

1903  
JAN. 22.  
—  
CRIMINAL  
REVISION.

30 C. 918=7  
C. W. N. 510.

In the present case the Magistrate appears to have had before him no evidence of any of the facts which would entitle him to make the order in question. The order in question is in fact made under section 147 in which it is provided that the procedure to be followed in making this order is that which is laid down in section 145. In our view, the Magistrate ought to have had some evidence in proof of the allegation contained in the written statement, and that he ought not to have made the order without having some evidence to that effect before him.

On that ground we set aside the order, and direct that the Magistrate do proceed according to law.

The Rule is made absolute.

*Rule absolute.*

30 C. 921(=7 C. W. N. 704).

[921] CRIMINAL REVISION.

KEDAR NATH SHAHA v. EMPEROR.\*

[17th June, 1903.]

*Court-fee stamp, sale of—"Sale"—Exchange—Transfer of stamp on promise that one of equal value would be returned—Court-fees Act (VII of 1870) s. 34, cl. (3).*

Where a mukhtear who had purchased a court-fee stamp for a client, transferred it to another client, the latter having agreed to return to the mukhtear another court-fee stamp of the same value, and was convicted of an offence under s. 34 of the Court-fees Act :—

*Held*, that there had been no 'sale' of the stamp within the meaning of s. 34 of the Court-fees Act (VII of 1870), and that the conviction should be set aside.

RULE granted to the petitioner, Kedar Nath Shaha.

This was a Rule calling upon the District Magistrate of Bogra to show cause why the conviction and sentence of the petitioner should not be set aside.

The petitioner, a mukhtear of the Criminal Court, who had purchased a court-fee stamp of the value of 8 annas for a client, transferred the stamp to another client of his who had immediate need of it for the purpose of submitting a petition to the Magistrate. The latter client promised to return to him another court-fee stamp of the same value, when the client for whom the stamp had originally been purchased arrived in Court.

The petitioner was convicted in a summary trial and fined, under s. 34 of the Court-fees Act of 1870, by the Deputy Magistrate of Bogra on the 23rd April 1903. The judgment of the Lower Court was as follows:—

" Summary and Reasons :—

This is case of sale of court-fee stamp under section 34, Court-fees Act.

The accused is a mukhtear of the Criminal Court. He transferred a court-fee stamp to a client of his who had immediate need of it for the purpose of submitting a petition to the Magistrate.

[922] The court-fee stamp of 8 annas was in the hand of the mukhtear, purchased before for another client, but at the time he had no use for it. He therefore transferred it to the new client.

The mukhtear says that this new client promised him to return another court-fee stamp of equal value when the vendor arrived in Court. This statement I accept to be correct, as there is no evidence to the contrary. Now, it is pleaded for the defence that by this transfer of Court-fee the mukhtear has not effected a sale, but only caused an exchange.

\* Criminal Revision No. 447 of 1903, against the order of M. K. Bose, Deputy Magistrate of Bogra, dated April 23, 1903.

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.