

we think, therefore, that the defendant was entitled to have the plaintiff's uncle and minor brother placed on the record either as co-plaintiffs or defendants.

We think, however, that under the circumstances of this case, and having regard to the state of the law on the subject, the plaintiff should be, and we hereby direct that he be allowed to amend his plaint by making the other members of the family mentioned by the defendant parties to the suit, and reverse the decree of the Court below for that purpose. Such amendment to be made within a month of the papers being received by the Court of first instance; but, in default, the decree of the lower Court of appeal is to stand confirmed. In any case, the plaintiff must pay the defendant his costs up to the present time.

1887.

HARI GOPAL  
v.  
GOKALDAS  
KUSHABA-  
SHEK.

## REVISIONAL CRIMINAL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

IN RE JANKIDA'S GURU SITA'RAM.\*

1887.

August 17.

*Criminal Procedure Code (Act X of 1882), Secs. 155, 202, 203—Magistrate's power to direct a local investigation by the police—Complaint of an offence cognizable by a Magistrate—Examination of complainant.*

Section 155 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police, or call for a police report.

It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer. He is bound to receive the complaint, and after examining the complainant to proceed according to law.

THIS was an application for the exercise of the revisional jurisdiction of the High Court under section 435 of the Code of Criminal Procedure (Act X of 1882).

The applicant Jánkidás lodged a complaint before Mr. Ryan, the Acting Second Presidency Magistrate, charging one Gangádás and twelve other persons with criminal trespass and house-trespass, under sections 447 and 448 of the Indian Penal Code (Act XLV of 1860). He alleged that he was the *pujári* and manager of the temple of Shri Mahádev at Nágpáda; that on the 13th June,

\* Criminal Revision; Application No. 157 of 1887.

1887.

IN RE  
JANKIDÁS  
GURU  
SITARAM.

1887, at about 8 o'clock in the morning, the accused unlawfully entered the temple during his absence, assaulted his brother's widow, who was then engaged in worshipping the idol, and turned her out by force; that the tenants, who came to her rescue, were also assaulted and turned out; and that when he himself returned soon afterwards he found the temple closed, and some of the accused standing near the entrance, and that they used abusive and threatening language towards him.

The Magistrate referred this complaint to the police for inquiry and report. On receipt of the police report he refused to interfere in the matter.

The complainant thereupon applied to the High Court for a revision of the Magistrate's proceedings.

*Ganpat Sadáshiv Ráv* for the complainant:—The Magistrate's action was irregular. He had no power to refer the complaint to the police for investigation or for report. Such power is given only to the Chief Presidency Magistrate: see section 202 of the Code of Criminal Procedure (Act X of 1882). Under section 203 the Magistrate is bound to examine the complainant before he dismisses the complaint. In the present case the complainant was not examined; nor was any order made dismissing the complaint. The proceeding is irregular and illegal, and should, therefore, be set aside. He referred to *Queen-Empress v. Puran*<sup>(1)</sup> and *Baidya Nath Singh v. Muspratt*<sup>(2)</sup>.

At this stage the Court (West and Birdwood, JJ.) adjourned the further hearing of the case, and directed the Magistrate to state whether he was empowered by the local Government, under section 202 of the Code of Criminal Procedure, to order a local investigation to be made by the police, or to call for a police report.

The Magistrate made the following report:—

“The undersigned has the honour to report that a Presidency Magistrate is authorized by section 155 of the Criminal Procedure Code (Act X of 1882) to direct the police to make an investigation in non-cognizable cases.

(1) I. L. R., 9 All., 85.

(2) I. L. R., 14 Calc., 141.

"The complaint made by Jánkidás Sitárám Bává against Gangádás Jannádás and twelve others alleged that they had committed criminal trespass on the premises of the temple at Nág-pádá, and as it appeared the police had already taken action with a view to prevent any possible breach of the peace, the information presented by the complainant was forwarded to the police superintendent of the district for inquiry and report.

1887.

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 IN RE  
 JÁNKIDÁS  
 GURU  
 SITÁRÁM.

"A second information was presented by Jánkidás, superadding a charge of theft, and this being a cognizable offence he was directed to make his complaint, in the first instance, to the police superintendent, to whom also the second information was forwarded.

"It does not appear that the local Government has authorized the Presidency Magistrate to direct a local investigation by a police officer under section 202 of the Criminal Procedure Code (Act X of 1882). But a Magistrate having a jurisdiction appears, by intendment and implication of the law, to possess such a discretionary authority in cognizable cases."

On receipt of this report the Court (West and Birdwood, JJ.) made the following order :—

Section 155 is conversant only with the powers of police officers. It confers no power or authority on Magistrates. Section 202 enables only the Chief Presidency Magistrate to direct a local investigation by the police, except when a like authority has been specially conferred on a Presidency Magistrate of lower rank.

It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he has cognizance, to refer the complainant to a police officer. He is bound, when the circumstances giving him jurisdiction exist, to receive the complaint, and deal with it according to law. A different course would foster abuses, and defeat the purpose of the law, which is to give to persons, who have been injured, an access to justice independent of the police.

The Magistrate, therefore, will take the examination of the complainant, and proceed thereon according to law.

*Proceedings set aside.*