

(1879) 12 AHC CK 0001

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Bhup Singh and
Another

RESPONDENT

Date of Decision: Dec. 31, 1879

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 215
- Penal Code, 1860 (IPC) - Section 417

Citation: (1880) ILR (All) 570

Hon'ble Judges: Straight, J

Bench: Single Bench

Judgement

Straight, J.

In this case the two accused persons were originally charged before Mr. Hewitt, Assistant Magistrate of Agra, at the instance of one Bhagwan Singh, u/s 417 of the Penal Code. After investigation the prosecution failed and a discharge was passed u/s 215, Criminal Procedure Code, the Assistant Magistrate at the same time making an order for compensation against Bhagwan Singh, on the ground that his complaint was frivolous and vexatious. Against this order for compensation and of discharge, Bhagwan appealed to the Court of Session, and the then Officiating Judge, Mr. Gardener, having made some remarks in writing on the case, remitted the record to the Magistrate of the District, who made the case over to Kedar Nath, Deputy Magistrate, who then proceeded with an inquiry against Bhup Singh and Umrao Singh, based upon Sections 363 and 420 of the Penal Code, ultimately committing them for trial to the Court of Session. On the 11th of October the order for compensation passed against Bhagwan Singh by Mr. Hewitt was quashed by this Court, having been made in a case other than a summons case and therefore being ultra vires. The committal of Bhup Singh and Umrao Singh having taken place on the 30th of September, the case came on for hearing at the Sessions Court on the 22nd

November, when objection was taken to the jurisdiction of the Judge to try it, on the ground that the commitment was informal and illegal, having been made in consequence of the remarks in writing of the Officiating Sessions Judge of the 26th July, which virtually amounted to a "direction to commit" u/s 296, Criminal Procedure Code, and had been so regarded : this direction the Judge had no power to make, the offences charged against Bhup Singh and Umrao Singh not being "Sessions cases," or in other words "exclusively triable by a Court of Session." Upon this objection, taken in limine," the Sessions Judge declined to proceed with the case and remitted the whole of the proceedings and papers to this Court with the object and intention, I presume, that the commitment should be quashed.

2. The case for the accused, or in other words in support of my setting aside the proceedings against them, has been very fully and ably argued by Mr. Colvin, though the whole of his contention has been based on an entire misconception of the character of the document of the 26th of July. I am clearly of opinion that it is not nor was it ever intended to be a "direction to commit." On the contrary, as far as I understand its terms, the Officiating Sessions Judge carefully guarded himself against making any order of that kind and simply relegated the record to the Magistrate of the District, for him to take Such steps in the matter as he might think proper. The Magistrate upon consideration of the facts appearing in the evidence, u/s 44, Criminal Procedure Code, referred the case for investigation to his subordinate Kedar Nath, who had full power to hold the necessary inquiry, and, if he considered the case one that ought to be tried by the Court of Session, to commit it thereto in accordance with the provisions of Section 196, Criminal Procedure Code. Whether that investigation did or did not take place in consequence of the remarks of the Officiating Sessions Judge of the 26th July appears to me quite immaterial: there was no "direction to commit" in the sense of Section 296, Criminal Procedure Code, that is to say, to send the discharged accused at once to the Sessions Court, without further inquiry. The observations of the Judge, which it was quite competent for him to make under the proviso at the end of Section 296, Criminal Procedure Code, even if they did amount to a "direction," seem to suggest to the Magistrate of the District, that he should, as he properly might, direct the Sub-ordinate Court to inquire into any offence, other than that on which the order of discharge had been passed, which the evidence on the record showed to have been committed. It appears to me that the inquiry upon the charges u/s 363 and 420 of the Penal Code were rightly held by the Deputy Magistrate, and that there is no pretence for impeaching his commitment. The cases of *Queen v. Seetul Pershad* 1878 H.C.R.N.W.P. 168 see also *Empress v. Kanchan Singh* ILR All. 413, and *Petition of Mohesh Mistree* ILR Cal. 282, are clearly distinguishable from the present, and my view of this matter in no way involves disagreement with any of the authorities quoted. The records are returned to the Sessions Judge, and he is directed to proceed with the trial of the accused Bhup Singh and Umrao Singh, u/s 363, 420 and 109/420, in ordinary course.