

Before Mr. Justice Phear and Mr. Justice Ainslie.

IN THE MATTER OF THE PETITION OF RAGHOO PARIRAH\*

1873  
January 28. *Criminal Procedure Code (Act XXV of 1861), s. 67 (1)—Complaint—Dismissal without Enquiry.*

REFERENCE by the Sessions Judge of Cuttack under the following circumstances :—

One Raghoo Parirah, on the 5th November 1872, presented a petition to the District Magistrate, alleging that he had been maltreated by the Police, and asking for an enquiry. The deposition of the complainant did not appear to have been taken, nor was there any record of any enquiry having been made. The petition was ordered to be filed, but no further order was made in the case. Accordingly the complainant, on the Magistrate going into camp, presented a second petition on the 20th November to the Joint Magistrate in charge. He made no mention of his former petition. The Joint Magistrate after taking the complainant's deposition, fixed the 26th November for the trial of the case, and issued warrants against the accused. The District Magistrate being informed of this, at once transferred the case to his own file, and directed the suspension of the warrants, and on the 3rd December he dismissed the complaint under section 67 of the Criminal Procedure Code, observing that, after an enquiry made by him in his executive capacity, he was satisfied that the Police had only acted in the discharge of their duty, and were therefore protected by ss. 76 and 77 of the Code.

The Sessions Judge being of opinion that the complaint had been improperly dismissed, referred the matter for the orders of the High Court.

The judgment of the Court was delivered by

PHEAR, J.—It appears that the Magistrate removed a case from the file of the Joint Magistrate to his own, after complaint had been made and warrants issued by the Joint Magistrate upon the footing of the complaint. The Magistrate having removed the case immediately suspended the warrants and dismissed the complaint, on the ground that he had previously, in his executive capacity, made some enquiry into the matter out of which the complaint arose, and from information that he so gained was of opinion that the complaint ought to be rejected under section 67 of the Criminal Procedure Code. The words of this section are, so far as it is necessary to read it now—“If in the judgment of the Magistrate there be no sufficient ground for proceeding, he shall dismiss the complaint.”

\*Reference to the High Court under section 434 of the Code of Criminal Procedure, by the Sessions Judge of Cuttack.

(1) See Act X of 1872, s. 147.

We think that the Magistrate committed an error in taking this course. It has always been held by this Court that the proper officer to issue the warrant is the officer who has heard the complaint made, because it is he who can best exercise a discretion with regard to the *primâ facie* merits of the complaint. When that officer had issued the warrants the case ought to go on in due course according to the procedure prescribed by the Code, unless something occurs to show that the Magistrate who had issued the warrant had from some cause or another made a wrong exercise of his discretion, which has certainly not been the case here. It appears to me that when the Magistrate took the case from the Joint Magistrate's file, he ought to have proceeded with it as from the stage at which he found it; and I think he committed a material error by not doing so. In my opinion therefore the order of the Magistrate which suspended the warrants and dismissed the complaint should be set aside.

I do not think it necessary that we should transfer the case to any other Magistrate for complete investigation and decision, because I feel confident that the Magistrate whose order is now in question, when he is made acquainted with the opinion of this Court, will duly carry out the investigation which the complaint initiated, and will come to a fair and judicious determination of the matter.

Before Mr. Justice Macpherson.

IN RE EDULJEE RUTTONJEE.

Act VIII of 1859, ss. 280, 281 — Plaintiff.

S. 281 of Act VIII of 1859 does not apply to a plaintiff in custody for the cost of a suit.

THIS was an application under s. 281 of Act VIII of 1859 for the release of a prisoner confined in the Presidency Jail, who was in custody at the suit of the defendant for the costs of a suit in which he had been unsuccessful. The terms of s. 280 had been complied with by the prisoner.

Mr. *Kennedy*, in support of the application, contended, that s. 281 applied to this case; that the words of the section applied, as laid down by s. 280, to "any person in confinement under a decree;" and therefore would apply to a plaintiff-debtor, as well as a defendant-debtor.

Mr. *Woodroffe*, *contra*, referred to a decision by Levinge, J., in *In the matter of Beenarussee Dossee* (1).

Mr. *Kennedy*, in reply.

MACPHERSON, J.—I shall follow the decision of Levinge, J., that s. 281 does not apply to such case as this. The application is dismissed with costs.

(1) Cor. Rep., 123.

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March. 4.