

## REVISIONAL CRIMINAL.

1930  
September,  
4.

Before Mr. Justice A. G. P. Pullan.

SARFARAZ SINGH AND ANOTHER (APPLICANTS) v. KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY)\*

*Criminal Procedure Code (Act V of 1898), sections 4(h) and 190—"Complaint" as defined in the Code of Criminal Procedure, essential elements of—Magistrate's powers to take cognizance of an offence in the absence of a complaint—Powers of a Magistrate under section 190 of the Code of Criminal Procedure.*

Where in a petition there was no allegation that an offence had been committed with a view that the Magistrate should take action in respect of such an offence against any person under the Code of Criminal Procedure, held, that it was not a complaint as defined in section 4(h) of the Code of Criminal Procedure.

There is nothing in the Code of Criminal Procedure to restrain a Sub-Divisional Magistrate from taking action in respect of an offence which he thinks has been committed but which has not been brought to his notice in the form of a complaint. Section 190 of the Code of Criminal Procedure gives him very wide powers although no doubt it is intended that a Magistrate should be able to bring his experience to bear upon any statement of facts made to him by an aggrieved person who might not know what his legal remedy was in the given circumstances.

A Magistrate, therefore, acted within his jurisdiction when he read the statements made by certain persons as being a complaint of facts which constituted an offence, and even if the definition of "complaint" would rule out the application of clause (a) of section 190 the Magistrate was certainly able to take cognizance of the offence under clause (c) of the same section.

Dr. J. N. Misra, for the applicants.

The Assistant Government Advocate (Mr. Ali Mohammad), for the Crown.

PULLAN, J.:—These three applications in revision may be considered together. On the 18th of September, 1929, two persons Ramphal and Budhai came

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\*Criminal Revision No. 82 of 1930, against the order of Thakur Rachhpal Singh Sessions Judge of Gonda, dated the 30th of May, 1930.

before a Sub-Divisional Magistrate of Tarabganj with separate petitions in which they alleged that Sarfaraz Singh and others were threatening them and likely to interfere with the cutting of their crops, and asked the court to take preventive measures presumably under section 107 or 145 of the Code of Criminal Procedure. The Sub-Divisional Magistrate passed temporary orders which appear to have been under section 145 of the Code of Criminal Procedure. Eight days later on the 26th of September, Ramphal made a second application in the form of a complaint that Sarfaraz Singh and another had cut his crop, and on this complaint proceedings were instituted under section 379 of the Indian Penal Code. While these Proceedings were pending the Sub-Divisional Magistrate on the 23rd of October, passed an order on the two petitions which had been made on the 18th of September in the following terms:—

“This is a case under sections 447 and 352 of the Indian Penal Code and is transferred to the Court of the Tahsildar.”

On the 30th of November, 1929, the Bench Magistrate convicted Sarfaraz Singh and his son Jaipatar Singh of an offence under section 379 of the Indian Penal Code and ordered them each to pay a fine of Rs. 25. On the 18th of December, 1929, the Tahsildar Magistrate convicted Sarfaraz Singh and five others of offences under sections 352 and 447 of the Indian Penal Code and sentenced them each to pay a fine of Rs. 50. Appeals were filed against both these convictions before the District Magistrate and both appeals were dismissed. In his judgment in the theft case the learned District Magistrate pointed out that although Sarfaraz Singh had been successful in appeal in a civil suit as to the zamindari rights of this land and had got possession in August, 1929, “this

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gave him no right to confiscate the tenant's rights or to seize the crop." As it was admitted that the crop had been cut there seems to be no doubt that a criminal offence was committed and no case has been made out for interfering in revision with the order of the District Magistrate.

*Pullan, J.*

In his judgment in the two appeals arising from the conviction of Sarfaraz Singh and others of offences under section 352 and 447 of the Indian Penal Code the learned District Magistrate refers to the legal points which were argued before him. One of these points has been taken before me and it is as follows :—

In these cases no complaint was made that any offence under the Indian Penal Code had been committed. The persons aggrieved only asked the court to take action under the preventive sections of the Code of Criminal Procedure; the trial therefore is alleged to have been without jurisdiction. "Complaint" is defined in the Code of Criminal Procedure, section 4, clause (h) as "an allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person has committed an offence." Now in these petitions there was no allegation that an offence had been committed with a view that the Magistrate should take action in respect of such an offence against any person under the Code of Criminal Procedure. Consequently there was no complaint, and I am not prepared to agree with the learned District Magistrate that the original petition taken in conjunction with the statement recorded by the Magistrate amounted to a complaint. I find that in their statements also these persons merely requested the Court to take action so that the opposite party should not be able to seize the crops. But although I do not agree with the District Magistrate's view that this was a complaint I do not find that there is anything in the Code of Criminal Procedure to restrain the Sub-Divisional Magistrate from taking action in

respect of an offence which he thinks has been committed but which has not been brought to his notice in the form of a complaint. Section 190 of the Code of Criminal Procedure enacts that a Sub-Divisional Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; and (c) upon information received from a person or upon his own knowledge or suspicion that such offence has been committed. This section gives to the Sub-Divisional Magistrate very wide powers. No doubt it was intended that a Magistrate should be able to bring his experience to bear upon any statement of facts made to him by an aggrieved person who might not know what his legal remedy was in the given circumstances. In the present case these cultivators made statements which clearly indicated that criminal offences under the Indian Penal Code had been committed by this Sarfaraz Singh and others, and although they themselves did not ask that these persons should be prosecuted possibly because they did not know that the acts of which they complained amounted to offences under the Penal Code, the Magistrate was acting within his jurisdiction when he read the statement as being a complaint of facts which constituted an offence, and even if the definition of "complaint" would rule out the application of clause (a) of section 190 the Magistrate was certainly able to take cognizance of the offence under clause (c) of the same section.

I am therefore unable to find that in any of these cases there has been any failure on the part of the Magistrate to exercise his jurisdiction, still less can I find that there has been any miscarriage of justice. The courts below have found that these offences have been committed and no reason has been shown to me for reconsidering these findings in revision. I dismiss all three applications.

*Application dismissed.*

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