

## REVISIONAL CRIMINAL

*Before Mr. Justice Iqbal Ahmad*RAMANAND *v.* SHERI\*1933  
October, 27

*Criminal Procedure Code, section 203—Complaint dismissed and accused discharged—Fresh complaint on same facts—Whether entertainable by another court of co-ordinate jurisdiction.*

Where a complaint has been dismissed and the accused discharged, a second complaint on the same facts and against the same accused should not be entertained by another court.

Although there is no bar to the trial of a second complaint by the same Magistrate who had dismissed the first complaint, or by another Magistrate presiding over the same court as the successor in office of the former Magistrate, it would be contrary to sound principles to allow successive trials of complaints, based on the same allegations, by Magistrates presiding over different courts, after the first complaint has been dismissed by a Magistrate of competent jurisdiction.

*Queen-Empress v. Adam Khan* (1) and *Nanda v. King-Emperor* (2), followed; *Puran v. Emperor* (3), disapproved.

Mr. G. S. Pathak, for the applicant.

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

IQBAL AHMAD, J.:—This is a reference by the learned Sessions Judge of Meerut under section 438 of the Criminal Procedure Code and arises under the following circumstances. On the 16th of September, 1932, one Sheri filed a complaint in the court of a Sub-Divisional Magistrate of Meerut against Puran Mal and Ramanand patwaris under section 218 of the Indian Penal Code. This complaint was transferred to the court of Lt. Budh Prakash, Special Magistrate. The Special Magistrate dismissed the complaint and discharged the accused. About two weeks after the dismissal of the complaint and the discharge order, Sheri filed another complaint on the same facts in the court of the Sub-Divisional Magis-

\*Criminal Reference No. 577 of 1933.

(1) (1899) I.L.R. 22 All., 106. (2) A.I.R., 1927 All., 815.

(3) A.I.R., 1926 All., 298.

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trate. This complaint was transferred to the court of S. Meharban Ali, Special Magistrate, for trial. Ramanand then filed an application in revision in the court of the Sessions Judge challenging the competency of S. Meharban Ali to take cognizance of and to try the second complaint filed by Sheri. It was contended on behalf of Ramanand in the court of the Sessions Judge that as the previous complaint that was based on the very facts that formed the basis of the second complaint had been dismissed and he was discharged, the second complaint was not entertainable by another Magistrate. In support of this contention reliance was placed on behalf of Ramanand on the decision of this Court in *Nanda v. King-Emperor* (1). It was held in that case that when one Magistrate had discharged an accused person, another Magistrate of a different court cannot entertain a fresh complaint on the same facts for the same offence. This decision, as observed by the learned Judge, fully supports the contention advanced on behalf of Ramanand. On the other hand, on behalf of the complainant reliance was placed on the decision in *Puran v. Emperor* (2), and there is no doubt that there is conflict between the two decisions noted above. In view of this conflict the learned Judge has reported the matter to this Court for orders.

There is no provision in the Code of Criminal Procedure attaching finality to an order of discharge analogous to the provisions of section 403 of the Code, which bars the trial of a person for the same offence of which he has been convicted or acquitted so long as the order of conviction or acquittal remains in force. It is clear, therefore, that an order of discharge cannot be a bar to the trial of the person discharged for the same offence of which he was discharged, but it is also equally clear that it would be highly inconvenient to allow successive trials of complaints, based on the same allegations, by different Magistrates and different courts, after a previous

(1) A.I.R., 1927 All., 815.

(2) A.I.R., 1926 All., 298.

complaint on the same facts by the same complainant and against the same accused has been dismissed by a Magistrate of competent jurisdiction.

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A subsequent complaint can be filed either (1) before the same court presided over by the same Magistrate who had dismissed the former complaint, or (2) before the same court presided over by the successor in office of the Magistrate who had dismissed the former complaint, or (3) before a court other than the court which had dismissed the former complaint.

It is well settled that there is no bar to the trial of a second complaint by the same Magistrate who had dismissed the first complaint and passed an order of discharge. To this effect are the decisions of this Court in *Queen-Empress v. Purañ* (1), *Queen-Empress v. Umedan* (2), *Emperor v. Mehrban Husain* (3) and *Emperor v. W. C. Keymer* (4).

In the second class of cases in which the second complaint is filed before the same tribunal, although the incumbent is a different individual, it has been similarly held by this Court in *Ram Bharos v. Baban* (5) that the trial of the second complaint is not barred.

In the third class of cases where the complaint is filed or transferred for trial to a tribunal other than the one which had dismissed the previous complaint and passed an order of discharge, there is conflict of authority in this Court as to the maintainability of the second complaint. It was held in *Queen-Empress v. Adam Khan* (6) that where a competent tribunal has dismissed the complaint another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it. It was observed by the learned-Judges in that case that it was utterly contrary to sound principles that one Magistrate of co-ordinate jurisdiction should, in effect and substance, deal with, as if it were an appeal or a matter for revision, a complaint which had already been

(1) (1886) I.L.R., 9 All., 85.

(3) (1906) I.L.R., 29 All., 7.

(5) (1914) I.L.R., 36 All., 129.

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

(4) (1913) I.L.R., 36 All., 53.

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

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dismissed by a competent Magistrate of co-ordinate authority. This decision was distinguished in *Emperor v. Mehrban Husain* (1) and *Ram Bharos v. Baban* (2). It is to be noted, however, that the decision in *Queen-Empress v. Adam Khan* (3) was not dissented from in either of the two cases noted above. Again this decision was followed by a learned Judge of this Court in *Nanda v. King-Emperor* (4).

In the case of *Puran v. Emperor* (5) DANIELS, J., observed that the decision in *Adam Khan's* case was not followed by this Court and "that the opposite view has prevailed in later cases". The later cases referred to by the learned Judge are the cases of *Emperor v. W. G. Keymer* (6) and *Ram Bharos v. Baban* (2). I have examined these cases and I find that the view taken in *Queen-Empress v. Adam Khan* (3) was not dissented from in the subsequent decisions of this Court.

I, therefore, hold, following the decision in *Queen-Empress v. Adam Khan* (3), that the trial of the second complaint by S. Meharban Ali, Special Magistrate, is barred. I accordingly direct that the complaint in the court of S. Meharban Ali be dismissed. Let the record be returned.

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## MATRIMONIAL JURISDICTION

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1933  
 October, 30

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
 and Justice Sir Lal Gopal Mukerji*

TITLI ALIAS TEREZA (RESPONDENT) v. ALFRED ROBERT  
 JONES (PETITIONER)\*

*Divorce Act (IV of 1869), sections 4, 7, 19—Nullity of marriage—Idiot—Difference between medical and legal definitions of idiocy—Indian Penal Code, section 84—Mental Deficiency Act, 1913 (3 and 4 Geo. V., Ch. 28), section 1—Consent to marriage by person of defective mentality—Christian Marriage Act*

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\*Appeal No. 69 of 1932, under section 10 of the Letters Patent.

(1) (1906) I.L.R., 29 All., 7.

(3) (1899) I.L.R., 22 All., 106.

(5) A.I.R., 1926 All., 298.

(2) (1914) I.L.R., 36 All., 129.

(4) A.I.R., 1927 All., 815.

(6) (1913) I.L.R., 36 All., 53.