

Before Mr. Justice Kemp and Mr. Justice Glover.

DULALI BEWA v. BHUBAN SHAHA AND OTHERS.*

1869
Aug. 23.

*Code of Criminal Procedure, ss. 66 & 180—Dismissal of Complaint
without recording Evidence—Illegal Procedure.*

A charged B before a Magistrate, for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the Police, and reported to be false. The Magistrate, without recording the complaint under section 66 of the Code of Criminal Procedure, sent for the Police papers, and under section 180 of the same Code dismissed the case:

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Held, that the proceedings were illegal; that the Magistrate was bound under section 66 of the Code of Criminal Procedure to record the examination of the complainant, before he could, under section 180, dismiss the complaint.

THIS case was referred to the High Court by the Judge of Dinagapore, under section 434 of the Code of Criminal Procedure, for revision of the order passed by the Magistrate of that district, dated 18th July 1869, dismissing a complaint under section 180 of the Code of Criminal Procedure. The Sessions Judge considered the proceedings to be illegal, for the reasons contained in his letter to the Registrar of the High Court, of which the following is an abstract :

“ I believe it to have been illegal, because the complaint was “ not recorded in the manner prescribed in section 66.

“ The complaint was one of wrongful confinement, and was “ first made to the Police, by whom it was reported to be false. “ Thereupon the complainant petitioned the Magistrate. The “ order passed was to bring up the Police papers. These having “ been inspected, it was ordered that the case be dismissed under “ section 180, Code of Criminal Procedure.

“ The Magistrate, in his explanation called for by this Court, “ reports that he did not consider that section 66 applied to the “ case, because there was no application in the petition for a sum- “ mons or warrant against any person. This does not seem to me “ to be of much force, for if section 66 did not apply, neither did “ section 180, under which the case was dismissed. If the

* Reference, under Section 434, Code of Criminal Procedure from the Judge of Dinagapore.

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“ Officiating Magistrate had not considered it to be virtually a
 “ complaint of an offence on which a summons or warrant should
 “ issue, he would not have referred to section 180, in dismissing
 “ it. What I contend for is that a case cannot be dismissed under
 “ section 180, until the complaint has been duly recorded under
 “ section 66.”

The judgment of the High Court was delivered by

GLOVER, J.—In this case the Magistrate dismissed the complaint of one Dulali Bewa charging certain persons with wrongful confinement of her brother, under section 180 of the Code of Criminal Procedure. The Sessions Judge holds that this proceeding was illegal, and that before dismissing the complaint under section 180, the Magistrate was bound to record the examination of the complainant under section 66. The Magistrate in his explanation states, that he does not consider the case to come under section 66, as the object of the complainant was not to have a summons or warrant issued against any person. We think that section 66 does apply, and that before the complaint could be dismissed under section 180, the Magistrate was bound to have recorded the examination of the complainant.

The petition filed by her asks for a summons to be served on her witnesses, and in proof of her allegations for orders to the Police to make a further investigation, and release her brother who, she stated, was illegally confined. In the heading of this petition she distinctly prays that, after proof taken, the accused parties might be sent for. This petition, taken as a whole, appears to us clearly to mean that the petitioner wished those whom she charged with the unlawful confinement of her brother to be sent for by the Magistrate on proof of the truth of her allegations. The enquiry by the Police, which was also prayed for, was only a means to the end. We think therefore that the Magistrate was not right in dismissing the complaint without going through the process enjoined by section 66, and we think further, that he should send for the petitioner, Dulali Bewa, and give her the opportunity of strengthening her case by deposing on oath to its truth.