

CRIMINAL REVISION.

Before Mr. Justice Brett and Mr. Justice Ryves.

KANCHAN GORHI

v.

RAM KISHUN MUNDUL.*

1908

August 11.

Complaint—Magistrate—Complaint to Magistrate in charge of the sadar—Reference of complaint to another Magistrate for inquiry and report—Jurisdiction of latter to direct prosecution of the complainant before dismissal of the complaint—“Judicial proceedings”—Criminal Procedure Code (Act V of 1908) ss. 4 (m) and 476.

Where a complaint was lodged before the Senior Deputy Magistrate in charge of the *sadar*, who referred it to a Junior Deputy Magistrate “for inquiry and report”, and the latter, after taking evidence, drew up a proceeding under s. 476 against the complainant, and submitted a report to the former Magistrate, upon which he dismissed the complaint the next day :—

Held, that the proceeding before the Junior Deputy Magistrate was a “judicial proceeding” within s. 4(m), and that he had jurisdiction under s. 476 of the Criminal Procedure Code to direct the prosecution of the complainant for an offence under s. 211 of the Penal Code committed before him.

CRIMINAL RULE.

ON the 1st June 1908 the petitioner lodged a complaint before Babu S. K. Mukerjee, the Deputy Magistrate in charge of the *sadar* Purnea, against one Ram Krishna Mundul and others, alleging that they went to his house on the 28th May 1908 and extorted Rs. 50 from him. It appeared from the order-sheet of Babu S. K. Mukerjee that on the 17th June he referred the case to Mr. E. A. Oakley, a Deputy Magistrate, “for inquiry and report,” and the latter in his Explanation to the High Court admitted that the case had been sent to him for that purpose.

ON the 2nd July Mr. Oakley examined the petitioner and some of his witnesses, and having disbelieved the prosecution story, drew up a proceeding on the 9th instant, under s. 476 of the Criminal Procedure Code, against the petitioner, and

* Criminal Revision No. 845 of 1908 against the order of F. S. Hamilton, Sessions Judge of Purnea, dated the 15th July 1908.

put him on bail to appear, when called upon. On the same day he drew up a report and forwarded it to Babu S. K. Mukerjee with the order under s. 476. On receipt of the report the latter, on the next day, dismissed the complaint under s. 203 of the Code in the absence of the petitioner and without recording any reasons for his order as required by the section.

The petitioner thereafter moved the Sessions Judge of Purnea, who refused to interfere. He then obtained the present Rule from the High Court on the ground that after the Deputy Magistrate, Babu S. K. Mukerjee, had transferred the case to Mr. Oakley for "inquiry and report" only, and the latter did not take up the case for trial, but merely for the purpose of making a report, he had no jurisdiction to pass an order under s. 476 of the Code, until the case was legally disposed of by Babu S. K. Mukerjee.

Mr. Orr (Deputy Legal Remembrancer), for the Crown. The order of transfer to Mr. Oakley was not illegal. The senior Deputy Magistrate had power under s. 192 of the Code to refer the case to Mr. Oakley. The proceeding before the latter was a "judicial proceeding" under s. 4 (m), as he had the power to examine, and did examine, witnesses on oath. Then under s. 476 he had jurisdiction to direct the prosecution of the complainant as the offence under s. 211 of the Penal Code was committed before him.

Babu Dasarathi Sanial (Babu Aban Bhusan Mukerjee with him), for the petitioner. The case of the accused was sent to Mr. Oakley obviously under s. 202 of the Code "for inquiry and report." An investigation under this section is not a "judicial proceeding." Again Mr. Oakley had no jurisdiction to act under s. 476 as the case was forwarded to him only for inquiry and report and not for trial. Further he had no power to direct the prosecution of the petitioner, until the complaint had been dismissed by the senior Deputy Magistrate: *Jogendra Nath Mookerjee v Emperor* (1) and *Queen-Empress v. Sham Lall* (2).

(1) (1905) I. L. R. 33 Calc. 1.

(2) (1887) I. L. R. 14 Calc. 707.

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BRETT AND RYVES JJ. It appears that the case, out of which this Rule arises, was sent by Babu S. K. Mukerjee, who had taken cognisance of it, to another Deputy Magistrate, Mr. Oakley, for inquiry prior to the issue of processes against the accused. Mr. Oakley made the inquiry, examined witnesses, and came to the conclusion that the case, as presented by the complainant, was false and, therefore, he took proceedings under section 476 of the Criminal Procedure Code, and committed the complainant for trial under section 211 of the Indian Penal Code.

The present Rule was obtained on the District Magistrate to show cause, why the proceedings drawn by Mr. Oakley under section 476 of the Criminal Procedure Code should not be set aside on the ground that, after the case had been transferred to Mr. Oakley by the Deputy Magistrate, Babu S. K. Mukerjee, for inquiry and report only, Mr. Oakley had no jurisdiction to pass an order under section 476 of the Criminal Procedure Code, until the original complaint was disposed of.

Whether the case was sent to Mr. Oakley by Babu S. K. Mukerjee under the provisions of section 192 or under section 202 of the Criminal Procedure Code, it is clear that Mr. Oakley, in carrying out the order received with that order of transfer examined witnesses and recorded evidence on oath. In our opinion the proceedings conducted by Mr. Oakley, who is a Magistrate, fall within the description given in section 4, clause (m) of the Criminal Procedure Code of "judicial proceedings." That being so we must hold that, under the provisions of section 476 of the Criminal Procedure Code, Mr. Oakley had power to take proceedings under that section against the complainant for any offence referred to in section 195 of the Criminal Procedure Code committed before him or brought to his notice in the course of those proceedings, and to commit the accused for trial for having committed that offence.

We must, therefore, discharge the Rule.

Rule discharged.