

Before Mr. Justice Mulla

EMPEROR *v.* BALWANT SINGH AND OTHERS*

1939
August, 15

Criminal Procedure Code, section 530(q)—Summary trial—Complaint disclosing facts constituting offence of a graver nature—Magistrate issuing summons for a lighter offence, without any justification for doing so—Proceedings void—Jurisdiction.

A complaint was made charging the accused with rioting and house trespass after preparations for assault, under sections 147 and 452 of the Indian Penal Code, neither of the offences being summarily triable. The evidence produced by the complainant also supported his complaint but the Magistrate, without recording any order to the effect that he thought any part of the case put forward to be false or exaggerated, issued summonses under section 448 of the Indian Penal Code and tried the case summarily, though he convicted the accused under section 452: *Held*, that the procedure was highly irregular and void under section 530(q) of the Criminal Procedure Code; the Magistrate had no jurisdiction to hold a summary trial in a case in which the accused persons were charged with offences under sections 147 and 452 of the Indian Penal Code.

Mr. *Kumuda Prasad*, for the applicants.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

MULLA, J.:—This is an application in revision by five persons who have been convicted by a Magistrate of the first class of an offence under section 452 of the Indian Penal Code. As the sentences passed upon them were not appealable they went up in revision to the learned Sessions Judge of Meerut, but with no success. They have now come up in revision to this Court.

The case against the applicants was based upon a complaint made by one Bakhtawar Singh. It was clearly alleged in the complaint that the five applicants had come in a body armed with lathis to a *gher* which was in the occupation of the complainant and

*Criminal Revision No. 471 of 1939, from an order of R. F. S. Baylis, Sessions Judge of Meerut, dated the 31st of March, 1939.

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threatened to kill him and forcibly turned his cattle out and put their own cattle in. The *gher* as described by the complainant was used as a dwelling place and also as a place for the custody of property. The case was sent for an inquiry under section 202 of the Criminal Procedure Code to a second class Magistrate, who after recording the evidence of the complainant and three other witnesses reported that there was a *prima facie* case of criminal trespass on the part of the applicants. Upon that report the learned Sub-Divisional Magistrate before whom the complaint had been made proceeded to issue a summons to the applicants under section 448 of the Indian Penal Code and to try the case summarily. The summary trial held in these circumstances ended in the conviction of the applicants under section 452 of the Indian Penal Code. It may be noted here that the summons issued to the applicants was only under section 448 of the Indian Penal Code and it is difficult to understand how the learned Magistrate proceeded to convict them under section 452 of the Indian Penal Code.

The substance of the argument on behalf of the applicants is that the learned Magistrate exceeded his jurisdiction in trying the case under section 452 of the Indian Penal Code summarily and hence in view of the provisions of section 530 of the Criminal Procedure Code the trial is void and must be set aside. Upon a consideration of all the facts of the case and the relevant provisions of the law I think the contention is sound and must prevail. Upon the allegations made in the complaint there cannot be the slightest doubt that the applicants were charged with rioting as well as house trespass falling within the purview of section 452 of the Indian Penal Code. Neither of those two offences is summarily triable. When the learned Sub-Divisional Magistrate issued a summons under section 448 of the Indian Penal Code he did not record any

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order to the effect that he did not believe any part of the case put forward by the complainant or that he thought that it was highly exaggerated. The complainant had been asked to produce evidence in support of his allegation and he had examined a number of witnesses. That evidence also supported his complaint and there was no reason why the learned Sub-Divisional Magistrate should have issued a summons under section 448 of the Indian Penal Code only, unless it was that a summary trial under section 448 of the Indian Penal Code was more convenient. The procedure might have been convenient but it was highly irregular and also void under section 530 of the Criminal Procedure Code. He was not empowered by law to hold a summary trial in a case in which the accused persons were charged with offences under sections 147 and 452 of the Indian Penal Code. Section 530 (g) clearly comes into operation and it must be held that the proceeding of the learned Magistrate was void. The same view of section 530 of the Criminal Procedure Code has been taken by the Calcutta High Court in the cases of *Kailash Chunder Pal v. Joynuddi* (1) and *Bishu Shaik v. Saber Mollah* (2). The view is further supported by a decision of this Court in the case of *Emperor v. Ram Narain* (3).

I have therefore no hesitation in holding that the trial held by the learned Sub-Divisional Magistrate in this case was void and the conviction and sentence of the applicants must be set aside. I therefore set aside the conviction and sentence of the applicants and direct that the case shall be re-tried by some other Magistrate of competent jurisdiction to whom it may be sent for trial by the District Magistrate of Meerut.

(1) (1900) 5 C.W.N. 252.

(2) (1902) I.L.R. 29 Cal. 109.

(3) (1924) I.L.R. 46 All. 446.