

stamp duty and penalty, as under section 61 of the Stamp Act power is given to the appellate courts to revise the decision of subordinate courts regarding the sufficiency of stamps.

1939

---

 LODHI  
 v.  
 ZIAUL HAQ
 

---

## REVISIONAL CRIMINAL

Before Mr. Justice Ismail

G. A. ST. GEORGE *v.* UMA DUTT SHARMA\*

---

 1939  
 May, 8
 

---

*Criminal Procedure Code, sections 29A, 446(1)—European British subject—Magistrate second class not competent to try or to commit such accused for trial—Commitment quashed—Re-trial—Discretion of court—Criminal Procedure Code, section 181(2)—Jurisdiction—Place of trial—Criminal misappropriation—Criminal Procedure Code, section 202—Issue of warrant for accused—Discretion of court.*

A Magistrate of the second class is not competent to inquire into or to try or to commit to a court of session for trial the case of an accused who is an European British subject and claims to be tried as such.

The "Magistrate" in section 446(1) of the Criminal Procedure Code means a Magistrate having jurisdiction to inquire into the case; section 446 must be read with section 29A of the Code. As a Magistrate of the second class is precluded by section 29A from inquiry into or trying a case against an European British subject he can not be in a position to discharge the accused under section 209 or section 253, as contemplated within section 446, nor to judge whether there is a *prima facie* case on the evidence against the accused in the absence of which it is not permissible to a Magistrate to commit an accused for trial. In these circumstances it is incumbent upon the Magistrate of the second class to direct the complainant to make a complaint to a Magistrate competent to hold a preliminary inquiry before commitment for trial.

Where the complainant had posted at Muzaffarnagar postal orders for a certain amount, as entry fee for a crossword competition, to the "Illustrated Weekly of India", Bombay, and the accused was one of the directors of a company which edited that paper and was apparently the editor in charge of the competition, and the complainant alleged that the money was misappropriated by the accused, it was *held* that the misappropriation, if any, took place in Bombay and not at Muzaffarnagar, even on

---

\*Criminal Reference No. 157 of 1939.

1939

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

the supposition that the letter containing the postal orders became the property of the addressee as soon as it was posted at Muzaffarnagar; for, according to that supposition, the money was received at Muzaffarnagar by the addressee, but it was received and misappropriated, if at all, by the accused in Bombay. Under section 181(2) of the Criminal Procedure Code, therefore, the offence was not triable at Muzaffarnagar but in Bombay.

To prevent abuse of the process of the court a re-trial should not, in the discretion of the court, be ordered, upon the quashing of a commitment order, where the complaint does not make out a *prima facie* case against the accused.

It is the duty of a Magistrate, in a proper case, to issue a warrant of arrest against the accused person, and the position of an accused person should not influence the court against doing so; but before exercising the power vested in the Magistrate he should take care to satisfy himself that the statement of the complainant that the accused is likely to abscond is based on reasonable grounds.

Messrs. *M. P. Bhargava* and *Gajadhar Prasad Bhargava*, for the applicant.

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

*Mr. Nanak Chand*, for the opposite party.

ISMAIL, J.:—This is a reference by the learned District Magistrate of Muzaffarnagar with the following recommendations: (1) That the proceedings be quashed for the reasons that the Tahsildar had no jurisdiction, as a Magistrate of the second class, to commit the accused to the court of session, and that, in any case, no court of the Muzaffarnagar district has territorial jurisdiction to take cognizance; (2) or if it be held that the courts in this district have territorial jurisdiction, that the proceedings be quashed in that there is no case made out by the complainant for the issue of process, or even for the purpose of further inquiry under section 202 of the Criminal Procedure Code.

The facts that have given rise to this reference are somewhat unusual. The complainant is a legal practitioner of Ghaziabad, district Meerut. The opposite

party, G. A. St. George, is one of the Directors of Messrs. Bennett Coleman & Co., Bombay. The company edits two papers. One of them is known as the "Illustrated Weekly of India". The paper conducts a crossword competition known as "Commonsense crossword". The public is periodically invited to compete in the solution of crossword puzzles published by the paper and the terms on which a person is entitled to compete are notified in the paper. The crossword competition No. 130 was published in the issue of 14th August, 1938. The complainant on the 6th September, 1938, sent nine entries addressed to the Illustrated Weekly of India Commonsense Crossword No. 130, Bombay, with a postal order for Rs.6. The complainant's case is that the free entry coupon No. 2 sent by the complainant rallied exactly with the correct solution published by the accused but the prize of Rs.25,000 payable to him was never paid. It is further alleged that the complainant sent in a scrutiny claim for the re-examination of the solutions sent by him and also Rs.5 as demanded by the accused. It is stated in paragraph 8 of the complaint that the accused did not send any reply to the inquiries made by the complainant. On these facts it is alleged in paragraph 9 "that the accused has by his acts of omission and commission cheated the complainant out of the sum of Rs.25,000 and a new Ford V-8 car worth Rs.5,000 and thereby committed offences under section 417/427." It is now stated that the reference to a new Ford V-8 car is an error; the offer was in fact for a free double return passage to Paris or London. Paragraph 10 of the complaint states "that the accused has further criminally misappropriated the sum of Rs.6 sent by postal order as entry fee and the sum of Rs.5 sent by money order as scrutiny fee and thereby committed an offence under section 403 of the Indian Penal Code." The complaint was filed in the court of a Magistrate of the second class at Muzaffarnagar. The Magistrate examined the complainant under section 200 of the Criminal Procedure Code and issued a bailable warrant.

1

---

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

1939

---

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

for the arrest of the accused. The accused was apprehended in Bombay and was released on bail. By his application dated 13th January, 1939, the accused questioned the jurisdiction of the Magistrate to try the case because he was a European British subject. Several other grounds were taken by the applicant to show that the Magistrate had no jurisdiction to try him. After a preliminary inquiry the Magistrate accepted the allegation of the accused that he was a European British subject, and purporting to act under the provisions of section 446, sub-clause (1), committed the accused for trial to the court of session. The accused moved the District Magistrate for the revision of the order of the Tahsildar Magistrate. The learned District Magistrate has submitted his recommendations to this Court as stated above.

The first point to be determined is whether the complaint made by the complainant was entertainable by a Magistrate of the second class of Muzaffarnagar. The offences mentioned in the complaint were all triable by a second class Magistrate. The fact that the accused was a European British subject was not admitted by the complainant and was not known to the Magistrate at the time the warrant was issued. It was open to the accused to submit to the jurisdiction of the Magistrate. The direction contained in chapter XXXIII is to be followed only when a plea of status is raised. The question whether the Magistrate had territorial jurisdiction will be considered later. It is contended by learned counsel for the accused that the Magistrate being a second class Magistrate had no authority to commit the accused to the court of session. Section 29A of the Criminal Procedure Code provides: "No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is a European British subject who claims to be tried as such". Offences under sections 403, 417 and 427 being punishable otherwise than with fine not exceeding Rs.50,

the Magistrate had no jurisdiction to proceed with the case.

The next point to be considered is whether the Magistrate was authorised to commit the accused for trial to the court of session. Section 446 (1) provides: "Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this chapter and the case is a warrant case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under section 209 or section 253, as the case may be, commit the accused for trial to the court of session, whether the case is or is not exclusively triable by that court." The view of the District Magistrate is that the Magistrate had no authority to commit the accused to the court of session. The only course open to him under the Code was to return the complaint to the complainant to be presented to a Magistrate having jurisdiction to entertain it. The contention of learned counsel for the complainant is that section 446 refers to a Magistrate without any qualification as to his powers. From this it is argued that every Magistrate, whether he is invested with the powers of a first or second class Magistrate, is permitted to commit the accused to the court of session under the provisions of section 446. If the contention of learned counsel for the complainant is sound it will mean that a European accused will be committed to the court of session whether there is any *prima facie* evidence to substantiate the offence with which he is charged or not. This will lead to very anomalous results. In my opinion the "Magistrate" in section 446 (1) means a Magistrate having jurisdiction to inquire into the case. Section 446 must be read with section 29A of the Code. Under section 446 it is open to a Magistrate to discharge the accused under section 209 or section 253. Section 209 is inapplicable in the present case. Under section 253, "If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the

1939

G. A. ST.  
GEORGE  
V.  
UMA  
DUTT  
SHARMA

1939

G. A. ST  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him." Such a course was impossible in the present case because section 29A precludes a Magistrate of the second class from inquiring into or trying the case. In my judgment, before an accused is committed to the court of session there must be some evidence on the record to prove a *prima facie* case against him. In the absence of such evidence it is not permissible to a Magistrate to commit the accused to take his trial in the court of session. In *Keshan v. King-Emperor* (1) it was held: "Before the Magistrate makes a commitment under section 446 (1) of the Code of Criminal Procedure he must consider whether there are grounds for discharging the accused under section 209 or section 253 of the Code." In that case the Sub-Divisional Magistrate of Begusarai had made a commitment to the court of session under section 446 of the Code without holding any preliminary inquiry under chapter XVIII of the Code. The learned Judges quashed the conviction and directed a preliminary inquiry by the Sub-Divisional Magistrate before ordering a commitment. In the present case, as stated above, the Magistrate could not hold an inquiry in view of section 29A of the Code. Under the circumstances it was incumbent upon him to direct the complainant to make a complaint to a Magistrate who was empowered to hold a preliminary inquiry before committing the accused to session.

The next question for consideration is whether the Magistrate of Muzaffarnagar had any territorial jurisdiction to try this case. As stated above the complainant is a resident of Ghaziabad in the district of Meerut, and the money was sent to Bombay according to the direction published in the Illustrated Weekly of India. The ground on which the complaint was lodged at Muzaffarnagar is stated in paragraph 11 of the complaint and runs as follows: "That as the first Rs.6

(entry fee) and entry coupons were handed to the post office at Muzaffarnagar for delivery to the accused, this court has jurisdiction under section 181 of the Criminal Procedure Code." The case is now confined to section 403 and section 417 of the Indian Penal Code only. Under section 181, sub-clause (2), "The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within the local limits of whose jurisdiction any part of the property which is the subject matter of the offence was received or retained by the accused person, or the offence was committed." Learned counsel for the complainant argues that as the postal orders were posted at Muzaffarnagar the accused must be deemed to have received the remittance at Muzaffarnagar. It is contended that the property in the postal orders vested in the addressee from the time of the delivery of the letter to the post office. It is stated that the post office was the agent of the addressee and not that of the sender. In support of this contention several authorities have been cited on behalf of the complainant, e.g., *Narasimhulu v. Adiappa* (1) and *Parmer v. Cawasjee* (2), etc. I do not propose to discuss these authorities in detail because in my judgment, even assuming the contention of learned counsel to be well founded, the offences of criminal misappropriation and cheating were committed at Bombay and not at Muzaffarnagar. In order to decide this question of law it is necessary to refer to certain admitted facts and allegations of the complainant. The complainant forwarded a postal order for Rs.6 on the 6th September, 1938, to the "Illustrated Weekly of India". Rs.5 were sent later on the 11th October, 1938, addressed to the same paper. According to the contention of learned counsel for the complainant the postal orders became the property of the addressee as soon as they were delivered to the post office and the post office became the agent of the addressee. It follows therefore that the title in the postal orders vested in the ad-

1939

---

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

(1) (1890) I.L.R. 13 Mad. 242.

(2) (1916) 14 A.L.J. 236.

1939

G. A. ST.  
GEORGE  
v.  
UMA  
DEVI  
SHARMA

dressee, namely the Illustrated Weekly of India, from the time of delivery. The accused personally was not the addressee and therefore he had no right to the postal orders or the letters addressed to the Illustrated Weekly of India. Even if we assume, as alleged by the complainant, that the postal orders were received by the accused, the postal orders continued to be the property of the Illustrated Weekly of India. The delivery of the same to the accused was as an agent of the Illustrated Weekly of India. That being so it cannot be suggested that the accused received the letter containing the postal orders at Muzaffarnagar. The post office was the agent of the addressee and not of the accused. It may be, as alleged by the complainant, that the accused converted the postal orders to his own use, but the conversion and misappropriation was effected at Bombay and not at Muzaffarnagar. There is yet another reason why the Magistrate at Muzaffarnagar had no territorial jurisdiction. It is conceded that the complainant sent the postal orders to the Illustrated Weekly to be allowed to enter the competition. It follows that the intention of the complainant was that the money should be appropriated by the addressee. If the accused dishonestly and fraudulently misappropriated the money which was the property of the Illustrated Weekly of India, he deprived the addressee of the money and not the complainant. Whatever view may be taken there cannot be the least doubt that according to the allegations of the complainant the misappropriation took place at Bombay and not at Muzaffarnagar. I do not propose to decide the question that the meaning of the word "received" finding place in section 181 (2) may be extended to the receipt of movable property by an agent without the knowledge of the principal. I have assumed for the purpose of this case that the postal orders were "received" by the addressee through its agents namely the post office at Muzaffarnagar. I have no hesitation in holding that the accused never "received" money at Muzaffarnagar and therefore the complaint



against the accused could not be entertained in that district.

The next point to be determined is whether it is a suitable case for the issue of process against the accused. I am aware that it is only in very rare cases that the court will be justified in throwing out a complaint without giving an opportunity to the complainant to substantiate his allegations, but in certain cases it is the duty of the court to protect the accused from unnecessary harassment and worry. In my opinion this is eminently a case in which this Court should exercise its powers to prevent an abuse of the process of court. The ingredients constituting an offence under section 403 are: (1) Dishonest misappropriation or conversion of property for a person's own use; (2) such property must be movable. The second ingredient exists but there is absolutely no evidence to prove the first ingredient. The complainant has nowhere suggested that to his knowledge the accused has misappropriated or converted to his own use Rs.6 and Rs.5 sent to the Illustrated Weekly of India. The complainant does not say either in the complaint or in his statement that he has reason to believe that the money was not credited to the account of the addressee. He does not say that he has made any inquiries with regard to the appropriation of these sums. The complainant is not entitled to ask the court to proceed with the complaint unless he makes out a *prima facie* case against the accused. It is the business of the police and not of a Magistrate to investigate an offence. The party concerned, namely the Illustrated Weekly of India, who must be deemed to be the owner of movable property which is the subject-matter of complaint, does not make any allegation against the accused. The complainant suspects that the accused has misappropriated the money, but no prosecution can be founded on the suspicion of the complainant. Similarly the ingredients constituting the offence of cheating are wholly lacking. In order to make out a

1939

---

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

1939

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

case of cheating against the accused the complainant must prove.

(1) That the person deceived delivered to some one or consented that some other person shall retain certain property.

(2) That the person deceived was induced by the accused to do as above.

(3) That such person acted upon such inducement in consequence of his having been deceived by the accused.

(4) That the accused acted fraudulently or dishonestly when so inducing that person.

The complainant in his complaint has repeated the language of the section but has not stated how he was deceived and who was the person who deceived him. He has assumed that the accused who is the editor in charge of Commonsense Crossword Competition must be the person responsible for the deception. In my opinion this is not a matter for assumption, but it must be proved by cogent evidence.

The rules and conditions under which these competitions are run are before me and were admittedly read by the complainant before he sent the remittance. Rule 7 is as follows: "No responsibility can be accepted for any entry forms lost, mislaid or delayed. No correspondence can be entered into or interviews granted except at the Competition Editor's discretion. The decision of the Competition Editor on all matters relating to this competition is absolutely final and legally binding and is an express condition of entry." The complainant who is an educated man and a practising lawyer knew full well that the decision of the Competition Editor on all matters relating to this competition is absolutely final. He invested a small sum of money in the hope of winning the prize of Rs.25,000. He knowingly ran the risk of losing this small sum and now that he has lost it he cannot make a grievance of it. If we assume, as contended by the complainant, that the accused personally was responsible for the

1939

---

 G. A. ST.  
 GEORGE  
 v.  
 UMA  
 DUTT  
 SHARMA

publication of rules, we have no reason to assume that *at the time* of the publication of the rules the accused had any intention of cheating the complainant or any one else. It is not suggested by the complainant that the accused misappropriated the first prize. The learned District Magistrate says that this prize was given to certain persons who were considered entitled to it by the Editor. Under the circumstances it appears incredible that the accused would go out of his way to commit a serious offence to deprive the complainant and to benefit some one else. The Editor did not know the complainant and it is not suggested that he had any particular partiality for the winners. I am therefore unable to accept the allegation of the complainant that the accused had any intention of causing wrongful loss to the complainant and wrongful gain to any one else.

I do not think it necessary to consider in detail the argument of learned counsel that the accused is guilty of an offence under section 294A. This section was never mentioned in the complaint and no complaint under this section can be made without previous sanction of the Local Government, *vide* section 196 of the Code of Criminal Procedure.

I have carefully read the statement of the complainant and I do not find any mention of relevant evidence he proposes to rely upon in order to establish his case. The documentary evidence filed by him does not connect the accused with the alleged crime nor does it establish the commission of crime. All he has to say is that as the correspondence received by him from the Illustrated Weekly of India were signed by the accused therefore he must be the villain of the piece. Such contention cannot be accepted in a court of law. Lastly, there is nothing to show, beyond the bare statement of the complainant, that he did send an "all correct solution." He states that he retained a copy of his solution which tallies with the correct solution published by the paper. The fact that a correct solution was

1939

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

published by the paper proves the *bona fides* of the management and in no way discloses a criminal intent.

Having given my very serious consideration to the able argument advanced by learned counsel for the complainant I feel no hesitation in holding that the complaint is entirely misconceived and should not be allowed to proceed. In my opinion the recommendations of the District Magistrate must be accepted. I accordingly quash the commitment made by the Tahsildar who had no jurisdiction as a Magistrate of the second class to commit the accused to the court of session. I also dismiss the complaint as in my opinion there is no sufficient ground for proceeding with it.

Before concluding this judgment I wish to say a few words with regard to the Magistrate concerned. In my judgment it was the duty of the Magistrate to have carefully considered the allegations in the complaint before issuing a process against the accused. It was a case in which the Magistrate should have postponed the issue of process for the attendance of the accused and under section 202 of the Criminal Procedure Code should have called upon the complainant to produce evidence in support of his allegations. The case was of an unusual type and the learned Magistrate accepted everything that was said by the complainant on trust. In my opinion the Magistrate showed singular lack of judgment in issuing a warrant against the accused demanding a bail of Rs.5,000. The only ground for the issue of warrant was that the complainant apprehended that the accused would abscond. The Magistrate never took the trouble of inquiring into the ground of the apprehension entertained by the complainant. The Magistrate should have known that the accused represented a paper which has a large circulation. There was no reason to suppose that the accused as one of the editors of that paper would abscond rather than face the trial. In suitable cases it is the duty of a Magistrate to issue warrants of arrest. The position of an accused person should not influence the court, but

before exercising the power vested in the Magistrate he should have taken some trouble to satisfy himself that the statement of the complainant was based on reasonable grounds. I do not find any such grounds on the record. I do not consider it proper to say anything more on the subject as it may possibly prejudice the Magistrate who has no opportunity of clearing his position before me

1939

---

G. A. ST.  
GEORGE  
v.  
UMA  
DUTT  
SHARMA

---

*Before Mr. Justice Ismail*

EMPEROR v. NIHAL SINGH\*

---

1939  
June, 21

*Criminal Procedure Code, section 522—Order for restoration of possession of immovable property—Time limit for passing such order.*

There is no limitation of one month from the date of the conviction for passing an order under sub-section (3) of section 522 of the Criminal Procedure Code, as there is for an order under sub-section (1). So, where an order for restoration of possession of the immovable property was passed by the Magistrate more than one month after the conviction under section 447 of the Indian Penal Code, the High Court in revision set aside that order and itself passed an order for the restoration of possession.

The applicant was not represented.

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

Mr. E. V. David, for the opposite party.

ISMAL, J.:—This is a reference by the learned District Magistrate of Muttra recommending that the order of the Magistrate for restoration of possession of certain immovable property be set aside. It appears that one Salig Ram brought a complaint against Nihal Singh and others under sections 447 and 352 of the Indian Penal Code. On the 30th of September, 1938, Nihal Singh was convicted under only one count, namely section 447 of the Indian Penal Code and sentenced to a fine of Rs.15. The other accused were acquitted.

---

\*Criminal Reference No. 196 of 1939.