judge might "be revised," and meantime that proceeding against him under section 211 of the Indian Penal Code might be stayed.

Mr. *R. K. Sorabji*, for the applicant.

The Assistant Government Advocate (*Mr. W. K. Porter*) for the Crown.

KNOX, J.—This is an application for revision of an order passed by the Court of Session at Azamgarh, whereby the Sessions Judge confirmed an order passed by the District Magistrate of Azamgarh, dismissing a complaint brought by one Dukhi against Shifayat-ullah, a Sub-Inspector of Police. Three reasons are urged why the order of the learned District Magistrate should be set aside. The first is that no formal transfer of the case took place from the Court of the Magistrate of the first class to the Court of the District Magistrate. Upon referring to the file of the case I find that the complaint was instituted in the Court of a Deputy Magistrate. The Deputy Magistrate examined the complainant and on the very same day sent the case to the District Magistrate. As the District Magistrate says he transferred the case, I take his order to be an order passed under section 523 of the Code of Criminal Procedure. If the supposition is correct the Magistrate when transferring the case should have placed on the record his reasons for the transfer. The reasons for the transfer are obvious. The Government of these Provinces, by an order passed on the 13th of September, 1902, to be found in the Manual of Government Orders, Department VI, p. 104, has directed Magistrates to withdraw from

Subordinate Magistrates under section 528, paragraph 2, of the Code of Criminal Procedure, all cases in which a complaint has been made that a police officer has committed an offence under the Penal Code. Although the reasons should have been recorded, I agree with the learned Judge in holding that the mere omission to record them, though an irregularity, does not invalidate the subsequent proceedings.

The second reason urged is that no notice was given to the complainant to show cause against the transfer. I know no law requiring notice to be given.

Lastly, the Magistrate is said to have acted irregularly and illegally in calling for a private report from the accused, and my attention has been called to the case of *Baidya Nath Singh v. Muspratt* (1). This same point was taken before the Magistrate, and he has dealt with it in his order of the 2nd of October 1905. It is true that the Magistrate did call upon the Sub-Inspector concerned to report what he knew about the complainant and to send up all papers concerning it. The Magistrate placed the report, when received, upon the record, and he has shown that he looked upon this order in the light of an order to show cause why process should not issue against him upon the complaint preferred by Dukhi. The Magistrate appears to have dealt with the complaint carefully and to have acted very properly and discreetly in eventually dismissing it after inquiry made under section 203. I see no reason for interfering. I dismiss the application.

(1) (1886) I. L. R., 14 C.L., 141.

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