

REVISIONAL CRIMINAL

Before Mr. Justice Allsop

EMPEROR v. SALEK CHAND*

1936
August, 24

Criminal Procedure Code, sections 344, 526—Adjournment for purpose of applying for transfer—Costs of such adjournment can not be ordered.

No order for costs of adjournment can be made where the adjournment is granted under section 526(8) of the Criminal Procedure Code for the purpose of enabling the accused to apply to the High Court for a transfer of the case. A court can not impose terms for granting an adjournment when it is bound to grant that adjournment whether the terms are accepted or not.

The applicant was not represented.

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

ALLSOP, J.:—Salek Chand was an accused person in a criminal court. He asked for an adjournment in order to enable him to apply to the High Court for transfer. The Magistrate adjourned the case on condition that a sum of Rs.20 was paid by way of costs. Under section 344 of the Criminal Procedure Code a Magistrate may adjourn a case on such terms as he thinks fit, but this particular adjournment was one which was covered by the provisions of section 526, sub-section (8), of the Criminal Procedure Code and the court had to grant it. It is true that the explanation to sub-section (9) says that nothing contained in sub-section (8) or sub-section (9) restricts the powers of a court under section 344, but at the same time it is difficult to see how a court can impose terms for granting an adjournment when it is bound to grant that adjournment whether the terms are accepted or not.

It has been held in *Sorabji v. Erachshaw* (1) that costs should not be imposed in a case of this kind. The

*Criminal Reference No. 314 of 1936.

(1) (1932) I.L.R., 56 Bom., 536.

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learned Sessions Judge has made a reference that the order for costs should be set aside. I accept the reference and direct that orders shall issue accordingly.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet*

And on a reference

Before Mr. Justice Rachhpal Singh

EMPEROR v. LAKHAN*

1936

May, 12

August, 26

Criminal Procedure Code, sections 4(1)(h), 190(1)(b), 195(1)(a)—“Complaint” of public servant—“Report” by police officer—Distinction—Cognizance by Magistrate—Indian Penal Code, sections 177, 182—False information to public servant—“Legally bound” to furnish information—Criminal Procedure Code, section 45(d)—“Occurrence”—Criminal Procedure Code, section 537—Absence of complaint.

The mukhia of a village gave information to the police that a certain woman had died by drowning in the river. The sub-inspector of police who went to the village to make an investigation found that the information was false to the knowledge of the mukhia, and he thereupon addressed and sent to the Superintendent of Police a communication, headed as a “report”, which, after mentioning all the allegations constituting the offence and stating that the mukhia was guilty of an offence under section 177 of the Indian Penal Code, concluded with the following request: “It is therefore prayed that permission under section 195 of the Criminal Procedure Code may be given to institute a case under section 177 of the Indian Penal Code against Lakkan mukhia.” The Superintendent of Police sent this on to the Magistrate with the endorsement “Forwarded to the Sub-Divisional Magistrate for information and necessary action.” The Sub-Divisional Magistrate treated it as a complaint and took cognizance of the offence:

Held (per SULAIMAN, C.J., and RACHHPAL SINGH, J.; BENNET, J., contra) that the communication in question was a report and did not amount to a complaint within the meaning of section 4(1)(h) and section 195(1)(a) of the Criminal Procedure Code.

*Criminal Revision No. 924 of 1935, from an order of Tufail Ahmad, Sessions Judge of Banda, dated the 15th of August, 1935.