

1905
November 21.

Before Mr. Justice Richards.

GULLAY v. BAKAR HUSAIN AND OTHERS.*

*Criminal Procedure Code, section 437—Revision—Practices—Lower Court
having concurrent jurisdiction in revision with the High Court.*

Where the Magistrate of the District dismissed a complaint under the provisions of section 203 of the Code of Criminal Procedure, the High Court declined to entertain an application by the complainant asking for further inquiry under section 437 of the Code, when no application for that object had been made to the Sessions Judge. *Emperor v. Kalicharan* (1) followed.

ONE Gullay presented a complaint in the Court of Magistrate subordinate to the Magistrate of the District of Jhansi against one Bakar Husain, a Sub-Inspector of Police, and other persons. The Magistrate, to whom the complaint was presented, examined the complainant, and then, in view of an executive order that cases in which charges were made against the police should be laid before the District Magistrate, sent the papers to the District Magistrate. That officer passed an order taking the case on to his file; re-examined to some extent the complainant; heard some of his witnesses, and then dismissed the complaint, in so doing purporting to act under the provisions of section 203 of the Code of Criminal Procedure. The complainant thereupon applied to the High Court under section 437 of the Code asking that the District Magistrate might be directed to make further inquiry into the case.

Babu *Sital Prasad Ghosh* for the applicant.

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

Mr. B. E. O'Connor, for the Sub-Inspector.

RICHARDS, J.—A complaint was made by the present applicant against a Thanadar alleging that he had been guilty of corruption. This complaint was made in the Criminal Court, and in the ordinary course of disposal of business the complaint came before a Magistrate of the first class. He examined the complainant, and then, in compliance with some executive order, directed the papers to go before the District Magistrate. This direction was due to the practice that complaints of the nature in question come before the District Magistrate and not the ordinary

* Criminal Revision No. 602 of 1905.

(1) Weekly Notes, 1904, p. 232.

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O.
BAKAR
HUSAIN,

Magistrates. It seems to me that it would be a much better practice if, the moment it was seen that the particular complaint was one of a description which ought to be disposed of by the District Magistrate, the complaint should at once, and before the examination of the complainant was put on the file, be sent to the District Magistrate. In the present case, however, the District Magistrate made an order taking over the complaint, and he proceeded to re-examine the complainant, no doubt making some use of the examination which had already been recorded by the Magistrate of the first class. He then proceeded to dismiss the complaint, clearly purporting to act under the provisions of section 203 of the Code of Criminal Procedure. The present application is one by way of revision seeking further inquiry under section 437 of the Code of Criminal Procedure. Section 437 of the Code would not apply to the present case unless the complaint had been dismissed under section 203. We accordingly have a complaint made, the District Magistrate examining the complainant, and after such examination dismissing the complaint, and following on that we have the present application which treats the proceeding of the District Magistrate as a proceeding dismissing the complaint under section 203. I accordingly think that I am quite justified in dealing with the present case apart altogether from the complication, if not irregularity, caused by the fact that the Magistrate of the first class had examined the complainant before he sent the papers on to the District Magistrate. If the case is dealt with as an application under section 437, it is contended that the present application ought to be refused on the ground that it is open to the applicant to apply in the first instance to the Sessions Judge and that it is the practice of this Court not to entertain such an application for revision when the Sessions Court has concurrent jurisdiction unless a previous application has been first made to the lower Court. In support of this contention I am referred to the case of *Emperor v. Kalicharan* (1). It is very important that the practice of this Court should be uniform, and I accordingly follow the ruling in this case just referred to, and I dismiss the application.