

1913
 SUBED ALI
 v.
 EMPEROR.
 COXE J.

individual peons, and, consequently, it is the nazir's duty, not to delegate his authority, but to distribute the processes which are received by his department among the various officers entrusted with their execution. That, in my opinion, does not amount in any way to delegation.

I think, therefore, that the officer who was entrusted with the execution of the process was the peon, or the bailiff, as he is described in it. He was the attaching peon and consequently his custody of the property was lawful, and the accused were guilty of an offence in rescuing that property from him.

S. K. B.

Rule discharged.

CRIMINAL REVISION.

Before Imam and Chapman JJ.

ABDULLAH MANDAL

v.

EMPEROR.*

1913
 April 16,

Cognizance—Police report—Case made over to another Magistrate for enquiry and report—Criminal Procedure Code (Act V of 1898) ss. 173, 190 (1) (b)—Practice.

Where a Magistrate, upon receiving a police report under s. 173, does not take cognizance of the case under s. 190 (1) (b), which he is perfectly competent to do, but makes it over for enquiry and report to an Honorary Magistrate, he acts contrary to the provisions of the Law.

THE facts are briefly these. One Nasirul Huq laid a charge of theft of a bullock belonging to his brother-in-law, Panchcowrie Shaikh, at the thana of Dadpur, against the petitioners. The police enquired

* Criminal Revision No. 347 of 1913, against the order of A. B. De, Subdivisional Officer of Hooghly, dated Jan. 18, 1913.

into the case and submitted a report to the Subdivisional Magistrate of Hooghly to the effect that there was no reliable evidence forthcoming to support the charge. The Subdivisional Magistrate thereupon made over the case to an Honorary Magistrate to enquire and report. An elaborate inquiry was made and the learned Honorary Magistrate reported that he could not recommend the trial of the petitioners for theft, as it was conclusively proved that the bullock had been purchased by Abdullah, one of the petitioners. Upon this report the Subdivisional Magistrate issued summonses against the petitioners. Against this order of the Magistrate the petitioners moved the High Court and obtained this Rule.

Babu Manmatha Nath Mukerjee, for the petitioners, contended that the Magistrate acted contrary to law in making over the case to the Honorary Magistrate for enquiry and report. He should have taken cognizance of the case himself and dealt with it under section 190, clause *b*, of the Criminal Procedure Code. He could not treat the police report as a complaint under section 200 of the Code of Criminal Procedure. Further, he submitted that the matter was fully gone into before the Honorary Magistrate, and the evidence did not disclose any offence. It would be most harassing to the petitioners to go to trial upon evidence such as was adduced at the preliminary enquiry.

IMAM AND CHAPMAN JJ. This was a Rule calling on the District Magistrate of Hooghly to show cause why the order dated the 6th January, 1913, should not be set aside.

Information was given to the police by the complainant, Nasirul Hug, at the thana of Dadpur, in respect of the theft of a bullock belonging to his brother-in-law, Panchcowrie Shaikh, by the petitioners

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Abdullah Mandal and Neamul Huq. The police, on such information being recorded, submitted a report to the Magistrate in which they stated that the case against the accused might be true, but that the evidence to prove it was not forthcoming. Thereupon the Subdivisional Magistrate made over the case to Mr. N. K. Bose, an Honorary Magistrate, for the purposes of enquiry and report. The Honorary Magistrate examined a number of witnesses on both sides and then submitted a report to the Subdivisional Magistrate, in which he expressed his opinion that it was amply proved that the bullock had been purchased by Abdullah, and that therefore he could not recommend a trial of the accused under section 379 Indian Penal Code. On receipt of this report, the Subdivisional Magistrate ordered the issue of summonses against the petitioners, and in his order remarked that the purchase of the animal by the accused should be established in Court.

The proceedings of the Subdivisional Magistrate are open to attack on grounds of law and fact alike. A report having been submitted by the police under section 173, it was open to the Magistrate to take cognizance of the case under section 190, clause (b), of the Criminal Procedure Code. But he did not choose to do so and proceeded to make over the case for enquiry and report, as though the matter he was dealing with was one on a complaint under section 200 of the Code. The proceedings before the Honorary Magistrate, thereafter, so far as they bear on the case based on a police report, were not in consonance with the provisions of the law. We might have been disposed to overlook the proceedings that were erroneously held before the Honorary Magistrate and should have treated the order of the Subdivisional Magistrate for the issue of summonses against the accused persons

as one passed under section 190, clause (b), had not the petitioners based their contention for the dropping of these proceedings on another ground as well. They say that the facts disclosed before the Honorary Magistrate do not justify the trial of the accused persons. Ordinarily, we would not be disposed to interfere with the discretion of the Magistrate, if it were not for exceptional circumstances, namely, the examination of a number of witnesses before the Honorary Magistrate having already had the effect of causing the two parties a great deal of trouble. If these proceedings before the Magistrate had disclosed facts which led us to believe that the trial would be in the interest of justice, we should have had no hesitation in allowing the proceedings to go on. But the enquiry by the police as well as by the Honorary Magistrate disclosing the fact that there is no case against the petitioners that could be rightly tried, and the Subdivisional Magistrate not having given sufficient ground for not agreeing with the Honorary Magistrate and the police, we are not disposed to allow the proceedings to go on.

The order, therefore, is, that this Rule be made absolute, the order of the Magistrate dated the 6th January, 1913, set aside, and the proceedings stayed. If the petitioners are on bail, they will be discharged from their bail.

S. K. B.

Rule absolute.

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