

The definition of the words 'sale and exchange' in the Contract Act and the Transfer of Property Act are cited with a view to shew that the change of one property for another is an exchange, and that the sale requires payment of price, and it is argued that price means money.

But it is apparent from the definition of the word 'exchange' that the two parties between whom it is effected must have the goods in hand or in possession in order to have them exchanged one for the other. When the transfer on one side is effected and the other side promised only, and had not completed the transaction, it comes within the definition of the word 'sale' and not of 'exchange'.

For this reason I find that the accused effected sale by the transfer of the Court-fee. He is therefore guilty under section 34 of the Court-fees Act.

The offence is a technical one, and a nominal punishment need only be inflicted."

Babu Dwarka Nath Mitter and Babu Narendra Kumar Bose for the petitioner.

RAMPINI AND HANDLEY, JJ. This is a Rule calling upon the Magistrate of the district to show cause why the conviction and sentence in this case should not be set aside.

The petitioner has been convicted of an offence under section 34 of the Court-fees Act, VII of 1870, namely of having sold a Court-fee stamp of eight annas. The facts do not disclose the commission of any such offence. It appears that the petitioner never sold the stamp at all. He transferred it to another person and was going to take another stamp in exchange, but there was no sale. The conviction, therefore, cannot stand. We set it aside and direct that the fine, if paid, be refunded.

Rule absolute.

30 C. 923.

[923] CRIMINAL REVISION.

LOKENATH PATRA v. SANYASI CHARAN MANNA.*

[27th February, 1903.]

Complaint—Dismissal of complaint—Complainant, examination of—False charge—Criminal Procedure Code (Act V of 1898) ss. 156, 159, 200, 202, 203—Penal Code (Act XLV of 1860) s. 211—Jurisdiction of Magistrates.

A complaint was made to a Magistrate who, without examining the complainant, sent the petition of complainant under s. 156 of the Code of Criminal Procedure to the police for inquiry, and upon receipt of the police report directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case under s. 159 of the Code, and on receipt of his report the Magistrate not being satisfied with it, cross-examined the complainant and some of his witnesses, examined some witnesses sent up by the police, and then dismissed the complaint under s. 203 of the Code, and directed the prosecution of the complainant under s. 211 of the Penal Code:—

Held, that the order dismissing the complaint was illegal, the Magistrate having no jurisdiction to deal with the case or dismiss it under s. 203 of the Criminal Procedure Code without complying with the requirements of the law as laid down in ss. 200 and 202 of that Code.

[Ref. 15 Cr. L. J. 517=16 O. W. N. 1105=16 I. C. 257; 9 C. W. N. 199; 12 Cr. L. J. 539=12 I. C. 515=2 P. R. 1912 Cr.=11 P. L. R. 1912; 12 Cr. L. J. 51; 51 I. C. 465. Expl. 12 Cr. L. J. 463=11 I. C. 999=10 M. L. T. 120=(1911) 2 M. W. N. 74 Dist. 47 I. C. 70=19 Cr. L. J. 874=3 Pat. L. J. 346.]

RULE granted to the petitioner, Lokenath Patra.

This was a Rule calling upon the District Magistrate of Howrah to show cause why the order of the Deputy Magistrate of Uluberia, dated

* Criminal Revision No. 75 of 1903, against the order of P. N. Dutt, Deputy Magistrate of Uluberia, dated Dec. 17, 1902.

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the 17th of December 1902, dismissing the complaint of the petitioner under s. 203 of the Code of Criminal Procedure and directing his prosecution under s. 211 of the Indian Penal Code, should not be set aside on the ground that he had no jurisdiction to make over the case for preliminary inquiry to the Sub-Deputy Magistrate without first examining the complainant; that the proceedings taken before the Sub-Deputy Magistrate were without jurisdiction; and that the Deputy Magistrate himself not having made a legal inquiry into the complaint had no jurisdiction to dismiss the case or pass the order for the prosecution of the petitioner under s. 211 of the Indian Penal Code.

On the 22nd September 1902 the petitioner made a complaint to the Sub-divisional Magistrate of Uluberia charging certain [924] persons with defamation and with having wrongfully confined him. On receipt of the complaint, the Subdivisional Magistrate, without examining the petitioner, sent the petition of complaint under s. 156 of the Criminal Procedure Code to the police for inquiry. The police investigated into the matter and submitted a report to the effect that the charge of defamation was true, but that there was no foundation for the charge of wrongful confinement.

On receipt of the police report, the Subdivisional Magistrate under s. 159 of the Code directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case. On receipt of his report, on the 17th December 1902, the Subdivisional Magistrate not being satisfied with it, cross-examined the petitioner and some of his witnesses, examined some witnesses sent up by the police, and then dismissed the complaint under s. 203 of the Code, directing the prosecution of the complainant under s. 211 of the Penal Code.

Babu Atulya Charan Bose for the petitioner. The Rule should be made absolute. The Subdivisional Magistrate had no jurisdiction to dismiss the complaint under s. 203 of the Criminal Procedure Code without first complying with the provisions of ss. 200 and 202 of that Code. There has been no examination of the complainant, nor has there been any direction to make a previous local investigation as contemplated by those sections. The Subdivisional Magistrate states that he ordered the Sub-Deputy Magistrate to hold the preliminary inquiry under s. 159 of the Code. If that be so, he should have proceeded according to law just as he would have done on receipt of a police report. The order directing the prosecution of the petitioner under s. 211 of the Penal Code depends on the validity of the order dismissing the complaint. If the order under s. 203 is illegal, so also is the order directing the prosecution, as there can be no such order until the complaint has been found to be false.

No one appeared to shew cause.

HARINGTON AND BRETT, JJ. In this case a Rule was issued calling upon the District Magistrate of Howrah to show cause why the order of the Deputy Magistrate, dated the 17th December 1902, dismissing the complaint of the petitioner under [925] section 203 of the Code of Criminal Procedure, and directing his prosecution under section 211 of the Indian Penal Code, should not be set aside on the ground that he had no jurisdiction to make over the case for preliminary inquiry to the Sub-Deputy Magistrate without first examining the complainant; that the proceedings taken before the Sub-Deputy Magistrate and the Bench of Honorary Magistrates were without jurisdiction,

and that the Deputy Magistrate himself not having made a legal inquiry into the complaint had no jurisdiction to dismiss the case or pass the order for the prosecution of the petitioner under section 211 of the Indian Penal Code.

It appears that a complaint was made to the Subdivisional Magistrate and that he without examining the complainant sent the petition of complaint to the police for inquiry. On receipt of the police report he directed the Sub-Deputy Magistrate to make a preliminary inquiry into the case, and on receipt of the report of the Sub-Deputy Magistrate he, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined three witnesses sent up by the police, and then proceeded to dispose of the case under section 203, dismissing the complaint and directing the prosecution of the complainant under section 211 of the Indian Penal Code. In his explanation the Magistrate has stated that he directed the investigation by the police under section 156, clause (3) of the Code of Criminal Procedure, and that he ordered the Sub-Deputy Magistrate to hold the preliminary inquiry under section 159 of the same Code, and he appears to be of opinion that his own cross-examination of the complainant on the depositions recorded by the Sub-Deputy Magistrate was a sufficient compliance with the law to enable him to deal with the case under section 203 of the Code of Criminal Procedure.

We are unable to accept this view as correct. Section 203 provides that "the Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding." In this case there has been no previous local investigation ordered under section 202 and there has been no examination of the complainant by the [926] Magistrate, who has dismissed the case, such as is contemplated by section 200 of the Code of Criminal Procedure.

We are unable therefore to hold that the Magistrate on the materials before him had jurisdiction to deal with the case, or to dismiss it under section 203. On receipt of the report of the preliminary inquiry under section 159, he should have proceeded to deal with the case in the same way as he would have dealt with it on receipt of a report from a Police officer. He has not done so but he has dealt with the case as if he had proceeded under sections 200 and 202 of the Code of Criminal Procedure without complying with the requirements of the law as laid down in these sections. We think therefore that he had no jurisdiction to pass an order under section 203; and we accordingly make the Rule absolute and set aside the order passed under section 203 as well as the order directing the prosecution of the petitioner under section 211 of the Indian Penal Code.

If the Magistrate wishes to take any further steps in the matter he should proceed in accordance with law.

Rule absolute.

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