# APPELLATE CRIMINAL.

*Before Mullick and Bucknill, J.J.*

KING-EMPEROR

*v.*

BHOLA BHAGAT.*

1923.

*Jan.* 11.

*Code of Criminal Procedure*, 1898 (*Act V of* 1898), *sections* 202, 200 *and* 54—*Complaint of cognizable offence to Magistrate—police enquiry ordered, whether ordinary powers of police are ousted—Arrest, legality of—Penal Code*, 1860 (*Act XLV of* 1860), *sections* 224, 225 *and* 332.

A Magistrate's order under section 202 of the Criminal Procedure Code, 1898, directing the police to enquire into a cognizable case does not debar the police from exercising their powers of arrest and investigation in regard to the same matter as formed the subject of the complaint.

Where a Magistrate to whom a complaint was made passed the following orders—

"Police to take cognizance under section 379, Penal Code, make a quick enquiry and report by 8th **February, 1922.**"

*Held*, that it was not an order passed under section 202 of the Code of Criminal Procedure Code, 1898, but an order directing the police to exercise the independent powers conferred on them by the law, and, therefore, that an arrest made by them in the course of their investigation was not illegal.

*Held further*, that even if the order was made under section 202 the police had power to arrest the accused and send up a charge sheet.

A complaint recorded by a Magistrate under section 200 is "credible information" upon which the police are entitled to effect an arrest under section 54, even though the Magistrate has not issued process against the accused persons.

*Government Appeal No. 7 of 1922, from a decision of Rai Bahadur Jadunandan Prasad, dated the 8th September 1922, reversing the order of Mr. M. A. Majid, Subdivisional Magistrate of Araria, dated the 25th July, 1922.

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*Charu Chandra Mazumdar*, In the matter of(1), *Queen-Empress* v. *Dalip*(2), *Nowrangi Singh* v. *The Queen-Empress*(3) and *Queen-Empress* v. *Pukot Kotu*(4), referred to.

The facts of the case material to this report were as follows:—

This was an appeal by the Local Government against an order of acquittal passed by the Sessions Judge of Purnea in Criminal Appeal No. 6 of 1922.

On the 30th January, 1922, one Ali Beg lodged a complaint before the Subdivisional Magistrate of Araria stating that three persons, Bhola Bhagat, Abdul and Jan Mohamad, had forcibly snatched away a bottle of liquor and robbed him of a purse containing Rs. 10. The Subdivisional Magistrate recorded the complaint and passed the following order upon it:

"Police to take cognizance under section 379, Indian Penal Code, make a quick enquiry and report by 8th February 1922."

That order reached the Sub-Inspector of Araria thana on the 4th February and as he was ill he deputed the officer next in seniority to him to proceed to the place of occurrence and to hold an inquiry. The Writer Head Constable, Mahesh Narain, accordingly arrived at Joki Hât on the 5th February and after making some investigation he arrested Bhola, Abdul and Jan Muhammad. It was alleged that, while he was bringing these three persons to the police-station, a mob of two thousand persons forcibly rescued the prisoners and assaulted two constables who attempted to resist.

Thereafter Bhola, Abdul and Jan Muhammad were placed upon their trial for the offences enumerated in Ali Beg's complaint and were convicted under sections 352, 426 and 379, Penal Code, and sentenced as follows: Bhola to rigorous imprisonment for one month under section 379 and one month under section 426; Abdul and Jan Muhammad to rigorous

(1) (1917) I. L. R. 44 Cal. 76.
(2) (1896) I. L. R. 18 All. 246.
(3) (1900-01) 5 Cal. W. N. 134.
(4) (1896) I. L. R. 19 Mad. 349.

imprisonment for one month under section 426. Against that order there was a reference to the High Court and on the 22nd May, 1922, Adami, J., set aside the convictions and directed a retrial. That retrial had not been concluded, when the present appeal came up for hearing.

Meanwhile, the police had instituted an inquiry against the persons who had been engaged in the rescue of the prisoners, and in regard to that occurrence they, on the 5th February, sent up twenty persons for trial to the Subdivisional Magistrate of Araria. The result was that nine out of these twenty were acquitted and the remaining eleven, who were respondents in the present appeal, were convicted and sentenced as follows: Bhola, Abdul and Jan Muhammad to one month's rigorous imprisonment and to a fine of Rs. 20 each under section 224, Ramcharitar, Rajkumar, Rashid Mian, Makhru Sahu, Bunsi Chamari, Phul Muhammad, Kutubuddin and Muhammad Irfan to one month's rigorous imprisonment and to a fine of Rs. 20 each under section 225, all the eleven accused to six months' rigorous imprisonment each under sections 147, 225 and 332, the sentences of imprisonment in all cases to run concurrently.

An appeal was then preferred to the Sessions Judge of Purnea and he, on the 8th September, 1922, reversed the convictions, holding that the arrest of the three prisoners was illegal, and that the appellants had committed no offence.

*Sultan Ahmad* (Government Advocate), for the Crown.

*Gour Chandra Pal*, for the respondents

MULLICK, J., after stating the facts as set out above proceeded as follows:—

The present appeal has been preferred by the Local Government against the order of acquittal and the eleven appellants before the Sessions Judge are now respondents before us.

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Mr. *Gour Chandra Pal*, on behalf of the respondents, contends that the learned Magistrate distrusted the truth of Ali Beg's complaint, and, acting under section 202, Criminal Procedure Code, sent it to the police for enquiry and report; that the police had no jurisdiction to do anything more than to hold a local inquiry and to send their report to the Sub-divisional Magistrate; and that they were incompetent to exercise any of the powers which they may have possessed under the general provisions of the Criminal Procedure Code, either under section 54 or under the chapter relating to the investigation of cognizable cases. In other words, it is contended that the arrest of the 5th February was not an act done in excess of jurisdiction but with complete absence of jurisdiction.

It is necessary, therefore, to see what was the meaning of the order of the 30th January. Reading that order it is impossible to say that it was an order made under section 202. In my opinion it was an order directing the police to exercise the independent powers conferred upon them by the law. The learned Deputy Magistrate nowhere says that he is proceeding under section 202 or that he distrusts the truth of the complaint; and in these circumstances the question is whether the police were entitled to proceed with the investigation independently of the Magistrate, even though a complaint was pending before the Magistrate in regard to the same matter. In my opinion there was nothing in the law to prevent such a course.

The Criminal Procedure Code draws a clear difference between jurisdiction to try and jurisdiction to investigate and it is possible to conceive of cases where, although the Magistrate may distrust a complaint or delay in passing orders the police would be failing in their duty, if they did not arrest an offender against whom a cognizable offence has been made out. Much more so would this be the case where the Magistrate, after recording the complaint, finds that a regular police investigation would be more suitable and intentionally keeps the complaint pending in order

that the police may exercise their powers of investigation and arrest independently of the Magistrate. In my opinion this is what he did in the present case.

But even if the order of the Magistrate was an order under section 202, I cannot see why the jurisdiction of the police to arrest and to send up a charge-sheet was ousted. In practice, of course, the police would not ordinarily take independent action in respect of a complaint which had already been distrusted by the Magistrate; but to lay down the general proposition that a Magistrate's order under section 202 debars the police from exercising their powers of arrest and investigation, would, in my opinion, be neither expedient nor correct.

Therefore from any point of view the police had in this case jurisdiction to take cognizance of the information which was given to them.

Mr. *Pal* next contends that in fact there was no information upon which the police could act. The reply to this is that the police had the complaint which had been recorded by the Magistrate His reply to that again is that if he was not acting under section 202 then the Magistrate had no authority under the Code to send the complaint at all to the police. Assuming that this was so and assuming that the Magistrate acted extrajudicially, the fact remains that the police got information upon which they could proceed. At its lowest the communication was a request from a private person that investigation should be made and I fail to see how the police were precluded from taking cognizance of the subject-matter of that communication. But in my opinion the Magistrate's order stands on a higher footing. As the executive head of the police he had power to send that complaint to the police and to direct them to investigate; in either case the jurisdiction of the police could not have been ousted.

The next question is whether the Writer Head Constable had authority to make the investigation. Now, section 4, clause (*p*), of the Criminal Procedure Code, clearly shows that the Writer Head Constable in

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this case was qualified to do so. The Sub-Inspector in charge was ill and although the Writer Head Constable admits that he has not been generally empowered to investigate cognizable cases, he being the officer in charge of the police-station on that day, it was his duty to make the investigation.

The only question that remains is, whether the arrest which followed on the 5th February was lawful. Now, section 54 of the Criminal Procedure Code is clear and the first clause of that section says that if a police officer finds that a reasonable complaint has been made or credible information has been given or a reasonable suspicion exists he is competent to arrest the accused person. It is contended by Mr. *Pal* that in this case there was no reasonable complaint or credible information or reasonable suspicion. To this the reply is that there was first of all the complaint which had been recorded by the Subdivisional Magistrate. It is, however, urged that in the complaint before the Magistrate was a charge of a cognizable offence against Bhola only and that against Abdul and Jan Muhammad there was only a charge of assault and mischief. Now, although the vernacular complaint states that Bhola was the person who snatched away the purse, in the English statement recorded by the Magistrate there is no qualification or discrimination and all three men are charged with the robbery. Again, when the Writer Head Constable arrived at Joki Hât, Ali Beg repeated the accusation, and in these circumstances it seems impossible to say that the Writer Head Constable had not credible information against all the three accused. In my opinion it was his duty to arrest all three and to leave it to the Court to decide which, if any, were guilty.

It is, however, contended that inasmuch as the Magistrate himself had not thought it necessary to issue process in the first instance, the police officer was put upon his guard and that he did not in fact believe that there was any cognizable case against the three men. In my opinion, this was not the position. There

was nothing before the Writer Head Constable to indicate that the Magistrate did not believe the charge, and as I have said before, even if he had known that the Magistrate was doubtful, his jurisdiction would not have been ousted.

In these circumstances the view taken by the learned Judge seems to be wrong. The arrest was lawful; there was no absence of jurisdiction, and, therefore, any assembly, which had for its object the rescue of the prisoners or the commission of an assault upon the police while engaged in the lawful exercise of their duties, was an unlawful assembly within the meaning of the Indian Penal Code. Our attention has been drawn to *In the matter of Charu Chandra Mazumdar*(1) in which a learned Judge of the Calcutta High Court held that, a letter written by the Criminal Investigation Department in Bombay to the Police Commissioner in Calcutta asking for the arrest of a certain person, was not sufficient information to justify resort to the provisions of section 54 of the Criminal Procedure Code. That case, however, is of no real assistance; for it must surely be a question of pure fact whether or not in the present case the materials before the police officer were sufficient to set section 54 in motion. If he should be so unfortunate as to be unable to establish those facts, the arrest must of course be pronounced illegal. In my opinion he has discharged the onus and his proceedings were perfectly legal.

In this view of the case, it is unnecessary to examine the arguments addressed to us as to the scope of section 99, Penal Code. There are observations in *Queen-Empress* v. *Dalip* (2), *Nowrangi Singh* v. *Queen-Empress* (3) and *Queen-Empress* v. *Pukot Kotu* (4) which may lead to the inference that even though the arrest is illegal, resistance is unlawful if the police acted in good faith and under colour of their office. Mr. *Pal* asks us to distinguish these cases and to hold

(1) (1917) I. L. R. 44 Cal. 76.
(2) (1896) I. L. R. 18 All. 246.
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that they cover irregularities and not illegalities. I agree that it is often said that section 99 extends not to cases where there is complete absence of jurisdiction but only to cases where there is jurisdiction and something has been done in excess of jurisdiction. It is unnecessary for us to examine the authorities dealing with this part of the case because, in my opinion, there was no illegality or irregularity whatsoever in the arrest.

The order, therefore, that we shall make is, that the appeal be allowed and that the case be remanded to the Sessions Judge of Purnea for rehearing. He will decide the questions of fact which arise upon the evidence. We only decide the question whether the arrest was legal.

The District Magistrate, upon receiving this judgment, will call upon the respondents to surrender and will then inform the Sessions Judge of the fact of his having done so in order that he may fix a day for the rehearing of the appeal. As the respondents were on bail in the Court of the Sessions Judge the District Magistrate will be competent to release them on adequate bail to appear before the Sessions Judge for the hearing of the appeal.

BUCKNILL, J.—I agree.

*Case remanded.*

## APPELLATE CIVIL.

*Before Das and Kulwant Sahay, J.J.*

1923.

Jan. 16.

MEDNI PRASAD SINGH

*v.*

NAND KESHWAR PRASAD SINGH.*

*Code of Civil Procedure*, 1908 (*Act V of* 1908), *Order XXI, rule* 90—"*whose interests are affected by the sale*"—

*Appeal from Original Decree No. 82 of 1920 from a decision of Babu Satish Chandra Mitra, Subordinate Judge, Second Court of Monghyr, dated the 11th March, 1920.