

GHOSE, J. I am of the same opinion. I should desire, however, to add that at one time I was inclined to think that the information lodged by the husband before the police having been placed before the Magistrate in due course, and the Magistrate having taken action upon such information, and the husband in his evidence before the Magistrate having referred to the information before the police, there was a complaint before the Magistrate within the meaning of the word "complaint" as given in section 4 of the Code of Criminal Procedure; but having considered more carefully the different sections of the Code which bear upon the question, and by the light of the various cases which have been quoted before us, I am of opinion that the information before the police could not be regarded as a complaint as defined by the Code.

[916] RAMPINI, J. I am of the same opinion. It appears to me that when the word "complaint" has been defined in clause (h) of section 4 of the Code of Criminal Procedure, it must be interpreted throughout that Code as bearing that meaning, and, therefore, in sub-section 3 of section 238, the word "complaint" can only mean a complaint made to a Magistrate. That being so, I think, the first question submitted to us must be answered in the affirmative. The second question does not arise.

HENDERSON, J. I am of the same opinion.

GEIDT, J. I am also of the same opinion.

*Conviction set aside.*

30 C. 916.

CIVIL RULE.

MUNNA LAL CHOWDHRY v. PADMAN MISSEK.\*

[14th May, 1903.]

*Jurisdiction—Sanction to prosecute—Criminal Procedure Code (Act V of 1898), s. 195, sub-ss. (6) and (7)—Subordinate authority—Sonthal Parganas Justice Regulation (V of 1893), s. 15.*

For the purposes of s. 195 of the Code of Criminal Procedure, the Court of the Deputy Commissioner of Sonthal Parganas shall be deemed to be subordinate to the Court of the Commissioner of Bhagalpur. Accordingly, an application against an order of the Deputy Commissioner of Sonthal Parganas, revoking a sanction given by the Subordinate Judge of Godda under s. 195 of the Code of Criminal Procedure, should be made to the Commissioner of Bhagalpur, and not to the High Court.

[Com. 19 C. L. J. 292=23 I. C. 876; 41 Cal. 915.]

RULE granted to Munna Lal Chowdhry.

This Rule was issued by a Division Bench (GHOSE and PRATT, JJ.) calling upon the opposite party to show cause why an order of the Deputy Commissioner of Sonthal Parganas should not be set aside.

[917] On the 4th October 1902, the Subordinate Judge of Godda, who was also the Sub-divisional Officer of the place, gave sanction for the prosecution of one Ram Sundar Singh and others under sections 177, 182 and 193 of the Indian Penal Code. From that order there was an appeal to the Deputy Commissioner of Sonthal Parganas, who revoked the sanction on the ground that it was passed without jurisdiction. Thereupon Munna Lal Chowdhry moved the High Court against that order and obtained this Rule.

\* Civil Rule No. 64 of 1903 against the order of C. H. Bompas, Deputy Commissioner of Dumka, dated Dec. 2, 1902.

1903

MAY 23.

FULL  
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30 C. 910=8  
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30 C. 916.

Babu *Boidya Nath Dutt* for the petitioner.

Dr. *Ashutosh Mukerjee* for the opposite party.

BANERJEE AND PARGITER, JJ. After hearing the learned vakils on both sides, we are of opinion that this Rule must be discharged on the simple ground that the application of the petitioner, which is evidently an application under sub-section 6 of section 195 of the Code of Criminal Procedure, ought to have been made to the Commissioner of the Bhagalpur Division, and not to this Court, regard being had to the provisions of section 15 of Regulation V of 1893, and sub-section 7, clause (a) of section 195 of the Code of Criminal Procedure. By sub-section 6 of section 195 any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and sub-section 7 says: "For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie that is to say, where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate." That makes the Court of the Commissioner of the Bhagalpur Division the proper Court to which to make the application.

That being so, we cannot entertain the present application, and the Rule must be discharged with costs.

*Rule discharged.*

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

[918] CRIMINAL REVISION.

MAHOMED NUR *v.* BIKKAN MAHTON.\*

[22nd Jan., 1903.]

*Evidence—Order unsupported by evidence—Criminal Procedure Code (Act V of 1898) s. 147.*

In proceedings under s. 147 of the Criminal Procedure Code, the first party filed their written statement and the Magistrate having declined to give the second party time to file their written statement, made an order under that section in favour of the first party without recording any evidence:—

*Held*, that the Magistrate ought to have had some evidence in proof of the allegations contained in the written statement; and that there being no such evidence upon which the order could be supported, it should be set aside.

*Haro Mohan Sardar v. Gobind Sahu* (1) distinguished.

THIS was a Rule calling upon the District Magistrate of Patna and upon the first party to show cause why the order of the Sub-divisional Officer of Bihar of the 25th September 1902 should not be set aside on the ground that there was no finding that a dispute likely to cause a breach of the peace existed, and that there was no evidence upon which the order could be supported.

The Sub-divisional Officer of Bihar, on the basis of a police report and a petition filed by one of the first party, drew up proceedings under s. 147 of the Code of Criminal Procedure calling upon the parties concerned to put in written statements of their claims on the 25th September 1902, and to be ready with oral and documentary evidence, so that an inquiry might be held whether the second party had got the right to

\* Criminal Revision No. 1185 of 1902 against the order of E. F. Ainslie, Sub-divisional Officer of Bihar, dated Sept. 25, 1902.

(1) (1902) 7 C. W. N. 3.