

CRIMINAL REVISION.

Before Mr. Justice Sharfuddin and Mr. Justice Coxe.

JYOTINDRA NATH DAW

v.

HEM CHANDRA DAW.*

1908
Sept. 10.

Complaint—Dismissal of complaint by Subordinate Magistrate—Refusal by District Magistrate to order further inquiry—Revival of complaint after such refusal—Criminal Procedure Code (Act V of 1898), ss. 203 and 437.

A Subordinate Magistrate who has dismissed a complaint under s. 203 of the Code is competent to revive it notwithstanding that the District Magistrate has refused to order a further inquiry in the matter on application made to him for that purpose.

On the 29th May 1908, one Hem Chandra Daw lodged a complaint before a Deputy Magistrate at Burdwan against the petitioner and others, under sections 352 and 323 of the Penal Code. The Magistrate, after examining the complainant, fixed the 19th June for evidence, acting apparently under section 202 of the Criminal Procedure Code. On that day, the complainant's witnesses being absent, the case was postponed to the 9th July, but the witnesses were still absent, and the complaint was dismissed under section 203 of the Criminal Procedure Code. On the 23rd instant, Hem Chandra moved the District Magistrate of Burdwan for a further inquiry under section 437 of the Criminal Procedure Code, but the latter declined to order such inquiry on the ground that the non-appearance of the witnesses was due to his fault in not taking out processes against them. The complainant then filed a petition before the Magistrate who had dismissed the complaint, praying for a revival of the case. This Magistrate passed an order on the 12th August to the following effect :—

“ In the present case the order of dismissal was for not producing witnesses on the fixed date. There was a motion before the District Magistrate who

* Criminal Revision No. 1015 of 1908, against the order of M. A. Kadir, Deputy Magistrate, Burdwan, dated Aug. 12, 1908.

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declined to interfere with the order of dismissal. If the motion had not been made, I would have passed the necessary orders on this petition, but I think, as the present application is after the District Magistrate's order, it should go to him for orders. All I can say is that I see no legal objection to the revival of the case."

The District Magistrate on the same date passed an order in these terms when the case was referred to him :—

" This matter has nothing to do with me. I have already disposed of the petition of motion which was filed before me. The Deputy Magistrate must act on the petition filed before him according to his own discretion."

The Deputy Magistrate thereupon, after hearing the muktair for the accused, issued a summons against the petitioner under section 323 of the Penal Code.

Babu Narendro Kumar Bose, for the petitioner. The revival of the case by the Deputy Magistrate is *ultra vires*. The District Magistrate's order was an obstacle to his doing so.

SHARFUDDIN AND COXE JJ. This is a Rule calling upon the District Magistrate of Burdwan to show cause why the order of the Deputy Magistrate, dated the 12th August 1908, reviving the case of the petitioner, should not be set aside.

It appears that the complainant in this case lodged his complaint on the 29th May 1908. He was referred to the Assistant Surgeon for examination of his injuries, and was directed by the Court to prove his case on the 19th June 1908, on which date his witnesses were not present. Then the case was fixed for the 9th July. On the 9th July, the case was dismissed under section 203 of the Criminal Procedure Code by the Deputy Magistrate on the ground of the absence of the complainant's witnesses. We then find the complainant moving the District Magistrate on the 23rd July 1908, under section 437 of the Criminal Procedure Code, on which the District Magistrate passed the following order :—" The non-appearance of the witnesses is due to the fault of the complainant who failed to take out process against them. I decline to order further inquiry." We again find that, on the 12th August 1908, the complainant put in a petition before

the Deputy Magistrate who had dismissed the complaint under section 203 of the Criminal Procedure Code praying for a revival of his complaint. This Deputy Magistrate rather hesitated to pass any order on this petition, inasmuch as the complainant had already moved the District Magistrate for a further inquiry and the District Magistrate had refused to interfere in the matter. What the Deputy Magistrate says is this:—"If the motion had not been made, I would have passed necessary orders on this petition, but I think, as the present application is after the District Magistrate's order, it should go to him for orders. All I can say is that I see no legal objection to the revival of the case." When the matter was thus referred to the District Magistrate he passed the following order on the 12th August 1908:—"This matter has nothing to do with me. I have already disposed of the petition of motion which was filed before me. The Deputy Magistrate must act on the petition filed before him according to his own discretion."

It is clear, therefore, that the District Magistrate did not forbid the Deputy Magistrate to take action on the petition for the revival of the complaint. On the contrary, we find that the matter was left entirely in the hands of the Deputy Magistrate who was asked to exercise his own discretion in the matter. There is no doubt that the Deputy Magistrate who had dismissed the complaint under section 203 of the Criminal Procedure Code could legally revive it after dismissal under section 203. The only hitch that there was in the revival was the District Magistrate's order mentioned above, but the District Magistrate himself sent back the application of the complainant for revival to the Deputy Magistrate for him to pass any order that he thought fit and proper.

In these circumstances, we do not think that the Deputy Magistrate's order to revive the complaint was in any way illegal or *ultra vires*. We, therefore, discharge the Rule. Let the record be sent down without delay.

Rule discharged.