

1905  
JUNE 20, 22.

CRIMINAL  
REVISION.

32 C. 1090=3  
C. L. J. 43=  
3 Cr. L. J.  
120.

32 C. 1090 (=3 C. L. J. 43=3 Cr. L. J. 120.)

[1090] CRIMINAL REVISION.

Before Mr. Justice Pargiter and Mr. Justice Woodroffe.

WAHED ALI v. EMPEROR.\*

[20th and 22nd June, 1905.]

*District—Magistrate—Accused—Discharge—Omission to state reasons in the order for further inquiry—Criminal Procedure Code (Act V of 1898) s. 437.*

It is not, as a matter of law, obligatory on a District Magistrate to issue a notice upon the accused before directing a further inquiry under s. 437 of the Criminal Procedure Code, but, according to the general principle of criminal jurisdiction, no order prejudicially affecting an accused should be passed without giving him an opportunity of being heard.

It is not ordinarily desirable that a District Magistrate should make a detailed examination of the evidence and give elaborate reasons for ordering a further inquiry, but it is desirable that he should give enough reasons to show that his order is a proper one.

[Ref. 8 C. L. J. 73=12 C. W. N. 822=8 Cr. L. J. 51; 9 Cr. L. J. 446=3 S. L. R. 7; 1 I. C. 938.]

RULE granted to Wahed Ali Sheikh.

The petitioner, Wahed Ali, was placed on his trial before the Sub-divisional Officer of Uluberia, accused under s. 353 of the Indian Penal Code of having, on the 16th November 1914, assaulted a Police constable while arresting a woman under a warrant issued by the Suburban Police Court at Alipore. The Subdivisional Officer, after recording the examination of the prosecution witnesses, discharged the petitioner under s. 253 of the Criminal Procedure Code, on the 3rd December, upon the grounds that the evidence given was discrepant and unreliable as to the identity of the assailants, that the name of the petitioner was not mentioned in the constable's report, and that, in any case, the accused had acted in the right of private defence.

On the 20th March 1905, the District Magistrate of Howrah, acting on his own motion and without notice to the petitioner [1091] to show cause, set aside the order of discharge in the following terms:—

Under section 437 of the Criminal Procedure Code I set aside the order of discharge and direct the retrial of the case before Babu Jnan Sankar Sen, Deputy Magistrate.

The petitioner then moved the High Court and obtained the present Rule.

Mr. Russool (with him Babu Jodu Nath Kanjilal) for the petitioner. The District Magistrate should have given the accused an opportunity of being heard before he set aside the order of discharge—*Hari Dass Sanyal v. Saritulla* (1), *Jaijai Ram v. Suphal Singh* (2), *Re Amin Kariadar* (3), *Natto Singh v. Kari Singh* (4). He should have assigned solid and sufficient reasons: *Hari Dass Sanyal v. Saritulla* (1).

PARGITER AND WOODROFFE, JJ. Wahed Ali Sheikh was accused of an offence under section 353 of the Indian Penal Code and was discharged. Afterwards the District Magistrate of Howrah passed an order, on the 20th March last, under section 437 of the Criminal Procedure Code, setting aside the order of discharge and directing the retrial of the case.

\* Criminal Revision No. 481 of 1905, against the order passed by H. T. S. Forrest, District Magistrate of Howrah, dated March 20, 1905.

(1) (1888) I. L. R. 15 Cal. 608.

(2) (1898) 2 C. W. N. 196.

(3) (1898) 3 C. W. N. 249.

(4) (1899) 4 C. W. N. 100.

Wahed Ali obtained a Rule calling on the District Magistrate to show cause why his order should not be set aside on the grounds, first, that the order was made without any notice to the applicant, and secondly, that the order, inasmuch as it gives no reasons, is not according to law.

The District Magistrate has submitted an explanation, but it hardly touches the two points noticed.

As regards the first, it is quite true that, as a matter of law, it is not obligatory on the District Magistrate to serve a notice on the accused person before ordering a retrial, but it has been laid down that, according to the general principle of criminal jurisdiction, no order prejudicially affecting the accused person should be passed without giving him an opportunity of being [1092] heard; and in this case there appears to have been no reason why that principle should not have been observed.

With regard to the second reason we would say that undoubtedly it is not ordinarily desirable that a District Magistrate, in ordering a further inquiry under section 437 of the Criminal Procedure Code, should make a detailed examination of the evidence and give elaborate reasons, because that might prejudice the trial afterwards; but it is desirable that he should give enough in the shape of reasons to show that his order is proper.

On both the grounds, therefore, we set aside the order of the District Magistrate.

If he considers it necessary to proceed, he should proceed according to these directions.

*Rule absolute.*

32 C. 1093 (= 2 C. L. J. 280 = 2 Cr. L. J. 679.)

[1093] CRIMINAL REVISION.

*Before Mr. Justice Rampini and Mr. Justice Mookerjee.*

TARAPADA BISWAS v. NURUL HUQ.\*

[22nd, 24th, and 29th August, 1905.]

*Witnesses—Process—Magistrate—Extraordinary Jurisdiction of the High Court—Prejudice—Criminal Procedure Code (Act V of 1899), s. 145—Charter Act (24 and 25 Vic., c. 104) s. 15.*

It is not obligatory on a Magistrate to assist parties to a proceeding under s. 145 of the Criminal Procedure Code in producing their witnesses, and they cannot claim as a matter of right that process should be issued by the Court to enable them to bring forward their evidence.

*Harendra Narain Singh v. Bhabani Prsa Baruani (1), Ram Chandra Das v. Monohar Roy (2), Maadhab Chandra Tanti v. Martin (3), Surjya Kanta Acharjee v. Hem Chunder Chowdhry (4), and Radhanath Singh v. Mangal Gareri (5) dissented from. Manmatha Nath Mitter v. Baroda Prasad Roy (6) referred to.*

The powers of superintendence under s. 15 of the Charter Act should in cases under s. 145 of the Criminal Procedure Code, be exercised with caution; and the Court ought not to interfere, unless satisfied that the party has been prejudiced by the proceedings in the Court below.

*Sukh Lal Sheikh v. Tara Chand Ta (7) followed.*

\* Criminal Revision No. 697 of 1905, against the order of H. K. Briscoe, Sub-divisional Magistrate of Meherpur, dated the 9th of June 1905.

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| (1) (1885) I. L. R. 11 Cal. 762.      | (5) (1905) 2 C. L. J. 286, note. |
| (2) (1898) I. L. R. 21 Cal. 29.       | (6) (1904) I. L. R. 31 Cal. 685. |
| (3) (1902) I. L. R. 30 Cal. 508 note. | (7) (1905) 9 C. W. N. 1046.      |
| (4) (1902) I. L. R. 30 Cal. 508.      |                                  |

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C. L. J. 48=  
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120.