

## REVISIONAL CRIMINAL.

Before Mr. Justice Iqbal Ahmad.

EMPEROR v. LAKSHMI NARAIN.\*

1932

June, 20.

*Criminal Procedure Code, sections 107, 112, 117, 495—Proceedings for security for keeping the peace—Power of Magistrate to order police inquiry and report—Magistrate directing the police to conduct the case.*

A petition to a Magistrate to take proceedings under section 107 of the Criminal Procedure Code not being a complaint, the procedure prescribed by sections 202 and 203 of the Code has no application to such a case; but the Magistrate in such a case has, independently of those sections, the right to call for a report from the police before issuing a notice under section 112. It appears from section 117 that it is only after an order has been made under section 112 that the proceedings before the Magistrate become judicial proceedings. Before that stage the proceedings are more or less of an administrative character. If the Magistrate before issuing a notice under section 112 thinks it fit to consult the police in order to form an opinion as to whether or not the matter is one in which such a notice should be issued, there is nothing in the Code to prevent him from doing so.

As soon as a notice is issued under section 112 the Crown has the right to conduct the case against the person called upon to show cause, and section 495 of the Code gives discretion to the Magistrate to permit the prosecution to be conducted by any person mentioned in that section, and that person may or may not be a police officer. The Magistrate, therefore, is fully competent to direct the police to adduce evidence in the case against the person called upon to show cause.

Mr. Basudeva Mukerji, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

IQBAL AHMAD, J. : This is an application in revision against an order of a Magistrate of the first class ordering that proceedings under section 107 of the Code of

\*Criminal Revision No. 208 of 1932, from an order of J. V. Lynch, Magistrate, first class of Cawnpore, dated the 10th of March, 1932.

Criminal Procedure, that have been initiated against the applicant, be conducted by the police.

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On the 30th of July, 1931, one Manni Lal filed a petition before the learned Magistrate alleging that the applicant, along with certain other persons, was likely to commit a breach of the peace or disturb the public tranquillity, and prayed that the persons named in the petition be bound down under section 107 of the Code of Criminal Procedure. The learned Magistrate sent the petition to the police for inquiry and report. The police submitted a report on the 7th of October, 1931, recommending that the applicant and the other persons named in the petition be bound down.

The Magistrate then issued notice under section 112 of the Code of Criminal Procedure and directed the Sub-Inspector, who had submitted the report above referred to, to bring all the evidence and produce the same in court on the 24th of February, 1932. On that date an application was filed on behalf of the applicant requesting the learned Magistrate to prevent the police from prosecuting the case. The learned Magistrate rejected the application.

Against the order of the learned Magistrate the applicant went in revision to the learned District Magistrate. The learned District Magistrate, holding that the case "has become a Crown one and the Crown has to attend to the important work of prosecuting it", dismissed the application in revision.

Now the applicant has come to this Court. The learned counsel for the applicant contends that as the petition of Manni Lal was not a complaint as defined by section 4(1) (h) of the Criminal Procedure Code, the learned Magistrate had no jurisdiction to proceed under section 202 of the Code and send the same for inquiry to the police, and accordingly the police had no *locus standi* to prosecute the case and to lead evidence against the applicant. In support of this contention he relies on

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a decision of the Lahore High Court in *Hari Singh v. Jagta* (1). In that case an application under section 107 of the Code of Criminal Procedure was presented by a man named Hari Singh, and the Magistrate, after recording his statement, sent the case to the local zaildar for report. The zaildar reported that there was no sufficient ground for proceeding under section 107 and the Magistrate dismissed the application. The learned District Magistrate being of opinion that a Magistrate before whom an information contemplated by section 107 of the Code of Criminal Procedure is laid may either at once refuse to proceed or, if in his opinion there is sufficient ground for proceeding, may act in the manner provided for by chapter VIII of the Code, and that it is not open to him to refer to a zaildar or anyone else before deciding whether to proceed, made a reference to the High Court recommending that the order of the Magistrate dismissing the petition be set aside. The High Court held that as a proceeding under section 107 of the Code cannot be regarded as a complaint within the meaning of section 4(1) (h) of the Code, the Magistrate had no jurisdiction to deal with the case under sections 202 and 203 of the Code, and accordingly quashed the order of the Magistrate dismissing the petition and directed him to try the case in accordance with law.

If it was intended to lay down in that case that it is not open to a Magistrate, before whom a petition is filed requesting him to take action under section 107 of the Code, to send the same for inquiry and report to the police, I, with all respect, am unable to agree with that decision. Such a petition is no doubt not a complaint and, therefore, it is manifest that the procedure prescribed by sections 202 and 203 of the Code, which are confined in their operation to complaints as defined by the Code, has no application to such a petition. It follows, therefore, that a Magistrate is not competent to proceed under sections 202 and 203 when dealing with such a petition.

but I can discover no justification for holding that he cannot, independently of those sections, refer the matter to the police for inquiry and report.

It is to be noted that section 107 of the Code of Criminal Procedure is in part IV of the Code which is headed "Prevention of offences". The Magistrate is responsible for the maintenance of peace in the district. This responsibility is cast on him in his administrative and not in his judicial capacity. He is the sole authority to decide whether or not it is imperative for maintenance of peace to set the law in motion by initiating proceedings under section 107 or other preventive sections in chapter VIII of the Code. His discretion in this respect is absolute and unqualified. Accordingly his discretion to initiate proceedings under section 107 or other preventive sections in chapter VIII of the Code has not been tramelled by such conditions the fulfilment of which is a condition precedent to the issue of a process to a person to answer a charge formulated against him in a complaint. Complaints are for the redress of wrongs already committed, and from the moment a Magistrate takes cognizance of a complaint he acts judicially and, therefore, is bound to proceed in accordance with law, and, in coming to a decision one way or the other, to take cognizance only of such matters that constitute legal evidence in the case. But in acting under sections 107, 108, 109 or 110 of the Code the Magistrate does not, so long as he does not record an order in writing in accordance with section 112 of the Code calling upon any person to show cause, act judicially. In those sections complete discretion is given to the Magistrate either to act or not to act on the information received by him. The discretion to issue a notice under section 112 in pursuance of an information received by him is absolute and uncontrolled by any conditions whatsoever. It is nowhere provided that the information contemplated by those sections must be information gathered from legal evidence, nor is there any provision as to the source from

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which the information may be received. The information may be conveyed to the Magistrate by a private individual or by an officer of the police. But in either case he is given a discretion to issue or not to issue a notice to the person against whom he has received the information to show cause why he should not furnish security for keeping the peace or to be of good behaviour. With a view to satisfy himself as to the desirability or urgency of issuing a notice under section 112 the Magistrate has, for obvious reasons, the right to test the accuracy of the information received by him before issuing the notice. The manner in which he is to do so is not provided for in the Code. The reason is not far to seek. The above sections being enacted simply with a view to prevent commission of offences and being a part of the administrative machinery for maintaining law and order, the legislature did not think it fit to circumscribe the administrative powers of the Magistrates under those sections by making it obligatory on them to follow the procedure which by law they are bound to follow while dealing with complaints. A reference to section 117 of the Code makes it clear that it is only after an order has been made under section 112 that the Magistrate is to "proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary". Clause (2) of that section provides that "*such inquiry*" is to be made in the manner prescribed in the Code for "conducting trials and recording evidence" either in summons-cases or in warrant-cases as the case may be. It is only from the stage that the inquiry under section 117 begins that the proceedings before the Magistrate become judicial proceedings. Before that stage the proceedings are more or less of an administrative character and the Magistrate till then is not bound by rules of evidence. For the maintenance of law and order Magistrates have control over the police, and it is open to them to seek their assistance in the discharge of their

duties. If a Magistrate before issuing a notice under section 112 thinks it fit to consult the police in order to form an opinion as to whether or not he should issue such a notice, there is nothing in the Code to prevent him from doing so. It follows, therefore, that, apart from the provisions of section 202 of the Code, a Magistrate proceeding under chapter VIII has the right to call for a report from the police before issuing a notice under section 112. The view that I take is in consonance with the view taken in the case of *Sanjivi Reddy v. Koneri Reddi* (1).

The moment a notice is issued under section 112 the Crown has the right to conduct the case against the person called upon to show cause and section 495 of the Code of Criminal Procedure gives discretion to the Magistrate to permit the prosecution to be conducted by any person mentioned in that section. That person may or may not be a police officer. In the present case, therefore, the Magistrate was fully competent to direct the police to adduce evidence in the case.

For the reasons given above I dismiss this application.

### APPELLATE CIVIL.

*Before Justice Sir Lal Gopal Mukerji and Mr. Justice Bennet.*

SHUBRATAN AND ANOTHER (DEFENDANTS) *v.* DHANPAT GADARIYA (PLAINTIFF).\*

1932  
June, 21.

*Transfer of Property Act (IV of 1882), sections 60, 62—Redemption of usufructuary mortgage—Long period fixed—Onerous terms—Contract Act (IX of 1872), section 14—“Clog on the equity of redemption”—Rules of equity contained in English cases are inapplicable where statutory law applies.*

A possessory mortgage of a house was made for a period of 60 years for Rs.75. The rent of the premises was taken

\*Second Appeal No. 204 of 1931, from a decree of Sarup Narain, Second Additional Subordinate Judge of Gorakhpur, dated the 25th of November, 1930, modifying a decree of S. Z. Rahman, Munsif of Gorakhpur, dated the 23rd of March, 1929.

(1) (1925) I.L.R., 49 Mad., 315.