

*Before Mr. Justice Prinsep and Mr. Justice Stephen.*

BISHU SHAIK

v.

SABER MOLLAH.\*

1902

Feb. 5.

*Summary trial—Complaint disclosing facts constituting offence of a graver nature—Process, issue of—Trial for minor offences—Magistrate, jurisdiction of—Illegality—Criminal Procedure Code (Act V of 1898) s. 200.*

Where the complaint stated that the accused with a large number of other persons armed with swords and other deadly weapons came upon the complainant's land, threatened him, and, in spite of his remonstrances, cut his paddy, and the Magistrate in examining the complainant recorded merely the fact that the complainant stated that his paddy had been cut by the accused, and thereupon tried the accused summarily and convicted them under ss. 143 and 379 of the Penal Code. *Held*, that as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and the examination of the complainant, which had not been properly recorded, did not show that such offence had not been committed, the Magistrate had acted without jurisdiction, and it was ordered that he should hold a regular trial.

THE accused Bishu Shaik obtained a Rule calling upon the District Magistrate to show cause why his conviction and sentence should not be set aside and a regular trial ordered on the ground that the offence disclosed in the petition of complaint was not triable summarily.

In this case the petition of complaint of the complainant. Saber Mollah stated that the accused persons, Bishu Shaik and another, with some ninety or a hundred men armed with swords and other deadly weapons came upon his land, threatened him, and, in spite of his remonstrances, cut his paddy. In examining the complainant the Deputy Magistrate of Magurah recorded merely the fact that the complainant had stated that his paddy had been cut by the accused persons. He then issued processes for the attendance of the accused to answer charges of offences under ss. 143 and 379 of the Penal Code. A summary trial was thereupon held and the accused were convicted.

*Mr. P. M. Ghata* for the petitioner.

PRINSEP and STEPHEN JJ. The Rule must be made absolute. In this case the petition of complaint stated that the accused with

\* Criminal Revision No. 904 of 1901, made against the order passed by R. Banerjee, Esq., Deputy Magistrate of Magurah, dated the 20th of September 1901.

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others to the number of some 90 or 100 armed with swords and other deadly weapons came upon the complainant's land and, in spite of his remonstrances, threatened him and cut his paddy.

The Magistrate in examining the complainant recorded merely the fact that the complainant stated that his paddy had been cut by the persons accused by him, and he accordingly issued processes for the attendance of the accused to answer charges of offences under ss. 143 and 379 of the Indian Penal Code, both of which offences are triable summarily. A summary trial was thereupon held and the accused has been convicted.

We have no doubt that on the facts before the Magistrate the offences complained of were not triable summarily. The petition of complaint discloses the commission of a much more serious offence than the offences for which the Magistrate has held a summary trial. The examination of the complainant, which has not been properly recorded, does not show that the offence so complained of was not committed. We must therefore hold that the Magistrate acted without jurisdiction. The conviction and sentence are set aside. The Magistrate will proceed to hold a regular trial.

D. S.

*Rule made absolute.*

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*Before Mr. Justice Prinsep and Mr. Justice Stephen.*

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 Dec. 3.

KULDIP SAHAI

v.

BUDHAN MAHTON.\*

*Complaint to police—Report by police—Case ordered to be entered as true by Magistrate—Judicial enquiry—Right of complainant to be examined and to have his case tried—Criminal Procedure Code (Act V of 1898) ss. 173, 200 and 202.*

The complainant lodged information with the police charging certain persons with assault and with forcibly carrying off grain. The complaint was investigated and a report made to the Subdivisional Officer, who ordered the case to be entered as true, recording the offence under s. 147 of the Penal Code. He, however, declined

\* Criminal Revision No. 1050 of 1901, made against the order passed by J. G. Cumming, Esq., District Magistrate of Patna, dated 22nd June 1901.