

RICHARDS, C. J. and BANERJI, J. —Having regard to the circumstances of this case and to the pleadings, we cannot say that it was wrong to grant to the plaintiff a decree for possession of the property in suit. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

1913

UMRAO SINGH
v.
RAMJI DAS.

REVISIONAL CRIMINAL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Ryves.

EMPEROR v. W. O. KEYMER. *

1913
November, 28.

Criminal Procedure Code, section 437—Accused once tried and discharged—Fresh inquiry into the same charge on a second complaint—Jurisdiction.

Held that it is competent to a magistrate who has tried and discharged an accused person on particular charges to again inquire into the same charges on a second complaint. Queen-Empress v. Umedan (1) followed.

THE facts of the case, stated briefly, were as follows:—One Mrs. Williams brought a complaint against Keymer charging him with cheating and criminal misappropriation in connection with the purchase of a carriage and a motor car for her. The case was tried at length, and on the 17th of March, 1913, the trying magistrate, being of opinion that the charges were not made out by the evidence adduced, discharged Keymer on all the charges. Some time later Mrs. Williams made a fresh complaint to the police, accusing Keymer of criminal misappropriation of a sum of Rs. 182 which she had paid to him in connection with the purchase of the motor car. This item of Rs. 182 had been included in the first complaint and was dealt with at the trial ending with the order of discharge, dated the 17th of March, 1913. The police made a fresh report upon the second complaint of Mrs. Williams, and the same magistrate who had discharged the accused revived the case against him. The accused applied to the High Court in revision against the order of revival.

Babu Satya Chandra Mukerji, for the applicant:—

The first complaint covered the matter of Rs. 182 which is the subject of the present proceedings. The accused having been tried and discharged on that complaint, and the order of discharge not having been set aside by a competent authority under section 437 of the Code of Criminal Procedure, the matter cannot be revived.

* Criminal Revision No. 843 of 1913 from an order of G. O. Byrne, Joint Magistrate of Benares, dated the 8th of August, 1913.

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

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KEYMER.

The present case is different from a case where the first complaint is dismissed under section 203 of the Code of Criminal Procedure. The case against the applicant was tried out at length and he was then discharged. This case is not, therefore, covered by the rulings in *Queen-Empress v. Umedan* (1) and *Emperor v. Mehrban Husain*, (2). There is no case of this High Court which is exactly in point; but the following authorities are in my favour:—*Nilratan Sen v. Jogesh Chundra Bhuttacharjee* (3), *Komal Chandra Pal v. Gour Chand Audhikari* (4), *Mahomed Abdul Mennan v. Pancharanga Row* (5) and *Queen-Empress v. Adam Khan* (6).

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

There is nothing to prevent the same magistrate who has dismissed a complaint or discharged an accused person from reopening the case on a fresh complaint or a fresh police report. He can do so even without any fresh complaint. Section 437 does not bar such action on the part of the Magistrate. The point is covered by authority; and there is no essential difference, as far as this point is concerned, between a case where the complaint is dismissed under section 203 of the Code of Criminal Procedure and a case where the accused person is discharged. I rely on the following authorities:—*Queen-Empress v. Umedan* (1), *Emperor v. Mehrban Husain* (2), *Dwarika Nath Mondul v. Beni Madhab Banerjee* (7), *Mir Ahmad Husain v. Mahomed Askari* (8) and *Emperor v. Chinna Kaliappa Gounden* (9). The case in I. L. R., 22 All., cited by the applicant, was different. There, a complaint was dismissed by one magistrate and then another magistrate of co-ordinate powers re-opened the same matter.

BANERJI and RYVES, JJ:—Mrs. Williams lodged a complaint against W. C. Keymer, charging him with several offences in connection with the purchase of a phaeton and a motor car. The case was tried at length by a magistrate of the first class, who, on the 17th of March, 1913, passed an order of discharge on all the

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

(5) (1904) I. L. R., 28 Mad., 255.

(2) (1908) I. L. R., 29 All., 7.

(6) (1899) I. L. R., 22 All., 106.

(3) (1896) I. L. R., 23 Calc., 983.

(7) (1900) I. L. R., 28 Calc., 652.

(4) (1897) I. L. R., 24 Calc., 286.

(8) (1902) I. L. R., 29 Calc., 726.

(9) (1905) I. L. R., 29 Mad., 126.

charges. Subsequently Mrs. Williams complained to the police with reference to an item of Rs. 182, which she had paid to Keymer in connection with the purchase of a motor car and which she charged him with criminally misappropriating. The case was re-instated in the court of the same magistrate who had already passed the order of discharge as stated above. In this second case he has taken some evidence on behalf of the prosecution and framed a charge. This court was then moved in revision on the ground that it was not open to the Magistrate having once discharged the accused, to again inquire into the same charge on a second complaint. It seems to us that we are bound by the ruling in *Queen-Empress v. Umedan* (1). That ruling completely covers the facts of this case, and it has been followed more than once in this Court. That, no doubt, was a case of the dismissal of a complaint under section 203 of the Code of Criminal Procedure, but in our opinion the principle is the same and applies to this present case. We think, therefore, that the Magistrate had jurisdiction. We think, however, that the more appropriate tribunal to decide this case is a civil court. The application is rejected. With these observations we direct the record to be returned for disposal.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Piggott.

BADRI KASAUNDHAN (DEFENDANT) v. SARJU MISR (PLAINTIFF) AND
BINDESRA KUNWAR AND OTHERS (DEFENDANTS) *

1913
December 2,

Act (Local) No. II of 1901 (Agra Tenancy Act), section 167; schedule IV, Group C, No. 80—Civil and Revenue Courts—Jurisdiction—Suit by reversionary heir on death of Hindu widow to recover a holding.

The widow and son's widow of a separated Hindu, being in possession as such of a fixed rate holding which had belonged to their late husband and father-in-law, sold the same to a *malhajan*, who in turn sold it to the zamandar.

Held, on suit brought by the reversionary heir of the late tenant some three years after the last widow's death for recovery of possession of the holding, (1) that the suit was of the nature contemplated by section 167 and schedule IV, Group C, No. 80, of the Agra Tenancy Act, 1901, and would not lie in a Civil

* First Appeal No. 164 of 1913, from an order of V. N. Mehta, Subordinate Judge of Jaunpur, dated the 4th of July, 1913.

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