

*Before Mr. Justice King.*

MUHAMMAD YUSUF AND OTHERS *v.* ABDUL MAJID.\*

1930  
July, 16.

*Criminal Procedure Code, sections 107, 436, 438—Security for keeping the peace—Discharge of person informed against—Power of Sessions Judge to order further inquiry—“Complaint”—“Accused of any offence”—Revision—Discretion of High Court.*

The powers conferred upon a Sessions Judge under section 436 of the Criminal Procedure Code do not give him jurisdiction to set aside an order of discharge passed under section 119 in proceedings under section 107 and to order further inquiry to be made into the case of the persons discharged. An application to a Magistrate under section 107 to have the opposite party bound over to keep the peace is not a complaint as defined in the Code, because it does not allege that any person has committed an offence, and the order of discharge is not a dismissal of a complaint under section 203; section 204(3) is not applicable to the circumstances, nor does the last part of section 436 apply, since the persons who were discharged were not accused of any offence.

Even if the Sessions Judge had made a reference to the High Court under section 438, the High Court should not have interfered, inasmuch as the question whether it was necessary in the interests of the public peace to take security from the persons discharged was essentially a question which primarily concerned the District Magistrate and the local police, and it was not the sort of case in which the Sessions Judge or the High Court should interfere.

Mr. *M. A. Aziz*, for the applicants.

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

KING, J. :—This is an application in revision against an order passed by the learned Sessions Judge of Aligarh, setting aside an order of discharge passed by a Magistrate of the first class and directing further inquiry to be made under section 107 of the Code of Criminal Procedure.

\*Criminal Revision No. 140 of 1930, from an order of Ali Ausat, Sessions Judge of Aligarh, dated the 31st of January, 1930.

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It appears that there were two parties who were hostile to each other; one party consisted of Abdul Majid and his associates and the other party consisted of Muhammad Yusuf and his associates. Muhammad Yusuf made an application to the Magistrate under section 107 for having the opposite party bound over to keep the peace. This was followed by a similar application made by Abdul Majid that security for keeping the peace should be taken from Muhammad Yusuf and his party. Both the applications were sent to the police for inquiry. The police reported that there was fear of a breach of the peace, but the breach of the peace was to be apprehended from the side of Abdul Majid and his party, and that there was no apprehension from the side of Muhammad Yusuf's party. The Magistrate proceeded with the application against Abdul Majid and his party and bound over Abdul Majid and two other persons under section 107. As regards the counter application, he dropped further proceedings on the strength of the police report and did not proceed to take any further evidence as against Muhammad Yusuf and his party.

Abdul Majid and the two other persons bound over along with him appealed to the Sessions Judge, and at the same time Abdul Majid applied to him in revision praying that the order discharging Muhammad Yusuf and his party under section 107 should be set aside, and that further inquiry should be made as against them.

The learned Sessions Judge dealt with the appeal and with the revision in one judgment. He upheld the order passed against Abdul Majid and his two associates and dismissed their appeal. In the revision case he remarked that the Magistrate had discharged the accused persons on the strength of the police report. The learned Judge further observes: "In my opinion it seems proper that Abdul Majid's evidence should be heard against these men, and if it is found that these

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three men are likely to disturb the peace, they should be bound over under section 107 of the Code of Criminal Procedure. I, therefore, set aside the order of discharge against Qudrat-ullah, Muhammad Yusuf and Amanat-ullah and send the case back to the court below for trial on the merits."

It has been urged for the applicants that the learned Sessions Judge had no jurisdiction to set aside the order of discharge and to order further inquiry to be made under section 107.

In my opinion this contention is well founded. The only section under which the Judge could be considered to have passed his order is section 436 of the Code of Criminal Procedure. Under that section the Sessions Judge in exercise of his revisional powers can direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged.

The powers thus conferred upon the Sessions Judge under section 436 do not apply to the action which he has taken in the present case. The application made by Abdul Majid under section 107 cannot be held to be a complaint. The word "complaint" is defined in section 4, clause (h), of the Code as follows: "Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence." The application made by Abdul Majid under section 107 cannot amount to a complaint, because it does not allege that any person has committed an offence. It only alleges that there is a fear of a breach of the peace on the part of the opposite party and prays that action may be taken to prevent the apprehended breach of the peace.

Moreover the application was not dismissed under section 203. That section only applies to the dismissal of a complaint, and I have already shown that an application under section 107 cannot be held to be a "complaint" within the meaning of the Code. Section 204, sub-section (3), is clearly not applicable to the facts of this case. The last sentence of section 436 also does not apply since the persons who were discharged were not "accused" of any "offence". It is conceded indeed by the learned Assistant Government Advocate that the Sessions Judge had no jurisdiction under section 436 to set aside the order of discharge and to direct further inquiry. The only section under which the Sessions Judge might have taken action, if he had considered that Muhammad Yusuf and his party had been wrongly discharged, was under section 438 by making a report to the High Court. It has been suggested by the learned Assistant Government Advocate that this application may now be treated as a report made to the High Court under section 438. This course is out of the question. The application is made against the Judge's order and it cannot possibly be treated as a reference made by the Judge himself.

Even if the Judge had made a reference under section 438 I should not have interfered in revision. The question whether it is necessary in the interests of keeping the peace to take security from Muhammad Yusuf and his party is essentially a question which primarily concerns the District Magistrate and the local police. The police reported that in their opinion there was no necessity for taking security from Muhammad Yusuf and his party. The Sub-Divisional Magistrate considered that it was unnecessary to take further action against them. If the District Magistrate had thought it necessary to take further action he could have permitted the institution of fresh proceedings. It is not the sort of case in which the Sessions Judge or the High Court should, in

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my opinion, interfere. I set aside the order which is the subject matter of this application and restore the order of discharge passed by the Sub-Divisional Magistrate.

### REVISIONAL CIVIL.

*Before Mr. Justice Niamat-ullah and Mr. Justice Bennet.*

1930  
July, 10.

PANNA LAL (JUDGMENT-DEBTOR) v. BHOLA NATH  
(AUCTION PURCHASER) AND OTHERS.\*

*Civil Procedure Code, section 115; order XXI, rule 89—Application to set aside sale on deposit—Sufficiency of amount deposited—Order setting aside sale reversed in appeal on erroneous view holding deposit insufficient—Revision—Acting illegally in the exercise of jurisdiction.*

In execution of a decree a house was sold for Rs. 1,000, besides certain other properties which were sold by a separate lot and fetched a price which together with the Rs. 1,000 fully satisfied the decree. The judgment-debtor applied under order XXI, rule 89, of the Civil Procedure Code to have the sale of the house set aside, and deposited for payment to the decree-holder Rs. 1,000, besides the five per cent. for payment to the auction purchaser, as well as the sale expenses. Objection was raised that the whole decretal amount as specified in the proclamation of sale should have been deposited and not merely Rs. 1,000. The court overruled the objection and set aside the sale. The appellate court reversed this order, holding that the deposit was insufficient. In revision the High Court *held* :—

Under order XXI, rule 89(1) (b) the amount to be deposited for payment to the decree-holder would be the decretal amount specified in the proclamation of sale, less any amount which the decree-holder might have since then received; and, as by the sale of the properties other than the house in question the decree had been fully satisfied except to the extent of Rs. 1,000, the only part of the decretal amount which needed to be deposited for payment to the decree-holder was Rs. 1,000, and the deposit was, therefore, sufficient.

Order XXI, rule 92(2) is mandatory in its provisions and lays down that where the deposit required by rule 89 is duly made the court shall set aside the sale; the court has no