

## REVISIONAL CRIMINAL.

*Before Mr. Justice Abdul Raof.*

NABI BAKHSH—*Petitioner,*

*versus*

THE CROWN—*Respondent.*

Criminal Revision No. 372 of 1919.

*Criminal Procedure Code, Act V of 1898, section 437—order for further inquiry after discharge without notice to the accused—when further inquiry should not be ordered.*

*Held*, that an order for further inquiry after discharge should not be passed without notice to the accused, the order being one which is prejudicial to him.

*Dulla v. Empress* (1), referred to.

*Held also*, that further inquiry should not be ordered unless the order of discharge was manifestly perverse or foolish or was based upon a record of evidence which was obviously incomplete.

*Emperor v. Kiru* (2) *per* Kensington, J., referred to.

*Revision from the order of C. F. Osborne, Esquire, District Magistrate, Sialkot, dated the 13th December 1918.*

KHARAK SINGH, for Petitioner.

NEMO, for Respondent.

ABDUL RAOOF, J.—In this case the petition was charged under section 406, Indian Penal Code, and an order of discharge was recorded by *Pandit Shambhu Nath*, Magistrate, 2nd Class, on the 7th September 1918. The District Magistrate, Mr. C. F. Osborne, by an order, dated the 13th December 1918, set aside the order of discharge and ordered a fresh trial by the Magistrate of the *Ilaga*. The petitioner has come up on revision to this Court.

The first ground urged on behalf of the petitioner is that the order of the Magistrate is irregular as it has been passed behind the petitioner's back without any

(1) 2 P. R. (Cr.) 1901.

(2) 10 P. R. (Cr.) 1911 p. 4.

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notice being given to him. In my opinion there is force in this ground. It has always been held by this Court and other High Courts that a Court should not pass an order prejudicial to a person without giving him an opportunity of meeting the case against him. It was held in the case of *Dulla and others* versus *The Empress* (1) that before an order for further enquiry is passed to the prejudice of an accused person it is proper that he should be called upon to show cause why such order should not be passed. This is a very salutary rule of practice which has been acted upon in almost all the High Courts, and though it is not specifically laid down in the law that a notice must necessarily go under these circumstances, it has always been held to be a proper course to adopt. Especially in a case where on the face of the order of discharge it does not appear that the order is perfunctory or foolish a superior court ought not to set aside an order passed by a competent Court. If any authority is necessary for this proposition it is to be found in a Full Bench case *Emperor v. Kiru* (2) in which Mr. Justice Kensington is reported to have observed at page 34 that no invariable rule can be laid down, but speaking generally further enquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish or was based upon a record of evidence which was obviously incomplete. None of these circumstances are to be found in the present case. In this case it appears from the judgment that the learned Magistrate has thoroughly examined the evidence given in the case and has also taken into consideration the record of the execution proceedings. Reading the judgment of the learned Magistrate, which in my opinion is a careful and exhaustive judgment, I think the order under revision was uncalled for.

For the reasons above set forth I set aside the order directing fresh trial. Revision allowed.

*Revision accepted.*

(1) 2 P. R. (Cr.) 1901.

(2) 10 P. R. (Cr.) 1911 F. B.