

with interest thereon at 6 per cent. per annum from the date of suit till realisation. Parties will receive and pay costs in proportion to their success and failure in all the courts.

1936

GUR DIN  
SAH  
v.  
BARI

*Appeal partly allowed.*

## REVISIONAL CRIMINAL

*Before Mr. Justice H. G. Smith*

SHEO BALAK SINGH (COMPLAINANT-APPLICANT) v. SANT  
BAKHSI SINGH (OPPOSITE-PARTY)\*

1936

September 9

*Criminal Procedure Code (Act V of 1898), sections 202, 203 and 436—Complaint before Sub-Divisional Magistrate—Enquiry under section 202—Complaint transferred to Special Magistrate—Special Magistrate, if can examine witnesses under section 202 again and dismiss complaint—Power of Sessions Judge to direct further enquiry.*

If the complaint is transferred at the very outset by one Magistrate to another, the latter has power to take action under sections 202 and 203 of the Code of Criminal Procedure; but it is impossible to suppose that the Code contemplates that when one Magistrate has examined witnesses under section 202 and has believed them, and thereupon transfers the case for trial to a subordinate Magistrate, that Magistrate should have power to examine those same witnesses over again under section 202, and then proceed to dismiss the complaint under section 203 of the Code of Criminal Procedure.

Even assuming that the subordinate Magistrate has power under the Code to take evidence under section 202 and to dismiss the complaint under section 203, Cr. P. C., further enquiry ought to be made into the complaint after summoning witnesses. Sessions Judge himself can, in such a case, order further enquiry under the provisions of section 436 of the Code of Criminal Procedure and it is not necessary for him to make reference to the High Court.

Dr. *Qutub Uddin*, for the applicant.

Mr. *Akhtar Husain*, for the opposite party.

SMITH, J.:—This is a reference by the learned Sessions Judge of Rae Bareilly.

\*Criminal Reference No. 33 of 1936, made by Mr. K. N. Wanchoo, I.C.S., Sessions Judge of Rae Bareilly.

1936

SHEO  
BALAK  
SINGH  
v.  
SANT  
BAKHS  
SINGH

Smith, J.

The facts are rather peculiar. A complaint was made by one Sheo Balak Singh against one Sant Bakhsh Singh under sections 420/409 of the Indian Penal Code. The complaint was lodged in the court of a Sub-Divisional Magistrate, who called upon the complainant to produce evidence under section 202 of the Code of Criminal Procedure. This was done, and after the evidence had been recorded the Sub-Divisional Magistrate passed an order in the following terms:

*"Muqadma binabar faisla sipurd baijlas Shaikh Azhar Husain Sahab, Special Magistrate, howe."*

On the case coming up before the Special Magistrate an order was apparently being written for the summoning of the accused, when the Special Magistrate changed his mind, and that order was struck out, and in its place there was substituted an order that the complainant should produce evidence under section 202 of the Code of Criminal Procedure. The same witnesses who had already been examined by the Sub-Divisional Magistrate were then examined again under that section, and in the end the Special Magistrate dismissed the complaint under section 203 of the Code of Criminal Procedure. The complainant then made an application in revision to the learned Sessions Judge, who has referred the case to this Court with a recommendation that the "proceedings" in the court of the Special Magistrate be set aside, and it be ordered that the case be proceeded with, after the summoning of the accused, from the stage at which the Sub-Divisional Magistrate left it. The learned counsel for the opposite party, Sant Bakhsh Singh, urges that the action of the learned Special Magistrate was justified by the provisions of section 202 of the Code of Criminal Procedure, and that the Special Magistrate was quite unfettered in his procedure. The fact that the Sub-Divisional Magistrate had already examined the three witnesses under section 202 of the Code of Criminal Procedure, it is urged, did not prevent the learned Special Magistrate from examining them again.

I have no doubt that the learned Sub-Divisional Magistrate intended to make over the case to the learned Special Magistrate for trial in the manner contemplated by section 192(1) of the Code of Criminal Procedure. No doubt if a complaint is transferred at the very outset by one Magistrate to another, the latter has power to take action under sections 202 and 203 of the Code of Criminal Procedure, but it is impossible to suppose that the Code contemplates that when one Magistrate has examined witnesses under section 202 and has believed them, and thereupon transfers the case for trial to a subordinate Magistrate, that Magistrate should have power to examine those same witnesses over again under section 202, and then proceed to dismiss the complaint under section 203 of the Code of Criminal Procedure.

Even, assuming that the learned Special Magistrate had power under the Code to deal with the case in the manner in which he did, it seems to me that further enquiry ought to be made into the present case. The learned Sessions Judge himself could have ordered further enquiry under the provisions of section 436 of the Code of Criminal Procedure,—it was not necessary for him to make this reference to this Court at all. As however, he has referred the matter here, I shall dispose of it myself instead of sending it back to the learned Sessions Judge with a direction to him to dispose of it. I direct that the case be taken up by the learned Sub-Divisional Magistrate, or by his successor, if he has in the meantime been transferred, and that further enquiry be made into the complaint after the summoning of the accused.

1936

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SREO  
BALAK  
SINGH  
v.  
SANT  
BAKISH  
SINGH

*Smith, J.*