

the appeal, set aside the decree of the court below, and remand the case to that court with directions to re-admit it on its original number in the file and proceed to hear and decide it according to law. The costs of this appeal will abide the result.

Appeal decreed and cause remanded.

1913

RAM
MANORATH
SINGH
v.
DILRAJI
KUNWARI.

REVISIONAL CRIMINAL.

Before Mr. Justice Ryves.

RAM BHAROS AND OTHERS v. BABAN *

*Criminal Procedure Code, section 203—Complaint—Dismissal of complaint—
Second complaint in pari materia—“ Same Court ”—Jurisdiction.*

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January, 2.

Where the question is as to the competence of a magistrate to entertain a second complaint *in pari materia* with a former complaint which has been dismissed under section 203 of the Code of Criminal Procedure, it is not necessary that both complaints should be before the same person, but before the presiding officer of the same court.

Queen-Empress v. Adam Khan (1) distinguished. *Queen-Empress v. Umedan* (2) and *Emperor v. Keymer* (3) referred to.

THE facts of this case were as follows :

On the 20th of September, 1913, Musammat Kalia, the wife of one Baban, made a report at the police station charging six persons with having assaulted her husband. On the 2nd of October, 1913, Nachko, the brother of Baban, filed a complaint in the court of the District Magistrate against nine persons with respect to the same assault on Baban as had been reported by Musammat Kalia. The District Magistrate forwarded Nachko's complaint to Mr. White, who was the Sub-Divisional Officer, for disposal. Mr. White ordered an inquiry under section 202 of the Code of Criminal Procedure, and on the 18th of October, 1913, he dismissed Nachko's complaint under section 203 of the Code. On the 22nd of October, 1913, Baban made a complaint against six out of the nine persons named by Nachko and alleged the same facts as reported by Musammat Kalia. Mr. White ordered that the police papers and the papers in Nachko's case should be put up along with Baban's complaint, on the 28th of October, 1913. Before that date Mr. White ceased to be the

* Criminal Revision No. 1097 of 1913 from an order of Suraj Din Bajpai, Magistrate, first class, of Mirzapur, dated the 11th of November, 1913.

(1) (1899) I. L. R., 22 All., 106. (2) Weekly Notes, 1905, p. 86.

(3) (1913) I. L. R., 36 All., 53.

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Sub-Divisional Officer and was replaced by Mr. Suraj Din Bajpai. Mr. Suraj Din Bajpai took up the case and ordered process to issue against the accused on the 11th of November, 1913.

Against this order the accused applied in revision to the High Court.

Mr. D. R. Sawhny, for the applicants.

Munshi Parmeshwar Dayal, for the opposite party.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

RYVES, J.—On the 20th of September, 1913, Musammat Kalia, the wife of one Baban, made a report at the police station charging six persons with having assaulted her husband. On the 2nd of October, 1913, Nachko, the brother of Baban, filed a complaint in the court of the District Magistrate against nine persons with respect to the same assault on Baban as has been reported by Musammat Kalia. The District Magistrate forwarded Nachko's complaint to Mr. White, who was the Sub-Divisional Officer, for disposal. Mr. White ordered an inquiry under section 202 of the Code of Criminal Procedure, and on the 18th of October, 1913, he dismissed Nachko's complaint under section 203 of the Code. On the 22nd of October, 1913, Baban made a complaint against six out of the nine persons named by Nachko and alleged the same facts as reported by Musammat Kalia. Mr. White ordered that the police papers and the papers in Nachko's case should be put up along with Baban's complaint, on the 28th of October, 1913. Before that date Mr. White ceased to be the Sub-Divisional Officer and was replaced by Mr. Suraj Din Bajpai. Mr. Suraj Din Bajpai took up the case and ordered process to issue against the accused on the 11th of November, 1913. Against that order this application in revision has been filed on the ground that, according to the decision of this Court in *Queen-Empress v. Adam Khan* (1), Mr. Suraj Din Bajpai had no jurisdiction to proceed with the case, inasmuch as Mr. White had already dismissed a complaint in the same matter. The case of *Queen-Empress v. Adam Khan*, as stated by the learned Judges who decided it themselves, is only applicable to exactly similar facts. The learned Judges say:—"We desire it to be distinctly understood that we decide nothing except the question actually

raised by the facts in this case, which is, that when a competent tribunal has dismissed a complaint another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it." In that case the first complaint had been made in the court of an Honorary Magistrate, who dismissed it under section 203 of the Code of Criminal Procedure. A similar complaint against the same person was then made in the Court of a Deputy Magistrate. Both the Honorary Magistrate, and the Deputy Magistrate were Magistrates of equal jurisdiction, namely, Magistrates of the first class. In this case at first sight there is undoubtedly a great similarity between the facts now before me and the facts in that case. There is, however, this distinction. Nachko's complaint was disposed of by Mr. White, to whom it had been sent, because he was the Sub-Divisional Magistrate having jurisdiction over the place where the offence was alleged to have been committed. He dismissed that complaint, as stated above, but when on the 22nd of October, Baban put in his complaint Mr. White entertained it, at any rate to this extent that he fixed a further date for its disposal. Mr. Suraj Din Bajpai took up the matter simply because he had become the Sub-Divisional Magistrate and was thus seised of the case as the successor of Mr. White. In other words, it was the same tribunal although the incumbent was a different individual. In this view Mr. Suraj Din Bajpai would not be precluded from entertaining Baban's complaint as has been held in *Queen-Empress v. Umedan* (1) and other cases in the Court, the last of which was decided by a Bench of which I was a member, on the 28th of November, 1913, that is, Criminal Revision No. 843 of 1913, *Emperor v. Keymer* (2). But whether the ruling in I. L. R., 22 All., 106, is or is not distinguishable on the ground suggested, it seems to me that this is certainly a case in which there should have been a magisterial inquiry. It appears that on the 28th of September, 1913, both the wife of Baban and Raghunath, one of the men whom she charged with having assaulted her husband, made counter-complaints. Nachko and Raghunath both filed complaints in court, apparently being dissatisfied with the action of the police. Both cases were sent to Mr. White for disposal. He accepted apparently the report of the police and dismissed both cases: This I think

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(1) Weekly Notes, 1895, p. 86.

(2) (1913) I. L. R., 33 All., 52.

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is a case in which this Court may properly take action under section 437 of the Code of Criminal Procedure. I, therefore, direct that Baban's complaint be returned to the learned District Magistrate and that he will either inquire into the same himself or will have it inquired into by some competent magistrate subordinate to himself. If Mr. White is still in the district it might be convenient for him to dispose of the matter.

Further inquiry ordered.

1914

January, 13.

*Before Mr. Justice Ryves and Mr. Justice Piggott. **

GHURBIN KOERI v. KHALIL KHAN AND OTHERS.*

Criminal Procedure Code, sections 250, 537—Frivolous or vexatious complaint—Compensation—Procedure—Irregularity.

A Magistrate, after recording the evidence for the prosecution and the statement of the accused, came to the conclusion that the complaint was unfounded and discharged the accused, and in the same order called upon the complainant to show cause, under section 250 of the Code of Criminal Procedure, why he should not pay compensation to the accused. Four days later, after hearing the complainant, the Magistrate passed an order directing him to pay compensation.

Held that the proceedings, though not strictly in accordance with section 250 of the Code, were not so far at variance with its provisions as to fall outside the purview of section 537. *Jugal Kishore v. Abdul Karim* (1) and *Emperor v. Punamchand Hirachand* (2) followed. *In the matter of the complaint of Sajdar Husain* (3) distinguished.

THE facts of this case were as follows :—

A complaint was filed under section 506 of the Indian Penal Code. After the examination of the prosecution witnesses and the statement of the accused were recorded, the Magistrate came to the conclusion that the offence was not proved and that the complaint was frivolous and vexatious. The Magistrate discharged the accused, and at the same time passed an order directing the complainant to show cause why compensation should not be awarded to the accused under section 250 of the Code of Criminal Procedure. Four days later he passed an order for the payment of compensation. The complainant appealed, and the Sessions Judge, being of opinion that the order was bad in law, referred the case to the High Court.

*Criminal Reference No. 1099 of 1913.

(1) Weekly Notes, 1905, p. 214. (2) (1906) 8 Bom., L. R., 347.

(3) (1903) I.L.R., 25 All., 315